AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

OK

6-21-82
Vol. 47 No. 119
Pages 26611-26804

federal register

Monday
June 21, 1982

Selected Subjects

Administrative Practice and Procedure
Agriculture Department

Air Pollution Control
Environmental Protection Agency

Business and Industry
Federal Communications Commission

Claims
Army Department

Coal Mining
Surface Mining Reclamation and Enforcement

Cotton
Agricultural Marketing Service

Food Stamps
Food and Nutrition Service

Government Procurement
Federal Procurement Policy Office

Income Taxes
Internal Revenue Service

Milk Marketing Orders
Agricultural Marketing Service

Privacy
Air Force Department

Radio Broadcasting
Federal Communications Commission

Railroads
Interstate Commerce Commission

Wildlife
Fish and Wildlife Service

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

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

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

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

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

Contents

Federal Register

Vol. 47, No. 119

Monday, June 21, 1982

Agriculture Department
See also Agricultural Marketing Service; Commodity Credit Corporation; Food and Nutrition Service.
RULES
Administrative regulations:
26611 Equal Access to Justice Act; awards procedures
NOTICES
26680 Privacy Act; systems of records

Agricultural Marketing Service
PROPOSED RULES
Cotton:
26637 Fiber and processing tests; fee schedule
Milk marketing orders:
26665 Oklahoma Metropolitan et al.
26656 Tennessee Valley, et al.

Air Force Department
RULES
26617 Privacy Act; implementation

Army Department
RULES
26616 Claims; Federal Tort Claims Act, extension
NOTICES
26686 Privacy Act; systems of records

Civil Aeronautics Board
NOTICES
26683 Certificates of public convenience and necessity and foreign air carrier permits; weekly applications
Hearings, etc.:
26684 Alaska Airlines Inc. et al.
26684 American World Airways, Inc.; fitness investigation
26730 Meetings; Sunshine Act
26684 Subsidy rate adjustments

Coast Guard
PROPOSED RULES
26667 Marine noise abatement standards; withdrawn

Commerce Department
See National Oceanic and Atmospheric Administration.

Commodity Credit Corporation
NOTICES
26730 Meetings; Sunshine Act

Defense Department
See also Air Force Department; Army Department; Defense Logistics Agency.
NOTICES
26687 Agency forms submitted to OMB for review
Meetings:
26687 Defense Systems Management College Board of Visitors
26687 Wage Committee

Defense Logistics Agency
NOTICES
26685 Privacy Act; systems of records

Drug Enforcement Administration
RULES
Schedules of controlled substances:
26616 Mazindol; correction

Economic Regulatory Administration
RULES
Powerplant and industrial fuel use:
26615 Electric utility conservation plans; correction
NOTICES
Consent orders:
26699 Union Oil Co. of California
Remedial orders:
26698 Crown Central Petroleum Corp.
26690 Dalco Petroleum Corp. et al.
26690 Fasgo, Inc.
26691 Scott, Walter J., et al.
26690 Scott, William J.
26691 Scott Oil Co.

Energy Department
See also Economic Regulatory Administration; Energy Information Administration; Federal Energy Regulatory Commission.
NOTICES
26688 Patents, exclusively or nonexclusively; availability

Energy Information Administration
NOTICES
26691 Monthly powerplant report (Form EIA–759; revision and inquiry
26700 Natural gas, high cost; alternative fuel price ceilings and incremental price threshold

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States, etc.:
26618 California
26619 Illinois
26623 Minnesota
26620 Nevada
26621 Tennessee
26622 Wisconsin
PROPOSED RULES
Air pollution standards of performance for new stationary sources:
26750 Phosphate fertilizer industry

Federal Aviation Administration
RULES
26615 Jet routes and reporting points; correction
26615 Transition areas; correction
PROPOSED RULES
26665 Control and transition areas; withdrawn
NOTICES
Meetings:
26724 Air Traffic Procedures Advisory Committee

Technical standard orders, draft; inquiries, etc.:
26725 Airborne radar approach and beacon systems for helicopters
26726 Aircraft tires
26726 Aircraft wheels and wheel brake assemblies
26726 Airspeed instruments
26727 Direction instrument, non-magnetic (gyroscopically stabilized)
26727 ILS glide slope receiving equipment operating within 328.6 to 335.4 Megahertz
26728 Optional display equipment for weather and ground mapping radar indicators
26725 Over speed warning instruments; draft technical standard order; inquiry
26728 Powerplant fire detection instruments (thermal and flame contact types)

Federal Communications Commission
RULES
Radio broadcasting:
26624 FM table of assignments; policies and procedures governing petitions to amend
Radio services, special:
26631 Land mobile services; geographic reallocation to business radio service, Detroit, Mich.
26631 Land mobile services; interconnection with public switched telephone network; correction
Radio stations; table of assignments:
26624 California; correction
PROPOSED RULES
Common carrier services:
26668 MTS and WATS market structure; tentative access charge plan
Radio services, special:
26677 Land mobile services; frequency coordination in business radio service; simplified requirements
NOTICES
Hearings, etc.:
26701 Airsignal International, Inc., et al.
26705 Southern New England Telephone Co.; second computer inquiry motion for exemption denied; grant of stay
26703 WRLJ, Inc., et al.
26730, 26731 Meetings; Sunshine Act (2 documents)
26703 Rulemaking proceedings filed, granted, denied, etc.; petitions by various companies

Federal Deposit Insurance Corporation
NOTICES
26731, 26732 Meetings; Sunshine Act (4 documents)

Federal Energy Regulatory Commission
NOTICES
Hearings, etc.:
26695 Bangor Hydro-Electric Co.
26695 Consolidated Edison Co. of New York, Inc.
26695 Glendale, Calif.
26695 Haemmig, Adrian B., et al.
26695 Idaho Power Co.
26696 Montaup Electric Co.
26696 Propane Gas & Appliance Co. et al.
26696 Southern California Edison Co.
26696 Southern Company Services, Inc.
26697 Southern Natural Gas Co.
26697 Tucson Electric Power Co.
26697 Union Electric Co.
26697 Upper Peninsula Power Co.
26698 Western Transmission Corp.

Federal Home Loan Bank Board
NOTICES
26733 Meetings; Sunshine Act

Federal Maritime Commission
NOTICES
Casualty and nonperformance, certificates:
26708 Canadian Cruise Lines (1982) Ltd.
26708 Canadian Cruise Lines (1982) Ltd. et al.

Federal Mine Safety and Health Review Commission
NOTICES
26733 Meetings; Sunshine Act

Federal Procurement Policy Office
PROPOSED RULES
Federal Acquisition Regulation (FAR):
26679 Procurement forms; draft availability

Federal Reserve System
NOTICES
Applications, etc.:
26708 Benton Bancorp. Inc.
26709 Transworld Corp.
Bank holding companies; proposed de novo nonbank activities:
26708 Citicorp

Fish and Wildlife Service
RULES
Migratory bird hunting:
26635 Hunting and conservation stamp program, "duck stamp contest" 1982 announcement and requirement changes

Food and Nutrition Service
PROPOSED RULES
Food Stamp program:
26639 Fraud and misrepresentation disqualification penalties and overpayments recovery improvements

Interior Department
See Fish and Wildlife Service; Surface Mining Reclamation and Enforcement Office.

Internal Revenue Service
PROPOSED RULES
Income taxes:
26666 Volunteer fire department; interest on certain obligations

Interstate Commerce Commission
RULES
Intermodal transportation:
26634 Trailer on flatcar and container on flatcar service improvements; antitrust immunity, clarification
Practice and procedure:
26634 Railroads; leased property improvements and retirements

NOTICES
Motor carriers:
26720, 26721 Permanent authority applications (3 documents)
26710 Temporary authority applications
Rail carriers; contract tariff exemptions:
26723 Union Pacific Railroad Co.
Railroad services abandonment:
26722, 26723 Consolidated Rail Corp. (3 documents)

Justice Department
See Drug Enforcement Administration.

Management and Budget Office
See Federal Procurement Policy Office.

Minerals Management Service
NOTICES
Outer Continental Shelf; oil, gas, and sulphur operations; development and production plans:
26709 SONAT Exploration Co.

National Credit Union Administration
NOTICES
26733 Meetings; Sunshine Act

National Oceanic and Atmospheric Administration
NOTICES
Meetings:
26685 Marine Fisheries Advisory Committee

Nuclear Regulatory Commission
NOTICES
Abnormal occurrence reports:
26723 Quarterly reports to Congress
Applications, etc.:
26724 Consumers Power Co.
26724 Texas Utilities Generating Co. et al.
26733 Meetings; Sunshine Act

Research and Special Programs Administration, Transportation Department
RULES
Hazardous materials:
26633 Aluminum cylinders (DOT 3AL seamless); specifications and usage requirements; correction
NOTICES
Hazardous materials:
26728 Applications; exemptions, renewals, etc.; correction
26729 Pipeline transportation of liquids; waiver of six-month valve inspection requirement

Small Business Administration
NOTICES
Meetings; regional advisory councils:
26724 Pennsylvania

Surface Mining Reclamation and Enforcement Office
PROPOSED RULES
Coal exploration on non-Federal and non-Indian lands; Federal program regulations, various States:
26779 Michigan
26786 Oregon
26794 Washington
Coal mining; Federal/State cooperative agreements:
26769 North Dakota
Permanent and interim regulatory programs:
26760 Surface and underground coal mining operations; backfilling and grading requirements
26754 Surface coal mining and reclamation operations; permanent and temporary impoundments
NOTICES
26710 Agency forms submitted to OMB for review

Transportation Department
See Coast Guard; Federal Aviation Administration; Research and Special Programs Administration, Transportation Department.

Treasury Department
See Internal Revenue Service.

Veterans Administration
NOTICES
Meetings:
26729 Wage Committee

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.

7 CFR
1 26611
Proposed Rules:
28 26637
272 26639
273 26639
276 26639
1011 26656
1046 26656
1071 26665
1073 26665
1098 26656
1104 26665
1106 26665
1126 26665
1132 26665

10 CFR
508 26615

14 CFR
71 26615
75 26615
Proposed Rules:
71 26665

21 CFR
1308 26616

26 CFR
Proposed Rules:
1 26666

30 CFR
Proposed Rules:
701 26754
816 (2 documents) 26754, 26760
817 (2 documents) 26754, 26760
826 26760
922 26779
934 26769
937 26786
947 26794

32 CFR
536 26616
806b 26617

40 CFR
52 (6 documents) 26618–26623
Proposed Rules:
60 26750

46 CFR
Proposed Rules:
Ch. I 26667

47 CFR
73 (2 documents) 26624
90 (2 documents) 26631
Proposed Rules:
Ch. I 26668
90 26677

48 CFR
Proposed Rules:
53 26679

49 CFR
173 26633
1039 26634
1090 26634
1249 26634
1300 26634

50 CFR
91 26635

Rules and Regulations

Federal Register
Vol. 47, No. 119
Monday, June 21, 1982

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 1

Administrative Regulations; Procedures Relating to Awards Under the Equal Access to Justice Act

AGENCY: Agriculture Department.

ACTION: Final rule.

SUMMARY: The Equal Access to Justice Act (5 U.S.C. 504) which took effect October 1, 1981, provides for the award of attorney fees and other expenses to parties who prevail over the federal government in certain administrative proceedings. These rules establish procedures for the submission and consideration of applications for such awards.

EFFECTIVE DATE: June 21, 1982.

FOR FURTHER INFORMATION CONTACT: Richard W. Davis, Jr., Office of the General Counsel, United States Department of Agriculture, Washington, D.C., 20250, (202) 447-8041.

SUPPLEMENTARY INFORMATION: These rules are based upon the model rules issued by the Administrative Conference of the United States on June 18, 1981, and, except for modifications necessary to adapt them to the use of this Department and conform them to the provisions of this Department's Uniform Rules of Practice Governing Formal Adjudicatory Proceedings (7 CFR 1.130 *et seq.*), the model rules have been adopted with only a few significant changes.

The wording of the model rules section on Proceedings Covered is modified to clarify that these rules apply only to proceedings required by statute to be conducted under 5 U.S.C. 554. All such proceedings conducted by this Department are listed in § 1.183 of these rules and therefore no provision is made for *ad hoc* designation of other covered proceedings.

The model rules provision for rulemaking regarding the maximum rate for attorney fees is omitted. It is extraneous to these rules and provision is made for petitioning for rulemaking in Departmental regulations at 7 CFR 1.28.

The requirements for documentation of fees and expenses are set out in greater detail than in the model rules. We believe this will expedite disposition of applications.

Except in the circumstance that part of the underlying adversary adjudication is settled before the final decision is issued and a fee award relating to it is agreed upon, there appears to be no occasion for an interim fee award and no provision for such award is made in these rules.

These rules relate to agency procedure and practice. Therefore, pursuant to 5 U.S.C. 553, it is found upon good cause that notice and other related public procedures with respect thereto are impractical and contrary to the public interest. Further, extensive public participation occurred in connection with consideration of the model rules. Because the Equal Access to Justice Act became effective on October 1, 1981, good cause is found to make these rules effective less than 30 days after publication in the **Federal Register.**

This rule has been reviewed under Secretary's Memorandum 1512-1 and Executive Order 12291 and has been determined not to be a "major rule" since it will not have an annual effect on the economy of $100 million or more.

In addition, it has been determined that these rules will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 7 CFR Part 1

Administrative practice and procedures.

Accordingly, 7 CFR, Subtitle A, Part 1 is amended by adding Subpart J to read as follows:

PART 1—ADMINISTRATIVE REGULATIONS

* * * * *

Subpart J—Procedures Relating to Awards Under the Equal Access to Justice Act in Proceedings Before the Department

General Provisions

Sec.

1.180 Definitions.
1.181 Purpose of these rules.
1.182 When the Act applies.
1.183 Proceedings covered.
1.184 Eligibility of applicants.
1.185 Standards for awards.
1.186 Allowable fees and expenses.
1.187 Delegations of authority.

Information Required From Applicants

1.188 Contents of application.
1.189 Net worth exhibit.
1.190 Documentation of fees and expenses.
1.191 Time for filing application.

Procedures for Considering Applications

1.192 Filing and service of documents.
1.193 Answer to application.
1.194 Reply.
1.195 Comments by other parties.
1.196 Settlement.
1.197 Further proceedings.
1.198 Decision.
1.199 Department review.
1.200 Judicial review.
1.201 Payment of award.

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

Subpart J—Procedures Relating to Awards Under the Equal Access to Justice Act in Proceedings Before the Department

General Provisions

§ 1.180 Definitions.

(a) The definitions contained in Subpart H—Rules of Practice Governing Formal Adjudicatory Proceedings (§ 1.132 of this part) are incorporated into and made applicable to this subpart.

(b) "Agency counsel" means the attorney from the Office of the General Counsel representing the agency of the Department administering the statute involved in the proceeding.

§ 1.181 Purpose of these rules.

The Equal Access to Justice Act, 5 U.S.C. 504 (called "the Act" in this subpart), provides for the award of attorney fees and other expenses to eligible individuals and entities who are parties to certain administrative proceedings (called "adversary adjudications") before the Department of Agriculture. An eligible party may receive an award when it prevails over

the Department unless the Department's position in the proceeding was substantially justified or special circumstances make an award unjust. The rules in this subpart describe the parties eligible for awards and the proceedings that are covered. They also explain how to apply for awards, and the procedures and standards that this Department will use to make them.

§ 1.182 When the Act applies.

The Act applies to any adversary adjudication pending before this Department at any time between October 1, 1981, and September 30, 1984. This includes proceedings begun before October 1, 1981, if final Departmental action has not been taken before that date, and proceedings pending on September 30, 1984, regardless of when they were initiated or when final Departmental action occurs.

§ 1.183 Proceedings covered.

(a) These rules apply to adversary adjudications required by statute to be conducted by this Department under 5 U.S.C. 554 in which the position of the Department is presented by an attorney or other representative who enters an appearance and participates in the proceeding. Proceedings before the Department's Board of Contract Appeals are not covered. Any proceeding in which this Department may prescribe a lawful present or future rate is not covered by the Act. Proceedings to grant or renew licenses are also excluded, but proceedings to modify, suspend, or revoke licenses are covered if they are otherwise adversary adjudications. The proceedings covered are adversary adjudications under the statutory provisions listed below.

Agricultural Marketing Agreement Act of 1937 (7 U.S.C. 608c(15)(A))
Animal Welfare Act (7 U.S.C. 2149)
Archaeological Resources Protection Act (16 U.S.C. 470ff)
Beef Research and Information Act (7 U.S.C. 2912)
Capper-Volstead Act (7 U.S.C. 292)
Cotton Research and Promotion Act (7 U.S.C. 2111)
Egg Products Inspection Act (21 U.S.C. 1047)
Egg Research and Consumer Information Act (7 U.S.C. 2713, 2714(b))
Endangered Species Act (16 U.S.C. 1540(a))
Federal Land Policy and Management Act (43 U.S.C. 1766)
Federal Meat Inspection Act (21 U.S.C. 604, 606, 607(e), 608, 671)
Federal Seed Act (7 U.S.C. 1599)
Horse Protection Act (15 U.S.C. 1823(c), 1825)
Packers and Stockyards Act (7 U.S.C. 193, 204, 213, 218d, 221)
Perishable Agricultural Commodities Act (7 U.S.C. 499c(c), 499d(d), 499f(c), 499h(a), 499h(b), 499h(c), 499i, 499m(a))
Potato Research and Promotion Act (7 U.S.C. 2620)
Poultry Products Inspection, Act (21 U.S.C. 455, 456, 457(d), 467)
Swine Health Protection Act (7 U.S.C. 3804(b), 3805(a))
U.S. Cotton Standards Act (7 U.S.C. 51b, 53)
U.S. Grain Standards Act (7 U.S.C. 79(g)(3), 85, 86)
U.S. Warehouse Act (7 U.S.C. 246, 253)
Virus-Serum-Toxin Act (21 U.S.C. 156)
Wheat and Wheat Foods Research and Nutrition Education Act (7 U.S.C. 3409)

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

§ 1.184 Eligibility of applicants.

(a) To be eligible for an award of attorney fees and other expenses under the Act, the applicant must be a prevailing party to the adversary adjudication for which it seeks an award. The term "party" is defined in 5 U.S.C. 551(3)). The applicant must show that it meets all conditions of eligibility set out in this section and in §§ 1.188 and 1.189.

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

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

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

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

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

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

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

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

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

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

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

§ 1.185 Standards for awards.

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

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

§ 1.186 Allowable fees and expenses.

(a) Awards will be based on the prevailing market rates for the kind and quality of service furnished.

(b) No award for the fee of an attorney or agent under these rules may exceed $75.00 per hour. No award to compensate an expert witness may exceed the highest rate at which this agency pays expert witnesses, which is set out at § 1.150 of this part. However, an award may also include the reasonable expenses of the attorney, agent, or witness as a separate item, if the attorney, agent, or witness ordinarily

charges clients separately for such expenses.

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

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

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

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

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

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

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

§ 1.187 Delegations of authority.

The Secretary of Agriculture delegates to the Judicial Officer authority to take final action on matters pertaining to the Act in proceedings covered by these rules. The Secretary by order may delegate authority to take final action on matters pertaining to the Act in particular cases to other subordinate officials or bodies.

Information Required From Applicants

§ 1.188 Contents of application.

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

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

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

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

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

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

(e) The application shall be signed by the applicant or an authorized officer or attorney of the applicant. It shall contain or be accompanied by a written verification under oath or affirmation under penalty of perjury that the information provided in the application and all accompanying material is true and complete to the best of the signer's information and belief.

§ 1.189 Net worth exhibit.

(a) An applicant except a qualified tax-exempt organization or cooperative association must provide with its application a detailed exhibit showing the net worth of the applicant and any affiliates (as defined in § 1.184) when the proceeding was initiated. The exhibit may be in any form convenient to the applicant that provides full disclosure of the applicant's and its affiliates' assets and liabilities and is sufficient to determine whether the applicant qualifies under the standards in this part. The Judge may require an applicant to file additional information to determine its eligibility for an award.

(b) Ordinarily, the net worth exhibit will be included in the public record of the proceeding. However, an applicant that objects to public disclosure of information in any portion of the exhibit and believes there are legal grounds for withholding it from disclosure may submit that portion of the exhibit directly to the Judge in a sealed envelope labeled "Confidential Financial Information," accompanied by a motion to withhold the information from public disclosure. The motion shall describe the information sought to be withheld and explain, in detail, why it falls within one or more of the specific exemptions from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 552(b) (1) through (9), why public disclosure of the information would adversely affect the applicant, and why disclosure is not required in the public interest. The material in question shall be served on counsel representing the agency against which the appliant seeks an award, but need not be served on any other party to the proceeding. If the Judge finds that the information should not be withheld from disclosure, it shall be placed in the public record of the proceeding. Otherwise, any request to inspect or copy the exhibit shall be disposed of in accordance with this Department's established procedures under the Freedom of Information Act (§§ 1.1 through 1.16 of this part).

§ 1.190 Documentation of fees and expenses.

(a) The application shall be accompanied by full documentation of the fees and expenses, including the cost of any study, analysis, engineering report, test, project or similar matter, for which an award is sought.

(b) The documentation shall include an affidavit from any attorney, agent, or expert witness representing or appearing in behalf of the party, stating the actual time expended and the rate at which fees and other expenses were computed and describing the specific services performed.

(1) The affidavit shall state the services performed. In order to establish the hourly rate, the affidavit shall state the hourly rate which is billed and paid by the majority of clients during the relevant time periods.

(2) If no hourly rate is paid by the majority of clients because, for instance, the attorney or agent represents most clients on a contingency basis, the attorney or agent shall provide information about two attorneys or agents with similar experience, who perform similar work, stating their hourly rate.

(c) The documentation shall also include a description of any expenses for which reimbursement is sought and a statement of the amounts paid and payable by the applicant or by any other person or entity for the services provided.

(d) The Judge may require the applicant to provide vouchers, receipts, or other substantiation for any expenses claimed.

§ 1.191 Time for filing application.

(a) An application must be filed no later than 30 days after the Department's final disposition of the proceeding.

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

(c) For the purposes of this subpart, final disposition means the later of (1) the date on which an initial decision of the Judge becomes final as set out in § 1.142(c) of this part; (2) issuance of an order disposing of any petition to rehear or reargue the proceeding or to reconsider an order of the Judicial Officer issued pursuant to § 1.145(i) of this part; (3) if no such petition to rehear, reargue or reconsider is filed, the last date on which such a petition could have been filed as set out in § 1.146 of this part; or (4) issuance of a consent decision as set out in § 1.138 of this part.

Procedures for Considering Applications

§ 1.192 Filing and service of documents.

Any application for an award or other pleading or document related to an application shall be filed and served on all parties to the proceeding in the same manner as other pleadings in the proceeding except as provided in § 1.189 for confidential financial information. The provisions relating to filing, service, extensions of time, and computation of time contained in § 1.147 of this part are incorporated into and made applicable to this subpart except that the statutory 30 day time limit on filing the application as set out in § 1.191 may not be extended.

§ 1.193 Answer to application.

(a) Within 30 days after service of an application, agency counsel may file an answer. If agency counsel fails to timely answer or settle the application, the Judge, upon a satisfactory showing of entitlement by the applicant, may make an award for the applicant's allowable fees and expenses.

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

(c) The answer shall explain in detail any objections to the award requested and identify the facts relied on in support of agency counsel's position. If the answer is based on any alleged facts not already in the record of the proceeding, agency counsel shall include with the answer either supporting affidavits or a request for further proceedings under § 1.197.

§ 1.194 Reply.

Within 15 days after service of an answer, the applicant may file a reply. If the reply is based on any alleged facts not already in the record of the proceeding, the applicant shall include with the reply either supporting affidavits or a request for further proceedings under § 1.197.

§ 1.195 Comments by other parties.

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

§ 1.196 Settlement.

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

§ 1.197 Further proceedings.

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

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

(c) In the event that an evidentiary hearing is held, it shall be conducted pursuant to §§ 1.130–1.151 of this part.

§ 1.198 Decision.

The Judge shall issue an initial decision on the application as expeditiously as possible after completion of proceedings on the application. The decision shall include written findings and conclusions on the applicant's eligibility and status as a prevailing party, and an explanation of the reasons for any difference between the amount requested and the amount awarded. This decision shall also include, if at issue, whether the Department's position was substantially justified, whether the applicant unduly protracted the proceedings, or whether special circumstances make an award unjust.

§ 1.199 Department review.

Either the applicant or agency counsel may seek review of the initial decision on the fee application, in accordance with the provisions of §§ 1.145(a) and 1.146(a) of this part. If neither the applicant nor agency counsel seeks review, the initial decision on the fee application shall become a final decision of the Department 35 days after it is served upon the applicant. If review is taken, it will be in accord with the provisions of §§ 1.145 (b) through (i) and 1.146(b) of this part.

§ 1.200 Judicial review.

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

§ 1.201 Payment of award.

An applicant seeking payment of an award shall submit to the head of the agency administering the statute involved in the proceeding a copy of the Department's final decision granting the award, accompanied by a statement that the applicant will not seek review of the decision in the United States courts. The agency will pay the amount awarded to the applicant within 60 days, unless judicial review of the award or of the underlying decision of the adversary adjudication has been sought by the applicant or any other party to the proceeding.

Dated: June 15, 1982.

John R. Block,

Secretary of Agriculture.

[FR Doc. 82-16659 Filed 6-18-82; 8:45 am]

BILLING CODE 3410-01-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

10 CFR Part 508

[Docket No. ERA-R-82-1]

Powerplant and Industrial Fuel Use Act of 1978; Electric Utility Conservation Plan

Correction

In FR Doc. 82-16070, at page 25729, in the issue of Tuesday, June 15, 1982, on page 25733, make the following correction to § 508.8(a), line 8, correct "removal" to read "approval".

BILLING CODE 1505-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 82-ASO-28]

Alteration of Transition Area, Memphis, Tennessee

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment corrects a deficiency in the description of the Memphis, Tennessee, Transition Area. This is an editorial correction and no change in airspace is intended.

DATES: Effective Date: 0901 GMT, September 2, 1982. Comments must be received on or before August 1, 1982.

ADDRESSES: Send comments on the rule in triplicate to: Federal Aviation Administration, ATTN: Chief, Airspace and Procedures Branch, ASO-530, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. The official docket may be examined in the Office of the Regional Counsel, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, telephone: (404) 763-7646.

FOR FURTHER INFORMATION CONTACT: Donald Ross, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763-7646.

SUPPLEMENTARY INFORMATION:

Request For Comments On The Rule

Although this action is in the form of a final rule, which involves editorial changes to correct a deficiency in the description of the Transition Area, and, thus, was not preceded by notice and public procedure, comments are invited on the rule. When the comment period ends, the FAA will use the comments submitted, together with other available information, to review the regulation. After the review, if the FAA finds that changes are appropriate, it will initiate rulemaking proceedings to amend the regulation. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule and determining whether additional rulemaking is needed. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the rule that might suggest the need to modify the rule.

The rule

The purpose of this amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is to alter the description of the Memphis, Tennessee, Transition Area to correct an error that has gone undetected for several years. In 1977, the Transition Area was amended by deleting two arrival extensions which were no longer required. The amendment (Docket No. 77-SO-42) which was effective December 1, 1977, has not been carried forward in subsequent issuances of the Compilation of Regulations published in the **Federal Register** nor in the current Compilation contained in AC 70-3. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Advisory Circular AC 70-3 dated January 29, 1982. Under the circumstances presented, the FAA concludes that there is a need for a regulation to properly describe the Memphis, Tennessee, Transition Area. Therefore, I find that notice or public procedure under 5 U.S.C. 553(b) is impracticable and that good cause exists for making this amendment effective in less than 60 days after its publication in the **Federal Register**.

List of Subjects in 14 CFR Part 71

Aviation safety, Airspace, Transition Area.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) (as amended) is further amended, effective 0901 GMT, September 2, 1982, as follows:

Memphis, TN, Amended

By deleting the words "* * * with 3 miles each side of the Memphis VORTAC 311° radial, extending from the 6.5-mile radius area to 32.5 miles northwest of the VORTAC * * *," wherever they appear in the description.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.69)

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in East Point, Georgia, on June 8, 1982.

George R. LaCaille,

Acting Director, Southern Region.

[FR Doc. 82-16632 Filed 6-18-82; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 75

[Airspace Docket No. 82-AAL-1]

Establishment of Alaskan High Altitude Routes and Reporting Points—Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction to final rule.

SUMMARY: This action corrects a final rule that altered the description of several Alaskan High Altitude Routes and established a high altitude reporting point as published in the **Federal Register** on May 13, 1982 (47 FR 20569). Inadvertently, the amended description of Area High Route J888R, as published in the proposal, was omitted from the final rule. This action adds J888R to that final rule.

EFFECTIVE DATE: June 21, 1982.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Regulations and Obstructions Branch (AAT-230), Airspace and Air Traffic Rules Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-8783.

List of Subjects in 14 CFR Part 75

Area high routes.

Adoption of the correction

Accordingly, pursuant to the authority delegated to me, **Federal Register** Document 82–12900 as published in the **Federal Register** on May 13, 1982 (47 FR 20569) is corrected by adding the following:

J888R AMOTT-RHODE [Amended]

By deleting the word "RHODE" from the title and subsituting for it the word "OZZIE" and by deleting "KULIK" and "RHODE" waypoint names, location and reference facility and substituting for them the following: "OZZIE 59°27'00"N. 163°00'00"W. Bethel, AK"

(Secs. 307(a), 313(a), and 1110, Federal Aviation Act of 1958 (49 U.S.C. 1348(a), 1354(a), and 1510), Executive Order 10854 (24 FR 9565); sec. 6(c) Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.69)

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Washington, D.C., on June 15, 1982.

John W. Baier,

Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 82–16633 Filed 6–18–82; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

Schedules of Controlled Substances; Rescheduling of Mazindol Into Schedule IV; Correction

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Final rule; correction.

SUMMARY: This document corrects the final order published on October 27, 1981, (46 FR 52333), which transferred mazindol from Schedule III to Schedule IV of the Controlled Substances Act and inadvertently deleted Pipradrol and SPA from Schedule IV.

EFFECTIVE DATE: November 27, 1981.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug Control Section, Drug Enforcement Administration, Washington, D.C. 20537, Telephone: (202) 633–1366.I

Accordingly, in the rule published October 27, 1981, the amendatory language appearing on p. 52334, column one, paragraph "2" and the text following it are corrected to read as follows:

"2. By revising paragraph (e) of 21 CFR 1308.14 by redesignating subparagraphs (2) through (5) as (3) through (6) and by adding a new subparagraph (2) for mazindol as set forth below:

"§ 1308.14 Schedule IV.

* * * * *

"(e) Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers and salts of isomers:

"(1) Diethylpropion.....1610
"(2) Mazindol.....1605
"(3) Pemoline (including organometallic complexes and chelates thereof).....1530
"(4) Phentermine.....1640
"(5) Pipradrol.....1750
"(6) SPA {(-)-1-dimethylamino-1,2-diphenylethane).....1635

* * * * * "

Dated: June 11, 1982.

Francis M. Mullen, Jr.,

Acting Administrator, Drug Enforcement Administration.

[FR Doc. 82–16566 Filed 6–18–82; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 536

Claims Against the United States

AGENCY: Department of the Army, DOD.

ACTION: Rule.

SUMMARY: Changes are required by Pub. L. 97–124, 29 December 1981 which extends the provisions of the Federal Tort Claims Act (28 U.S.C. 2671–2680) to claims arising on and after this date resulting from negligent and/or wrongful acts or omissions of members of the National Guard while they are performing certain federally funded duty or training.

DATE: Effective July 21, 1982.

FOR FURTHER INFORMATION CONTACT: Germain P. Boyle, Chief, Claims Operations, U.S. Army Claims Service, Office of the Judge Advocate General, Fort George G. Meade, Maryland 20755, (301) 677–7960.

SUPPLEMENTARY INFORMATION: 32 CFR Part 536 is amended to read as follows:

(28 U.S.C. 2671–2680)

List of Subjects in 32 CFR Part 536

Claims, Government employees, Military law, Vessels.

PART 536—CLAIMS AGAINST THE UNITED STATES

1. In § 536.29 paragraph (a) is revised to read as follows:

§ 536.29 Claims based on negligence of military personnel or civilian employees under the Federal Tort Claims Act.

(a) *Authority.* The statutory authority for this chapter is the Federal Tort Claims Act (60 Stat. 842, 28 U.S.C. 2671–2680), as amended by the Act of 18 July 1966 (Pub. L. 89–506; 80 Stat. 306), the Act of 16 March 1974 (Pub. L. 93–253; 88 Stat. 50), and the Act of 29 December 1981 (Pub. L. 97–124), and as implemented by the Attorney General's Regulations (28 CFR 14.1–14.11).

* * * * *

2. In § 536.29 paragraph (d) is revised to read as follows:

* * * * *

(d) *Claims payable.* Unless otherwise prescribed, claims for death, personal injury, or damage to or loss of property (real or personal) are payable under this section when the injury or damage is caused by negligent or wrongful acts or omissions of military personnel or civilian employees of the Department of the Army or civilian employees of the Department of Defense, or members of the Army National Guard while engaged in training or duty under sections 316, 502, 503, 504 or 505 of Title 32, U.S.C. for claims arising on or after 29 December 1981, while acting within the scope of their employment under circumstances in which the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. The Federal Tort Claims Act, pursuant to which this regulation is promulgated is a limited consent to liability without which the United States is immune. See Bigby v. United States, 188 U.S. 400 (1903). Similarly, there is no Federal cause of action created by the Constitution which would permit a

damage recovery because of the Fifth Amendment or any other constitutional provision. Immunity must be expressly waived, as by the Federal Tort Claims Act, supra.

3. Section § 536.29 (e)(1)(ii) is revised to revised as follows:

* * * * *

(e) * * *

(1) * * *

(ii) Members of reserve units during period of inactive duty training and active duty training, including ROTC cadets who are reservists while they are at summer camp.

* * * * *

4. Section 536.140 is revised to read as follows:

§ 536.140 Statutory authority.

The statutory authority for this chapter is contained in the act of 13 September 1960 (74 Stat. 878, 32 U.S.C. 715), commonly referred to as the National Guard Claims Act, as amended by Pub. L. 90–486, 13 August 1968, (82 Stat. 756), Pub. L. 90–525, 26 September 1968 (82 Stat. 877), Pub. L. 91–312, 8 July 1970 (84 Stat. 412), Pub. L. 93–336, 8 July 1974, (88 Stat. 291) the act of 8 September 1961 (75 Stat. 488, 10 U.S.C. 2736) as amended by Pub. L. 90–521, 26 September 1968 (82 Stat. 874), and Pub. L. 97–124, 29 December 1981.

* * * * *

5. Section 536.141 paragraph (c) is revised to read as follows:

§ 536.141 [Amended]

* * * * *

(c) The status of members of the Army National Guard of the various States and Puerto Rico, while engaged in duty of training under Federal law, has been settled by law and by the Federal courts (see 32 U.S.C. 501; 10 U.S.C. 672(d), 3079, 3499, 3500; William v. United States, 189 F.2d 607 (10th Cir. 1951); Maryland for the use of Levin, Johns, et al. v. United States (supra)). These cases held that military members of the Army National Guard, not in active Federal service, were not U.S. employees within the meaning of the Federal Tort Claims Act (see 28 U.S.C. 2671–2680) (see § 536.29). This status remained until changed by Pub. L. 97–124, effective 29 December 1981. Pub. L. 97–124 extended the Federal Tort Claims Act provisions to members of the National Guard while engaged in training or duty under sections 316, 502, 503, 504, or 505 of Title 32 to claims arising on and after 29 December 1981 that are based upon alleged negligent and/or wrongful acts or omissions. This act also provides that the remedy under the Federal Tort Claims Act procedures shall be the exclusive remedy in medical malpractice actions involving members of the National Guard with respect to claims arising on or after 29 December 1981, while such personnel were performing training or duty under the sections referred to above. The Levin case also held that civilian (technician) personnel of the Army National Guard, employed under 32 U.S.C. 709, were not U.S. employees. However, the status of Army National Guard technicians employed under 32 U.S.C. 709 was changed by Pub. L. 90–486 (82 Stat. 755), effective 1 January 1969. That act made them United States civilian employees, and claims arising from their acts or omissions as technicians on or after that date were settled under 536.29. However, claims generated by such employees when they were performing duty or training as military members of the Army National Guard under title 32 U.S.C. 316, 502, 503, 504, or 505 were settled under this chapter (536.140). Pursuant to Pub. L. 97–124, claims based upon negligent acts or omissions of such personnel occurring on or after 29 December 1981, will be processed under § 536.29 if they occur incident to the performance of federally funded training as a member of the Army National Guard. However, claims based upon non-combat activities of persons performing federally funded training under sections 316, 502, 503, 504, or 505 of Title 32 will continue to be settled under § 536.140".

* * * * *

6. Section 536.142 paragraph (a) is revised to read as follows:

§ 536.142 Claims payable.

(a) *General.* Unless otherwise prescribed, a claim for personal injury, death, or damage to or loss of property, real or personal, as provided in § 536.141, is payable under sections 536–140—536–152 when:

(1) Caused by the Act or omission, negligent, wrongful or otherwise involving fault, of Army National Guard personnel acting within the scope of their employment, provided the act or incident(s) generating the claim occurred during the period 3 September 1960 to 28 December 1981 (pursuant to Pub. L. 97–124, 29 December 1981, such claims accruing on or after 29 December 1981 will be processed under § 536.29 et seq.), or

(2) Incident to noncombat activities of the Army National Guard, if the Army National Guard personnel were engaged in duty or training under Title 32, U.S.C. 316, 502, 503, 504, 505, 709 and the incident generating the claim occurred after 13 September 1960.

* * * * *

John O. Roach II,

Liaison Officer with the Federal Register.

[FR Doc. 82–16299 Filed 6–18–82; 8:45 am]

BILLING CODE 3710–08–M

Department of the Air Force

32 CFR Part 806b

[Air Force Reg. 12–35]

Privacy Act of 1974; Air Force Privacy Act Program

AGENCY: Department of the Air Force, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Air Force adopts as a final rule certain exemptions from portions of the Privacy Act of 1974 for a new system of records. This system is identified as F20505 AFIS A, entitled: "Sensitive Compartmented Information Personnel Security Records." The exemption is needed to protect the identity of sources to whom proper promises of confidentiality are made during investigations.

DATE: This final rule is effective June 21, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. Jon Updike, Air Force Privacy Act Office, HQ USAF/DAAD(S), the Pentagon, Washington, D.C. 20330; telephone 202/694–3431.

SUPPLEMENTARY INFORMATION: On April 22, 1982, at 47 FR 17307, (FR Doc. 82–41003) the Department of the Air Force published the proposed exemption rule for this system of records. This rule is authorized under the provisions of 5 U.S.C. 552a (k)(2) and (k)(5). The notice for this system of records was published at 44 FR 74381, December 17, 1979. No comments were received on the proposed rule or the system notice and the rule is therefore, adopted as published.

List of Subjects in 32 CFR Part 806b

Privacy.

PART 806b—AIR FORCE PRIVACY ACT PROGRAM

Accordingly, Part 806b of Title 32, CFR is amended by revising § 806b.22(b)(21) to read as follows:

§ 806b.22 General and specific exemptions claimed.

* * * * *

(b) *Specific Exemptions.*

* * * * *

(21) Sensitive Compartmented Information Personnel Security Records (F20505 AFIS A).

(i) *Exemption.* This system is exempt from 5 U.S.C. 552a(a)(3); (d); (e)(4)(G), (H), and (I); and (f) but only the extent that disclosure would reveal the identity of a confidential source.

(ii) *Authority.* 5 U.S.C. 552a (k)(2) and (k)(5).

(iii) *Reasons.* To protect the identity of sources to whom proper promises of confidentiality have been made during investigations. Without these promises, sources will often be unwilling to provide information essential in adjudicating access in a fair and impartial manner.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

June 15, 1982.

[FR Doc. 82-16707 Filed 6-18-82; 8:45 am]

BILLING CODE 3910-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-9-FRL-2137-5]

California State Implementation Plan Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: Revisions to rules of the Kern County, Sacramento County, San Bernardino County Desert, San Diego County, and Santa Barbara County Air Pollution Control Districts (APCDs) were forwarded to EPA by the California Air Resources Board. These revisions concern air pollution control contingency plans and generally are equivalent to existing federal regulations. EPA reviewed the submitted rules with respect to the Clean Air Act and determined that they should be approved.

EFFECTIVE DATE: August 20, 1982.

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

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

Library, Office of the Federal Register, 1100 L Street NW., Room 8401, Washington, D.C. 20408.

California Air Resources Board, 1102 Q Street, Sacramento, CA 95812.

FOR FURTHER INFORMATION CONTACT: Douglas Grano, Chief, State Implementation Plan Section, Air Management Division, Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105, (415) 974-8058.

SUPPLEMENTARY INFORMATION: The California Air Resources Board submitted the following rules and regulations on the indicated dates:

Kern

July 30, 1981

Rule
603 Episode Criteria Levels
609 Episode Action Stage 1 (Health Advisory-Alert)
610 Episode Action Stage 2 (Warning)
611 Episode Action Stage 3 (Emergency)
613 Stationary Source Curtailment Plans and Traffic Abatement Plans

Sacramento

April 2, 1980

Rule
120 Emergency Episode Levels
121 Notification of an Episode Stage
122 Episode Control Actions

San Bernardino Desert

October 7, 1980

Rule
701 General (Emergencies)
704 Episode Criteria
705 Episode Notifications
707 First Stage Episode Actions
708 Second Stage Episode Actions
709 Third Stage Episode Actions
710 Interdistrict Coordination
711 Termination of Episodes
712 Advisory Council

San Diego

May 28, 1981

Rule
127 Episode Criteria Levels
130 Episode Actions
131 Stationary Source Curtailment Plan
132 Traffic Abatement Plan
134 Source Inspection

Santa Barbara

October 23, 1981

Rule
601 General (Emergencies)
602 Episodes/Disasters
603 Emergency Episode Plans
604 Source Inspection
605 Enforcement
606 Communications Network
607 Air Monitoring Stations
608 Air Monitoring Summaries
609 Interdistrict Coordination

Deletions:

609 Scientific Committee
610 Emergency Action Committee

Under section 110 of the Clean Air Act as amended, and 40 CFR Part 51, the Administrator is required to approve or disapprove these regulations as State Implementation Plan (SIP) revisions. All rules submitted have been evaluated and found to be in accordance with EPA policy and 40 CFR Part 51. EPA's detailed evaluation of the submitted rules is available at the EPA Library in Washington, D.C., and the Region 9 Office.

The rules approved in this notice concern air pollution control contingency plans required by 40 CFR 51.16, "Prevention of air pollution emergency episodes." In 40 CFR 52.274, "California air pollution emergency plan," EPA supplemented certain District contingency plans with federal regulations required by 51.16. The Kern, San Diego, and Santa Barbara County rule submittals listed above correct previous deficiencies in the Districts' rules and, thus, replace rules in § 52.274. As the Districts' rules are presently in effect, EPA is rescinding those portions of § 52.274 applicable to the above three Districts. These Districts' rules meet all requirements of § 51.16.

It is the purpose of this notice to approve all the rule revisions listed above and to incorporate them into the California SIP. EPA's approval of the above revisions to the California SIP is being done without prior proposal because the revisions are not controversial. The public should be advised that this approval action will be effective 60 days from the date of this **Federal Register** notice. However, if notice is received by EPA within 30 days that someone wishes to submit adverse or critical comments, the approval action will be withdrawn and a subsequent notice will indefinitely postpone the effective date, modify the final action to a proposed action and establish a comment period.

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

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

Under the Clean Air Act, any petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 20, 1982. This action may not be challenged later in proceedings to enforce its requirements.

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

List of Subjects in 40 CFR Part 52

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

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

Dated: June 14, 1982.

Anne M. Gorsuch,

Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

Subpart F—California

1. Section 52.220 is amended by adding paragraphs (c)(67)(iv)(B), (92)(v), (94)(iii), (101)(ii), and (103)(iii)(B and C) as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(67) * * *

(iv) * * *

(B) New or amended rules 120, 121, and 122.

* * * * *

(92) * * *

(v) San Diego County APCD.

(A) New or amended rules 127, 130, 131, 132, and 134.

* * * * *

(94) * * *

(iii) San Bernardino County APCD.

(A) New or amended rules 701, 704, 705, 707–711, and 712. Previously approved Rule 707, "Plans", submitted on June 6, 1977 is retained.

* * * * *

(101) * * *

(ii) Kern County APCD.

(A) New or amended rules 603, 609, 610, 611, and 613.

* * * * *

(103) * * *

(iii) * * *

(B) New or amended rules 601–608 and 609.

(C) Previously approved and now deleted rules 609 (Scientific Committee) and 610 (Emergency Action Committee).

* * * * *

2. In § 52.274 paragraphs (j)–(o), (s), and (t) are removed and reserved as follows:

§ 52.274 California air pollution emergency plan.

* * * * *

(j)–(o) [Reserved]

* * * * *

(s)–(t) [Reserved]

* * * * *

[FR Doc. 82-16711 Filed 6-18-82; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 52

[A-5-FRL 2133-2]

Illinois; Satisfaction of State Implementation Plan Approval Conditions Particulate and Ozone Control Strategies

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: On February 21, 1980 (45 FR 11472), the Environmental Protection Agency (EPA) conditionally approved a portion of the Illinois Control Strategy for Total Suspended Particulates [1] (TSP) and for Ozone. On March 5, 1982 (47 FR 9480), EPA proposed that the State satisfied its TSP Control Strategy condition in which the State agreed to conduct an analysis of the potential air quality impact from storage piles with uncontrolled emissions of less than 50 tons per year, to submit the results of any analysis to EPA, to submit any necessary regulations to the Illinois Pollution Control Board (IPCB), and promulgate and submit any necessary regulations to EPA in support of Rule 203(f)(3)(A). Also in this notice, EPA proposed that the State satisfied the Ozone Control Strategy condition in which the State agreed to conduct a study to demonstrate that the 3 pound per hour, 15 pound per day exemption for solvent metal cleaners contained in Rule 205(k) represents reasonably available control technology (RACT), to submit the results of the study to EPA, to submit any necessary regulations to the IPCB, and promulgate and submit any necessary regulations to EPA. Public comment was solicited on these two proposals. One comment was received from the legal representative of three steel companies. The purpose of this notice is to discuss the public comment received and to announce EPA's final rulemaking action which determines that these two Control Strategy approval conditions have been satisfied.

DATE: This final rulemaking is effective July 21, 1982.

ADDRESS: Copies of the proposed SIP revision, the public comments received on the Notice of Proposed Rulemaking (47 FR 9480) and response to the comments are available at the following addresses:

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

Illinois Environmental Protection Agency, 2200 Churchill Road, Springfield, Illinois 62706.

FOR FURTHER INFORMATION CONTACT: Randolph O. Cano, Regulatory Analysis Section, Air Programs Branch, Region V, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886–6035.

SUPPLEMENTARY INFORMATION: In its February 21, 1980, Final Rulemaking (45 FR 11472), EPA conditionally approved certain Illinois Control strategies for TSP and ozone. On March 5, 1982 (47 FR 9480), EPA proposed that Illinois had satisfied one approval condition for each of these strategies.

TSP Control Strategy

The TSP Control strategy approval condition discussed in today's notice concerns the State's commitment to conduct an analysis of the potential air quality impact from storage piles with uncontrolled emissions of less than 50 tons per year, to submit the results of any analysis to EPA, to submit any necessary regulations to the IPCB and promulgate and submit any necessary regulations to EPA in support of Rule 203(f)(3)(A).

The State submitted its report to EPA on October 1, 1981. The report concluded that TSP emissions from small industrial storage piles represent less than one percent of the industrial TSP emissions in Illinois nonattainment counties and only about five percent of the storage pile emission. According to the report, the spatial distribution of these small storage pile sources is such that their impacts do not have a substantial additive effect on air quality. Based on these findings, the State concluded that there was no need for further regulations. The State considers their October 1, 1981, submittal sufficient for satisfaction of the conditional SIP approval relating to control of industrial related storage pile emissions.

EPA reviewed the State's submittal as well as the report, and agrees that no further regulations are necessary. EPA proposed to find that the State's submittal satisfies the plan approval condition.

One public comment was received from the legal representative of three steel companies. The comment supported the removal of this condition and continued to object to EPA's conditional approval policy. Since no

[1] The rulemaking on February 21, 1980 (45 FR 11472) did not include rules for the control of particulates from iron and steel sources.

adverse comments were received, EPA approves the satisfaction of the TSP Control Strategy.

Ozone Control Strategy

The ozone control strategy approval condition discussed in today's notice concerns the State's commitment to conduct a study to demonstrate that the 3 pound per hour, 15 pound per day exemption for solvent metal cleaners contained in Rule 205(k) represent RACT, to submit the results of the study to EPA, to submit any necessary regulations to the IPCB, and promulgate and submit any necessary regulations to EPA.

EPA Study (EPA 905/4–80–008) *Volatile Organic Compound Emission from Solvent Cleaning Operations in the State of Illinois* was prepared to satisfy the report requirement. The study reached two conclusions: (1) The Illinois rule, as applied in Illinois, is more stringent than the EPA "presumptive norm" contained in the Control Techniques Guidelines (CTG), and (2) the allowable emissions from the Illinois rule are within five percent of those resulting from a rule consistent with the CTG.

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

Under 5 U.S.C. 605(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 20, 1982. This action may not be challenged later in proceedings to enforce its requirements.

List of Subjects in 40 CFR Part 52

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

This Notice of Final Rulemaking is issued under the authority of sections 110, 172 of the Clean Air Act, as amended.

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

Dated: June 14, 1982.

Anne M. Gorsuch,

Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

Subpart O Illinois

Section 52.720(c) is amended by adding paragraphs (33) and (34) to read as follows:

§ 52.720 Identification of the plan.

* * * * *

(c) * * *

(33) On October 1, 1981, the State submitted a report in satisfaction of the Total Suspended Particulate Control Strategy approval condition in which the State agreed to conduct an analysis of the potential air quality impact from storage piles with uncontrolled emissions of less than 50 tons per year, to submit the results of any analysis to EPA, to submit any necessary regulations to the Illinois Pollution Control Board, and promulgate and submit any necessary regulations to EPA. This report concluded that no further regulations were needed.

(34) EPA Study *Volatile Organic Compound Emissions from Solvent Cleaning Operations in the State of Illinois* (EPA 905/4–80–008) was prepared to satisfy the Ozone Control Strategy approval condition in which the State agreed to conduct a study to demonstrate that the three pound per hour, 15 pound per day exemption for solvent metal cleaners contained in Rule 205(k) represents RACT, to submit the results of the study to EPA, to submit any necessary regulations to the Illinois Pollution Control Board and promulgate and submit any necessary regulations to EPA.

The State reviewed this report and in a February 11, 1981, letter to EPA noted their agreement with the findings of the report and indicated that because there was no need for further regulations, this condition is satisfied.

* * * * *

Section 52.725 Control Strategy: Particulates is amended by removing and reserving (a) as follows:

§ 52.725 Control Strategy: Particulates.

(a) [Removed and Reserved]

* * * * *

Section 52.726 Control Strategy: Ozone is amended by removing and reserving paragraph (a)(1) to read as follows:

§ 52.726 Control Strategy: Ozone.

(a) Part D—Conditional Approval—The Illinois plan is approved provided that the following conditions are satisfied:

(1) [Removed and Reserved]

* * * * *

[FR Doc. 82-16710 Filed 6-18-82; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 52

[A-9-FRL-2127-4]

Nevada; Approval and Promulgation of Implementation Plans

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Rulemaking.

SUMMARY: On February 18, 1982, EPA proposed action on revisions to the State Implementation Plan (SIP) for Nevada. The revisions were submitted to meet the requirements of Parts C and D of the Clean Air Act for preconstruction review of new and modified major stationary sources of those air pollutants regulated under the Act. Today's notice takes final action under the Clean Air Act to approve these revisions.

EFFECTIVE DATE: This action is effective June 21, 1982.

FOR FURTHER INFORMATION CONTACT: David P. Howekamp, Acting Director, Air Management Division, Region 9, Environmental Protection Agency, 215 Fremont Street, San Francisco, CA 94105, Attention: Donald Harvey (415) 974–8213.

ADDRESS: A copy of today's revision to the Nevada SIP is located at:

The Office of the Federal Register, 1100 L Street NW., Room 8401, Washington, D.C. 20408.

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

SUPPLEMENTARY INFORMATION:

Background

The Clark County Health District (CCHD) adopted regulations for New Source Review and Prevention of Significant Deterioration. These regulations contain the preconstruction review requirements for new and modified major stationary sources. On November 17, 1981, the State of Nevada submitted these regulations as revisions to its SIP. On February 18, 1982 (47 FR 7267) EPA proposed to approve these revisions.

EPA Actions

EPA is taking final action under section 110 and Parts C and D of the Clean Air Act to approve the CCHD rules submitted on November 17, 1981. No comments were received during the public comment period.

EPA has a responsibility to take final action as soon as possible in order to minimize any delays in the processing of permits. Therefore, EPA finds that good

cause exists for making this action immediately effective.

Regulatory Process

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291. Under the Clean Air Act, any petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 20, 1982. This action may not be challenged later in proceedings to enforce its requirements.

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

List of Subjects in 40 CFR Part 52

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

(Sections 110, 129, 160 to 169, 171 to 173 and 301(a) of the Clean Air Act as amended (42 USC 7410, 7429, 7470 to 7479, 7501 to 7503, and 7601(a))

Dated: June 14, 1982.

Anne M. Gorsuch,

Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Subpart DD of Chapter I, Title 40, Code of Federal Regulations is amended as follows:

Subpart DD—Nevada

1. Section 52.1470, paragraph (c) is amended by adding subparagraph (24)(iii) to read as follows:

§ 52.1470 Identification of plan.

* * * * *

(c) * * *

(24) * * *

(iii) Amendments to the Clark County District Board of Health Air Pollution Control Regulations:

Section 1—Definitions 1.7, 1.13, 1.14, 1.15, 1.32, 1.48, 1.50, 1.52, 1.57, 1.67, 1.72, 1.90 and the addition of the following unnumbered definitions: "Emission Unit," "Criteria Pollutant," "Non-Criteria Pollutant," "Baseline Area," "Begin Actual Construction," "Building, Structure, Facility, or Installation," "Particulate Precursor," "Secondary Emissions," and "Significant."

Section 15—Source Registration, 15.1, 15.1.1, 15.1.2, 15.1.3, 15.1.4, 15.1.5, 15.1.6, 15.1.7, 15.1.8, 15.2; 15.2.1, 15.2.2, 15.3, 15.4, 15.5; Preconstruction Review for New and Modified Sources, 15.6, 15.6.1, 15.6.1.1, 15.6.1.2 (deleted), 15.6.1.6, 15.6.2, 15.6.2.1 (deleted), 15.6.2.2, 15.6.2.3, 15.6.2.4, 15.6.2.5, 15.6.3, 15.6.3.1, 15.6.3.2 to 15.6.3.5 (added), 15.6.6, 15.7, 15.8, 15.9, 15.10, 15.10.1, 15.10.2, 15.10.3, 15.10.4, 15.11, 15.12; Prevention of Significant Deterioration, 15.13 (added); Preconstruction Review Requirements for New or Modified Sources in Areas Exceeding Air Quality Standards ("Offset" Rules), 15.14.1, 15.14.1.2, 15.14.1.3 (added), 15.14.3.1, 15.14.3.2, 15.14.4, 15.14.4.1, 15.14.4.3, 15.14.3.3 (added), 15.14.4.3.4 (added), 15.14.4.3.5 (added) and, 15.14.4.4 (deleted).

* * * * *

2. Section 52.1485 is revised to read as follows:

§ 52.1485 Significant deterioration of air quality.

(a) The requirements of sections 160 through 165 of the Clean Air Act are not met, since the plan, except as it applies to the Clark County Health District, does not include approvable procedures for preventing the significant deterioration of air quality.

(b) *Regulation for preventing significant deterioration of air quality.* The provisions of § 52.21(b) through (w) are incorporated and made a part of the applicable State plan for the State of Nevada except for that portion applicable to the Clark County Health District.

[FR Doc. 82-16713 Filed 6-18-82; 8:45 am]

BILLING CODE 6560-50-M

---

40 CFR Part 52

[A-4-2136-8]

Tennessee: Approval of Implementation Plan Revisions

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA is today announcing approval of several State Implementation Plan (SIP) revisions submitted by the State of Tennessee. These revisions involve changes and additions to the regulatory and the non-regulatory parts of the following Tennessee rules: general definitions, visible emissions, process emission standards, construction and operating permits, required sampling, recording and reporting, methods of sampling and anaysis, new source performance standards, volatile organic compounds, and limits on emissions due to malfunctions, startups and shutdowns.

EFFECTIVE DATE: This action will be effective on August 20, 1982, unless notice is received within 30 days that someone wishes to submit adverse or critical comments.

ADDRESSES: Written comments should be addressed to Mr. Drew Peake of EPA, Region IV's Air Programs Branch (see address below). Copies of the materials submitted by Tennessee may be examined during normal business hours at the following locations:

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

Library Office of the Federal Register, 1100 L Street NW., Room 8401, Washington, D.C. 20005

Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street NE., Atlanta, Georgia 30365

Division of Air Pollution Control, Tennessee Department of Public Health, 150 9th Avenue North, Nashville, Tennessee 37203.

FOR FURTHER INFORMATION CONTACT: Mr. Drew Peake, Air Programs Branch, EPA Region IV, at the above listed address and phone 404/881-2864 or FTS 257-2864.

SUPPLEMENTAL INFORMATION: The purpose of this notice is to announce action on a series of revisions and additions to the Tennessee implementation plan dealing with various requirements of the Clean Air Act. EPA today approves the following revisions to the Rules of the Tennessee Department of Public Health as they were adopted by the Tennessee Air Pollution Control Board.

1200-3-2-.01-(vvv) through (cccc) add the following definitions: Primary aluminum reduction plant, potroom, potroom group, roof monitor, total fluorides, center worked prebaked, side worked prebaked, and soda recovery boiler, respectively. (Submitted January 22, 1982)

1200-3-5-.01-(1) concerning general standards was revised to allow for an alternate test method for fuel burning installations with fuel burning equipment of input capacity greater than 600×10^6 BTU per hour. (Submitted December 9, 1981)

1200-3-5-.09 added visible emission standards for kraft mill recovery furnaces. (Submitted January 22, 1982)

1200-3-7-.12 added process emission standards for carbon monoxide emissions from catalytic cracking units at petroleum refineries in Shelby County. (Submitted January 22, 1982)

1200-3-9-.01-(5)-(b)-6.-(i) changed the definition of a major source of sulfur dioxide and volatile organic compounds to a source with potential emissions of more than 100 tons per year and allowable emissions (based on best available control technology) greater than any of the following: 40 tons per year, 1000 pounds per day, or 100

pounds per hour. (Submitted January 22, 1982)

1200–3–10–.02–2–(b)–2 was revised to allow for an alternate test method for fuel burning installations with fuel burning equipment of input capacity greater than 600×10^6 BTU per hour. (Submitted December 9, 1981)

1200–3–12–.04–(2)–(c) was deleted and replaced with a requirement that a continuous in-stack sulfur dioxide monitor must be used for sulfuric acid plants and liquid sulfur dioxide plants located in a Class I county, and further that the type of monitor and its location will be subject to approval by the Technical Secretary. (Submitted December 9, 1981)

1200–3–16–.01–(5)–(g)–19 and 20 added EPA reference methods 19 and 20 (40 CFR Part 60 Appendix A) to the general provisions of the new source performance standards. (Submitted January 22, 1982)

1200–3–18–.02–(m) redefined "existing source" as any process(es) in existence or having a state or local agency's construction permit prior to the "Original rule certified date" for the specified paragraph. (Submitted January 22, 1982)

1200–3–12–.03–(f)–1 corrected a typographical error by changing the date from August 17, 1977 to August 11, 1975. (Submitted January 22, 1982)

1200–3–18–.03–(4), on standards for new sources, exempted new sources from the regulations which only apply to existing sources. (Submitted January 22, 1982)

1200–3–18–.19–(2) expanded the applicability of the volatile organic compound regulations for cutback asphalt from urban counties to statewide. (Submitted December 9, 1981)

1200–3–18–.19–(2)–(d), removed the exemption for cutback asphalt used for base stabilization. (Submitted December 9, 1981)

1200–3–18–.44–(5)–(a) corrected a typographical error in this paragraph. (December 9, 1981)

1200–3–18–.44–(5)–(b)–1.–(ii) and (iii) corrected typographical errors in these subparts. (Submitted December 9, 1981)

1200–3–18–.44–(5)–(b)–2.–(ii) changed the word "convert" to "content". (Submitted December 9, 1981)

1200–3–18–.44–(5)–(b)–3.–(i), (ii) and (iv) corrected typographical errors in these subparts. (Submitted December 9, 1981)

Action: EPA today approves the above listed SIP revisions. This is being done without prior proposal because the SIP revisions are noncontroversial, are based on accepted procedures, are of limited impact, and are expected to elicit no comments. The public should be advised that this action will be effective 60 days from the date of this **Federal Register** notice. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

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

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

Under Section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 20, 1982. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

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

List of Subjects in 40 CFR Part 52

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

(Section 110 of the Clean Air Act (42 U.S.C. 7410))

Dated: June 14, 1982.

Anne M. Gorsuch,

Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

Subpart RR—Tennessee

In § 52.2220, paragraph (c) is amended by adding subparagraph (46) as follows:

§ 52.2220 Identification of plan.

* * * * *

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

* * * * *

(46) Miscellaneous changes in Chapters 1200–3–5, 10, 12, 18, and 20, submitted on December 9, 1981, and miscellaneous changes in Chapters 1200–3–2, 5, 7, 9, 12, 16, 18, submitted on January 22, 1982, by the Tennessee Department of Public Health.

[FR Doc. 82–16712 Filed 6–18–82; 8:45 am]

BILLING CODE 6560–50–M

---

40 CFR Part 52

[A–5–FRL 2132–1]

Wisconsin; Approval and Promulgation of Implementation Plans

AGENCY: Environmental Protection Agency.

ACTION: Final Rulemaking.

SUMMARY: This notice announces final approval of a revision to the Wisconsin Implementation Plan (SIP) for ozone. The revision consists of Wisconsin Administrative Code section NR 154.01, Definitions, and section NR 154.13, Control of Organic Compound Emissions, as amended to control volatile organic compound (VOC) emissions from the industrial source categories covered by the second group of EPA Control Technique Guidelines (CTG). Control of VOC emissions is part of Wisconsin's strategy to attain and maintain the national ambient air quality standard (NAAQS) for ozone.

EFFECTIVE DATE: This final rulemaking becomes effective on July 21, 1982.

FOR FURTHER INFORMATION CONTACT: Sharon Reinders, (312) 886–6034.

SUPPLEMENTARY INFORMATION: Under section 107 of the Clean Air Act (Act), EPA has designated certain areas in each State as not attaining NAAQS for ozone. See 43 FR 8962 (March 3, 1978) and 43 FR 45993 (October 5, 1978). For these areas, Part D of the Act requires that the State revise its SIP to provide for attaining the NAAQS by December 31, 1982. The requirements for approvable SIP are described in a "General Preamble" for Part D rulemaking published at 44 FR 20372 (April 4, 1979), 44 FR 38583 (July 2, 1979), 44 FR 50371 (August 28, 1979) 44 FR 53761 (September 17, 1979), and 44 FR 67182 (November 23, 1979).

On January 15, 1981, the State of Wisconsin submitted to EPA revisions to the ozone SIP that consists of Wisconsin Administrative Code section NR 154.01 Definitions, and section NR 154.13, Control of Organic Compound Emissions, as amended to require control of VOC emissions from the source categories covered by Group II CTGs and other direct sources of VOCs. The amendments to NR 154.01 add the definitions for nine additional Group II

VOC source categories regulated in NR 154.13 and clarify existing definitions. The source categories covered by the present revisions of NR 154.01 and NR 154.13 are: factory surface coating of flatwood paneling, petroleum refinery fugitive emissions (leaks), pharmaceutical manufacture, rubber tire manufacture, surface coating of miscellaneous metal parts and products, graphic arts (printing), dry cleaning (perchloroethylene), gasoline tank trucks—leak prevention, and petroleum liquid storage—floating roof tanks.

On January 12, 1982 (47 FR 1304), the EPA proposed to approve these revisions with the understanding that the State correct the deficiencies noted in the notice of proposed rulemaking. The reader is referred to the notice of proposed rulemaking for further details. In a letter from the Wisconsin Department of Natural Resources (DNR) to the EPA dated March 31, 1982, the State made a commitment to correct the deficiencies in the following manner.

1. Wisconsin has committed to revise NR 154.13(13)(a), which contains a typographial error referencing subsection 3(e), instead of subsection 3(f), transfer of any organic compound. The State confirmed that the correct reference is to subsection 3(f). 2. Wisconsin committed to incorporate a definition of "energy intensive control device" and a procedure to determine what constitutes such a device into the DNR's air pollution control manual codes. 3. Finally, the State made a commitment to use EPA approved test methods, as specified in EPA policy memorandum "VOC Test Methods or Procedures," April 6, 1981, when conducting VOC compliance tests. The State proposes to reference these test methods in an Operations Handbook which the DNR is developing. In the interim, Wisconsin will use section NR 154.06(5)(c) which states that the owner or operator of any VOC source to which NR 154.13 applies shall demonstrate compliance by methods approved by the DNR. EPA approves of Wisconsin's commitment to use EPA approved test methods, to enforce these procedures as part of the SIP using the authority of NR 154.06(5)(c) and to incorporate the test methods in an Operations Handbook.

EPA received one comment from Deere and Company who submitted technical information which supports the Wisconsin determinations that the extended final compliance dates for air dried and extreme performance coatings to December 31, 1985, are appropriate. EPA has reviewed this comment along with the commitment from the State and finally approves the January 15, 1981, submittal.

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

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 20, 1982. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

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

This notice is issued under authority of sections 110 and 172 of the Clean Air Act, as amended (42 U.S.C. 7410 and 7502).

Dated: June 14, 1982.

Anne M. Gorsuch,

Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS—WISCONSIN

Title 40 of the Code of Federal Regulations, Chapter I, Part 52, is amended by adding paragraph (c)(27) to read as follows:

Supart YY—Wisconsin

1. Section 52.2570 is amended by adding paragraphs (c) (25) and (26) as follows:

§ 52.2570 Identification of plan.

* * * * *

(c) * * *

(27) On January 15, 1981, the Wisconsin Department of Natural Resources submitted revisions to regulations NR 154.01 and NR 154.13 representing reasonably available control technology which are necessary to attain and maintain the ozone standard. A supplemental commitment was submitted March 31, 1982.

[FR Doc. 82-16714 Filed 6-18-82; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 52

[A-5-FRL 2133-7]

Approval and Promulgation of Implementation Plans; Minnesota

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: This notice announces EPA's final rulemaking to approve new and amended rules as revisions to the Minnesota State Implementation Plan (SIP). In a March 23, 1982, notice (47 FR 12364), EPA proposed to approve the rules. No public comments were submitted during the thirty day comment period. Therefore, EPA takes final action today to approve the rules as revisions to the Minnesota SIP.

EFFECTIVE DATE: This final rulemaking becomes effective July 21, 1982.

ADDRESSES: Copies of the SIP revision are available for inspection at the following addresses:

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

Environmental Protection Agency, Public Information Reference Unit, 401 M Street, SW., Washington, D.C. 24060.

Minnesota Pollution Control Agency, 1935 West County Road B-2, Roseville, Minnesota 55113.

FOR FURTHER INFORMATION CONTACT: Delores Sieja, Regulatory Analysis Section, Air Programs Branch, EPA, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-6038.

SUPPLEMENTARY INFORMATION: On January 28, 1972, the State of Minnesota submitted its SIP to EPA for approval pursuant to Section 110 of the Clean Air Act. This submittal included, among other things, State rules APC-1 through APC-16. EPA approved these rules as part of the Federally approved Minnesota SIP on May 31, 1972 (37 FR 10874).

On January 23, 1981, the Minnesota Pollution Control Agency (MPCA) submitted new rules and amendments to some of their previously approved rules. These rules regulate emissions from many source categories within the State. In a May 6, 1982, notice (47 FR 19520) EPA approved some of the rules insofar as they pertained to Minnesota's strategy to control particulates in the primary and secondary nonattainment areas within the Twin Cities Seven County Metropolitan Area and the City of Duluth.

Among the rules approved in the May 6, 1982, notice were those portions of

APC–4, APC–24, and APC–32, and APC–33 which applied to the control of particulates. Today's action approves (1) rules APC–4, APC–24, and APC–32 as they apply to the control of sulfur dioxide, nitrogen dioxide and carbon monoxide; (2) amendments to APC–33; and (3) rules APC–8, APC–12, APC–13, APC–15, APC–16, APC–19 and APC–39 as revisions to the Minnesota SIP. More information concerning these rules is contained in a March 23, 1982 notice of proposed rulemaking (47 FR 12364).

A thirty day public comment period was provided for interested individuals to submit their comments on the proposed revisions to the Minnesota SIP and on EPA's proposed approval. No public comments were received. Therefore, EPA is approving these rules as revisions to the Minnesota SIP. Following is a list of the rules which EPA is acting on today.

Rule	Description	Action
APC–4	Standards of Performance for Fossil Fuel Burning Indirect Heating Equipment.	Sulfur dioxide and nitrogen dioxide limits approved.[1]
APC–8	Open Burning	Approved.
APC–12	Standards of Performance for Motor Vehicles and Stationary Internal Combustion Engines.	Approved.
APC–13	Standards of Performance for Storage Vessels for Petroleum Liquids.	Approved.
APC–15	Standards of Performance for Sulfuric Acid Plants.	Approved.
APC–16	Standards of Performance for Nitric Acid Plants.	Approved.
APC–19	Permits for Indirect Sources	Approved.
APC–24	Standards of Performance for Petroleum Refineries.	Sulfur dioxide and carbon monoxide limits approved.[1]
APC–32	Standards of Performance for Fossil Fuel Burning Direct Heating Equipment.	Sulfur dioxide limits approved.[1]
APC–33	Standards of Performance for Coal Handling Facilities Within Designated Areas.	Amendments approved.[2]
APC–39	Emergency Episodes	Approved.

[1] EPA notes that these rules, as they controlled particulates, were approved on May 6, 1982 (47 FR 19520). With the approval of the remaining portions today, the rules will be approved in their entirety.
[2] This rule was approved on May 6, 1982 (47 FR 19520). Today, EPA is approving amendments to APC–33.

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

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

List of Subjects in 40 CFR Part 52

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

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

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

Dated: June 14, 1982.

Anne M. Gorsuch,
Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Title 40 of the Code of Federal Regulations, Chapter I, Part 52 is amended. Section 52.1220(c) is amended by adding new subparagraph (21) to read as follows:

§ 52.1220 Identification of plan.

* * * * *

(c) * * *

(21) On January 23, 1981, the State submitted new rules and amendments to some of their previously approved rules. On November 17, 1981, the State submitted amendments to APC–33. On May 6, 1982 (47 FR 19520), EPA approved some of the rules insofar as they applied to the total suspended particulate strategy for the Twin Cities Seven County Metropolitan Area and the City of Duluth. The remainder of the rules are: (i) Those portions of APC–4, APC–24, and APC–32 which control emissions of sulfur dioxide, nitrogen dioxide, and carbon monoxide; (ii) the amendments to APC–33; and (iii) APC–8, APC–12, APC–13, APC–15, APC–16, APC–19 and APC–39.

[FR Doc. 82-16732 Filed 6-18-82; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[BC Docket No. 81-883; RM-4005]

Radio Broadcast Services, FM Broadcast Station in Palm Desert, Calif., Changes Made in Table of Assignments; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: This item corrects an erroneous listing for an amendment to the FM Table of Assignments (§ 73.202(b) of the Commission's Rules) for Indio and Palm Desert, California.

DATE: Effective immediately.

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

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Broadcast Bureau, (202) 632–7792.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

In the matter of amendment of § 73.202(b), table of assignments, FM Broadcast Stations. (Palm Desert, California); BC Docket No. 81–883, RM–4005.

Released: June 15, 1982.

1. On May 28, 1982, the Commission by its Broadcast Bureau, released a *Report and Order,* in the above captioned proceeding. We indicated that Channel 244A was assigned as a first FM channel to Palm Desert. We also listed Channel 276A (Station KCMS) which is assigned to Indio, California, and licensed to serve Palm Desert pursuant to § 73.202(b) as an assignment at Palm Desert. We neglected to indicate that we have, on our own, reassigned Channel 276A from Indio to Palm Desert to reflect its actual use at that community. Thus, the assignment of Channel 244A will provide a second FM service to Palm Desert. In addition, the correct name of the county in which Palm Desert is located is Riverside.

2. Section 73.202(b) of the Commission's Rules, the FM Table of Assignments, should be amended to read as follows:

City	*Channel No.*
Indio, Calif	224A
Palm Desert, Calif	244A, 276A

Federal Communications Commission.

Roderick K. Porter,
Chief, Policy and Rules Division, Broadcast Bureau.

[FR Doc. 82-16698 Filed 6-18-82; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[BC Docket No. 80-130; FCC 82-240]

Radio Broadcast Services; Revision of FM Assignment Policies and Procedures

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action adopts new policies and procedures to govern the disposition of rule making petitions to

amend the Table of FM Assignments (Section 73.202(b) of the Commission's Rules).

This action is taken to reduce the burdens on parties filing petitions and to expedite processing.

DATE: Effective June 21, 1982.

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

FOR FURTHER INFORMATION CONTACT: Jonathan David, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcast.

In the matter of revision of FM assignment policies and procedures BC Docket No. 80-130.

Second Report and Order

Adopted: May 20, 1982.

Released: June 2, 1982.

1. On March 27, 1980, the Commission adopted the *Notice of Inquiry and Notice of Proposed Rule Making*, in this proceeding, 45 FR 26390, published April 18, 1980, designed to explore the various aspects of our treatment of proposals to amend the FM Table of Assignments.[1] The *Notice* proposed to update both the procedures employed as well as the standards used to evaluate proposed changes in the Table. However, it did not propose changes in the technical standards used to govern these assignments.[2] In order to put this subject in better perspective, it is necessary to provide some background on how the current policies were created and have since been applied.

2. The current FM Table of Assignments was the outgrowth of the rule making proceeding in Docket No. 14185 begun on June 21, 1961.[3] The FM Table and the policies and procedures now utilized by the Commission were developed in the early 1960's and have been little changed since then. Not only has the subject not been studied on an overall basis since then, there have been profound changes in the nature of FM broadcasting. In sharp contrast to the situation in the early 1960's when little interest was shown in FM use (and that mostly in major cities) FM channels now are in demand everywhere. Since the old procedures were developed to deal with a far different situation, it made eminently good sense to revisit the subject to see what changes might be required.

3. The FM Table is intended to allow the Commission to meet its obligation under section 307(b) of the Communications Act to provide a "fair, efficient and equitable distribution of radio service" to the various states and the communities within them. As set forth in Docket No. 14185 and repeated in the present Notice, the objectives to be served by the FM Table are:

- Provision of some service of satisfactory signal strength to all areas of the country;
- Provision of as many program choices to as many listeners as possible; and
- Service of local origin to as many communities as possible.[4]

Needless to say, there were and are various ways to go about achieving these objectives. In addition to establishing the methodology, there was a need for continuing surveillance to assess the extent to which these FM practices were achieving the desired objectives. As we pointed out in the present Notice, this has not been possible, as most of our energies have been devoted to day-to-day administration. The present proceeding is designed to remedy this omission and examine each of the component policies which govern FM assignments.[5]

4. To aid commenting parties in focusing on the subject, the Notice set forth the individual policies which were being applied to FM assignments along with their historical background and what appeared to be the consequences of their current use. We believe that it is appropriate to continue use of this format. This separate discussion is not intended to ignore the fact that these policies are interrelated and in fact do overlap. Where appropriate, the discussion notes the common themes and the factual premises that connect the topics.

5. The Notice also distinguished between unopposed petitions and situations where a choice between conflicting proposals is necessary. In the former instance, there is a notably lesser need for extensive filings from the petitioner; and we indicated our desire to avoid burdening the petitioner with filing requirements that serve no useful purpose. Not only are such burdens unfair, they can only serve to delay action on the proposal. In the latter case, more information may be necessary when the Commission must make a 307(b) choice between conflicting proposals.[6] Recognizing that different standards may be required in each situation, the Commission proposed minimal requirements for the "singleton" case which then could be supplemented if a conflict arose. The discussion which follows observes this distinction.

FM Priorities

6. The *FM priorities* set forth the relative importance of the service to be provided from the perspective of section 307(b) of the Communications Act. The original priorities were stated as follows:[7]

(1) Provision for all existing FM stations.

(2) Provision of a first FM service to as much of the population of the United States as possible; particularly that portion of the population which receives no primary AM service nighttime.

(3) Insofar as possible, to provide each community with at least one FM broadcast station, especially where the

[1] This Table appears as § 73.202(b) of the Commission's Rules and specifies the FM channels assigned to the various communities listed. A party wishing to apply for a channel but finding none vacant at the desired location files a petition to amend the Table by adding the desired channel.

[2] That subject was treated in the *Notice of Proposed Rule Making* in BC Docket No. 80-90, in which the Commission decided to explore such matters as making Class A assignments on Class B/C channels, establishing two new classes of stations and modifying the co-channel and adjacent channel spacing requirements to reflect these changes. The end result of such technical changes would be to make many more FM channels available for assignments than is now possible. This could be expected to lead to an increased number of filings seeking new FM assignments. This, necessarily, would make the matter of updating our procedures an even more important one. While the *Notice of Proposed Rule Making* in BC Docket No. 80-90 referred to this docket as an "associate" item, the action taken today will in no way prejudge action the Commission might deem warranted in BC Docket No. 80-90. Given the substantial savings which will accrue to this Commission as a result of today's action, we see no reason to delay these benefits pending consideration in BC Docket No. 80-90.

[3] *Notice of Inquiry, Notice of Proposed Rule Making and Memorandum Opinion and Order*, FCC 61-833, 26 FR 6130. A *Second Further Notice of Proposed Rule Making* was issued in 1962, 40 F.C.C. 728, and the Table itself was adopted in 1963 in the *Third Report, Memorandum Opinion and Order*, 40 F.C.C. 747.

[4] These were the same objectives which the Commission had used over the years to govern AM 307(b) choices. They were again cited by the Court of Appeals in its recent affirmance of the clear channel decision, *Loyola University* v. *FCC*, Case No. 80-1824; Slip Opinion at 3.

[5] We have already acted to end the procedural step of calling for responses and replies to a petition even before a Notice of Proposed Rule Making issues. Although reconsideration of this action, taken in the *First Report and Order*, 88 F.C.C. 2d 631 (1981), has been sought, those issues are not pertinent to the remaining issues to which we now turn.

[6] As already noted, this requirement about distributing radio service underlies the FM Table concept, but it also applies to the choice which often must be made between conflicting assignment proposals.

[7] The priorities were first set out in the 1962 *Further Notice of Proposed Rule Making* in Docket No. 14185, and were later incorporated by reference in paragraph 25 of the *Third Report, Memorandum Opinion and Order*, the document which adopted the Table (40 F.C.C. 747 (1963)).

community has only a daytime-only or local (Class IV) AM station, and especially where the community is outside of an urbanized area.

(4) To provide a choice of at least two FM services to as much of the population of the United States as possible, especially where there is no primary AM service available.

(5) To provide, in all communities which appear to be of enough size (or to be located in areas with enough population) to support two local stations, two local FM stations, especially where the community is outside of an urbanized area.

(6) To provide a substitute for AM operation which, because they are daytime-only or suffer service interference at night, are marginal from a technical standpoint.

(7) Channels unassigned under the foregoing priorities will be assigned to the various communities on the basis of their size, location with respect to other communities, and the number of outside services available.

7. In the Notice, we proposed a simplification of the priorities as follows:

(1) First full-time aural service.
(2) Second full-time aural service.
(3) First local service.
(4) Other public interest matters.

(Co-equal weight would be given to priorities (2) and (3))

8. Some of the parties filing comments supported the proposed change in priorities. The National Radio Broadcasters Association thought the new priorities would be "sound tools for selecting between conflicting allocation proposals" so long as they are applied sensibly and not rigidly or mechanically. Likewise, the National Telecommunications and Information Administration ("NTIA") supported the proposal generally as did National Public Radio ("NPR"). NTIA, however, did suggest that only the first two priorities were needed. NPR thought attention could be given in the priorities to the need for public radio service, and it suggested that the proposal should be examined in terms of whether the proposed community has or lacks full-time public radio service.

9. Various other parties opposed changing the priorities, arguing that it would lead to giving inadequate attention to local service or the needs of smaller, rural communities. These concerns were reflected in the filings of the National Association of Broadcasters ("NAB"), the General Electric Broadcasting Company, Inc. ("GEBCO"), and the American Broadcasting Companies ("ABC"). NAB argued that the Commission apparently had concluded that smaller communities now have enough FM service so that the focus could shift instead to assigning channels to large urban areas. The NAB argued against any such change of emphasis. They also called for greater cooperation between industry and government and stressed the role of the Government-Industry Advisory Group that meets to consider various issues affecting AM and FM broadcast service authorization. ABC and others expressed a similar concern that the change could lead to a lessened emphasis on local service.

10. We have concluded that changes in the FM priorities are required. The first priority is no longer applicable, as provision has long since been made for all existing stations. Next recognition needs to be given to the fact that AM and FM have become joint components of a single aural medium. Ever since the *Anamosa and Iowa City* case, 46 F.C.C. 2d 520 (1974), the Commission has taken the single aural service concept into account in applying the FM priorities. It is time to formally codify this change.

11. In adopting new priorities, we continue to believe that greatest emphasis needs to be given to assuring the availability of at least one full-time radio service to as many people as possible. New priority one is designed for this purpose. Next in terms of importance are second aural service and first local service. As the Commission pointed out in *Anamosa and Iowa City*, the old system of giving greater priority to first local service could lead to anomalous results, and in fact:

> [A]pplying them literally the result would be that any community, even one of only 100 persons seeking a first channel would automatically succeed in preference to a second channel to a city of 1,000,000 that would bring a second service to 4,000,000 people. 46 F.C.C. 2d 520 (at 525).

In effect, the Commission has dealt with this problem by giving co-equal status to these two priorities. We believe that this approach also should be codified. This is what the new priorities two and three will do. In cases involving a choice between such second aural and first local services, the populations provided each of those services would be compared. Preference would be given depending on whether more persons would receive a second aural service or a first local service. Under this approach we will continue to give emphasis to local service while avoiding the possibility of anomalous results under the old priorities.

12. Finally, we believe it is preferable to employ a single priority for the remaining areas of comparison. It will allow the Commission to compare the benefits offered by the respective proposals without being bound by the rigid sequence of the old priorities.[8]

13. We believe that substantial gains can be obtained through use of the new priorities, including speeding our processes and easing resolution of disputes. Also, reducing the number of priorities has the advantage of avoiding the previous process which required an extra effort to document how a strong preference on one criterion outweighs another party's lesser preference on a higher rated priority. Overall, the new priorities better reflect the current FM situation and the need to concentrate on higher priority services. One final point needs to be emphasized. Since these priorities are used solely to make a choice between proposals, there is no need for a proponent to undertake an engineering study to demonstrate first or second aural service if no choice between proposals is presented. If conflicting proposals already are on file, the Notice of Proposed Rule Making can call for the submission of this information. If the conflict arises in response to the Notice, the material should accompany the new parties' comments. The original party could then supplement its original showing when filing its reply comments. In this way we can avoid delay in processing petitions and can save the Commission and the parties from unnecessary expense.

Reservation Policies

14. In this category are a series of policies which were designed to reserve channels for a future (and theoretically preferable) use. These policies called for rejection of proposed assignments, because of the effect on future assignment possibilities. The decision to employ these policies was based on the awareness that in the then-new FM medium, demand would develop slowly and unevenly. If no restrictions were employed, there would not be an equitable distribution of facilities. In particular, major urban areas would get a disproportionate share of assignments because that is where interest in FM developed first. A system was needed to make sure channels would be available elsewhere as interest in FM grew and spread. Now, of course, FM has become a mature medium and it is time to reexamine these restrictive policies to see if they are still needed. These

[8] This comparison can take into account the number of aural services received in the proposed service area, the number of local services, the need for or lack of public radio service and other matters such as the relative size of the proposed communities and their growth rate.

policies are those involving *preclusion,* use of *population guidelines* and, to a lesser extent, the policy on the *appropriate class of channel* to assign based on the size of the community involved. We will examine these policies individually beginning with preclusion.

15. *Preclusion.* Simply stated, if a channel is assigned to one location, then that assignment precludes use of that channel and adjacent channels elsewhere in the same general area. The policy was adopted as a means of holding channels in reserve for future use when FM interest had grown. Under the policy, the Commission considered the impact of proposed Class B or C assignments on the ability of other communities to obtain an assignment of their own. To do this, it was necessary for both the proponent and the Commission's staff to do extensive engineering work and to prepare full showings. Sometimes other existing assignments already precluded new assignments in this area, so the proposal raised no concern. In other cases, since alternative assignments were available to precluded communities, preclusion was of no concern. At issue here is whether preclusion showings should be required and what should be done if alternative assignments are not possible to communities lacking their own assignment.[9] Since there are 80 commercial FM channels available for use, preclusion in any one case leaves the great majority of channels unaffected. Cumulatively, though, the supply may have been depleted so that a given assignment may preclude the last opportunity for an assignment to a particular locality. If a proposal is received from that locality, the matter is a simple one of a choice between the proposals. The preclusion issue is an effort to deal with cases where interest in the precluded community is not expressed.

16. The approach suggested by the *Notice* involved use of the Commission's computer to study the impact of preclusion and to select the least preclusive channel for assignment. Where preclusion appeared to be significant, we contemplated the possibility of a notification procedure. Under this approach, time would be afforded to interested parties in affected communities to step forward and express interest in having the channel assigned to the otherwise precluded community. In so doing, this party also would need to provide the requisite commitment that it would apply for the channel, if assigned, and would construct it if authorized. It was clear that there would be additional administrative costs involved in use of such an approach. Parties were asked to indicate if they thought the benefits of this approach warranted its increased expense and delay. If they did support it, they were asked to indicate what size community should be used in determining the impact of preclusion.

17. Responses on these points varied. NTIA agreed that if there were a choice of channels it was appropriate to choose the least preclusive channel for assignment. Nonetheless, it saw no need to deny a proposal because of preclusion. Others supported the approach of assigning the least preclusive channel, but they asked the Commission to be more specific about what was meant by "least preclusive" channel. NPR, for example, said it was incumbent on the Commission to define and describe the term for the benefit of affected parties. On the more general point, NPR, GEBCO and others thought concern about preclusion was warranted. They supported the notification concept along the lines set forth in the Notice. In their view, there still is reason to withhold an otherwise acceptable assignment solely because of preclusion. Even though the need for or the interest in a station was not yet manifested, they believed that the opportunity should be protected lest there be no way of responding to the interest if and when it did arise.

18. The Commission's experience clearly demonstrates that the importance of preclusion has greatly diminished. The preclusion policy was adopted at a time when there was a great concern about the need to hold channels in reserve for future need when the medium had developed. Now that the FM medium has matured, the need to continue a reservation approach has diminished greatly. In most cases, it is conjectural at best to think that another year or two or more would result in any substantial changes. In fact, interest may never arise, and service would have been denied for no real reason.

19. The proposed notification approach can deal with this imperfectly at best. It can only offer a brief window in which interest in the precluded community could be expressed. This seems far too short to be of any practical value, and it could raise the possibility of obstructionist tactics. Places not yet in existence would not benefit from the proposed policy since they could not be identified in preclusion studies. As to existing communities, there is no way to know whether interest would ever be expressed. Yet, under the policy, every proposal would be delayed while the subject was studied. Most would be granted anyway, based on our experience in this area. Thus, the policy would likely have few beneficiaries. This is not enough to sustain such a burden.

20. We must also be concerned about the administrative impact of continued use of preclusion and the impact of insistence on the preparation of preclusion studies. The burden involved could only be compounded by a notification process. Notices would have to be sent to all communities and their receipt verified. The end result of this approach could only be a notable increase in the paperwork involved in seeking an assignment as well as the time of the Commission's staff in processing these proposals. Out of this comes delay in processing and thus a postponement of service. All considered, the cost is too high for the rare benefits derived. This is epecially true if the Commission has to deal with the additional assignment proposals arising as a result of the outcome of BC Docket No. 80–90. While notification, at least in the abstract, seemed a fair substitute for the old preclusion policy, it must be regarded as infeasible because of its impact on our processes. Based on the maturation of the FM medium we have decided to end our preclusion policy. It is no longer necessary to hold channels in reserve awaiting development of the medium. This does not mean a lessened concern about these affected localities. Where interest there is shown through the filing of a counterproposal, it will be given careful attention and accorded the full weight it deserves.

21. *Population criteria.* These criteria represented another example of holding channels in reserve. The guidelines were designed to reflect an appropriate apportionment of channels based on the size of the community involved, thus preventing larger cities (where interest in FM had developed) from obtaining a disproportionate share of channels. These criteria were taken into account in creation of the FM Table, and they have been applied ever since to petitions to add assignments to the FM Table. The population criteria are as follows:

- communities under 50,000 population—1 or 2 channels;
- communities between 50,000 and 100,000 population—2 to 4 channels;

[9] In deciding how large a community needs to be before preclusion becomes a matter of concern, the Commission's standard of community size has varied from 1,000 population to 2,000 or on occasion, 2,500.

- communities between 100,000 and 250,000 population—4 to 6 channels;
- communities between 250,000 and 1,000,000 population—6 to 10 channels; and
- communities over 1 million population—10 to 15 channels.[10]

In the Notice we questioned whether it was necessary or appropriate to continue use of these guidelines, especially since they seemed to have accomplished their purpose.

22. Reaction to this proposal varied. Again, the NAB focused on its concern that localism was being given short shrift and that the Commission was now emphasizing assignments for large urban areas at the expense of smaller localities. This position was supported in filings by ABC and GEBCO. All of the opponents (to some degree at least) thought that the population guidelines served to protect opportunities for service in smaller localities and read the Commission's proposal as expressing a lessened concern on this score. On the other hand, several opponents pointed to the fact that the Commission has not applied these guidelines so rigidly as to preclude all assignments in excess of them. They urged a continuation of this approach treating the proposal much like a waiver request, rather than dropping the guidelines entirely. Along this line, ABC thought that the Notice exaggerated the burden involved in overcoming the presumption of the guidelines. In ABC's view, waivers already were being given where appropriate. NPR, on the other hand, supported the Commission's proposal. NRBA wanted the criteria dropped rather than given only lip service through waiver. As NRBA saw it, "* * * (I)t is clearly preferable to abandon these criteria rather than force parties seeking allocations to go through purely formalistic waiver exercises."

23. We agree with NRBA that since waiver has become the general practice, there is little reason to retain the guidelines. The guidelines have served their purpose and have preserved opportunities until interest in FM developed. Now, of course, we are dealing with a matured medium in which many seek to operate in smaller communities. This means that the Commission can now withdraw this barrier and deal with the individual proposals that are filed. We no longer believe it is proper to say that no new service at all is better than allowing an assignment in excess of the limit specified in the criteria. As before, when conflicting proposals are filed, they can still be compared in terms of their 307(b) consequences, and preference given to the smaller community if appropriate.

24. *Appropriate class of channel.* There are two components to this subject. The first relates to the policy of taking into account the size of a community in deciding the class of channel to assign. Under this policy we have assigned Class A channels to smaller communities and Class B/C channels to larger communities. In part, this policy was part of the overall approach of holding channels in reserve, in this case the B or C channels being reserved for larger communities. In the Notice, we questioned whether there was a need to continue a hard and fast policy or whether flexibility was preferable. The second aspect relates to intermixture, our policy against assigning two different classes of channels to the same community.

25. The theoretical advantage of assigning a Class A channel to a small town and a B/C channel to serve larger ones breaks down in many cases. Some small towns are the population center for a sizeable area. Since a Class A channel would not be able to cover this entire area, a Class B or C channel is needed.[11] Also, when no B or C channels are available for a larger city, proposals to assign Class A channels there are received. In these cases, the result of the policy is to require additional work for the petitioner and to introduce unnecessary delay in reviewing the showings on behalf of an exception to the policy. With this in mind we thought that this policy could be eliminated. This aspect of the Notice elicited virtually no response. Nor has the Commission's own experience since suggested a need to continue a policy that either refuses an assignment which fully meets the rules or makes it only after an extensive showing has been filed. Accordingly, we no longer intend to mandate the choice of a channel based on community size.

26. Our policy against intermixing classes of channels in the same community is not based on any concepts of reserving spectrum for future use. Rather, its foundation is the idea that a higher power facility would have a competitive advantage over a lower power one in the same community.[12] Our proposal to end this policy elicited considerable comment. These comments focused separately on the two quite different aspects of the policy. Assigning a Class A channel to a community with B or C assignments was seen as quite different from the reverse situation. Several parties agreed that it was not necessary to have a policy against assigning a Class A channel to a community that already had one or more Class B or C channels. They agreed with the Commission's view, expressed in the Notice, that the party proposing such an assignment could be presumed to have understood and accepted the competitive risk. Although technically a violation of the policy against intermixture, this has been the informal approach taken by the Commission. Supporters of the Commission's proposal, like NRBA, agreed that these parties could protect themselves, but the NAB disagreed. It argued that the Commission should not rely on the willingness of a party to enter into such competition. Instead it urged an in-depth study of a Class A station's ability to compete. The Pennsylvania Association of Broadcasters ("PAB") also was unpersuaded. It referred to a case where it said economic data submitted by the Class B licensee was rejected.[13] PAB charged that the Commission was abandoning all but engineering or technical concerns. In other words, the Commission was advocating a marketplace approach to the making of assignments in which all assignments that met applicable engineering standards would be granted. In PAB's view, this violates the Commission's obligation under Section 307(b) of the Act to allocate frequencies in the public interest and would be in conflict with the Supreme Court's decision in *FCC* v. *RCA Communications,* 346 U.S. 86 (1953), and the Court of Appeals decision in *Hawaiian Telephone Co.* v. *FCC,* 498 F. 2d 771 (D.C. Cir. 1974). In both cases, according to PAB, the Courts held that it is not enough to presume a national policy favoring competition. Rather, it asserts, the Commission must demonstrate the tangible benefits it expects to flow from such competition before taking the action.

27. At most, the cases cited by PAB required the Commission to substantiate the benefits expected to flow from

[10] These are guidelines not guarantees, so that various places, large and small, have not received the specified number of assignments.

[11] The 1 mV/m coverage of a Class A station extends about 15 miles, a Class B station over 30 and a Class C station almost 60 miles. All of this is based on maximum facilities.

[12] As the *Rome, New York,* proceeding made clear, this policy prohibited intermixing assignments in a particular community. It did not preclude intermixing channels in the market. See *Notice of Proposed Rule Making and Memorandum Opinion and Order,* 42 FR 58189, adopted October 17, 1977.

[13] This case, *Falmouth, Massachusetts,* BC Docket No. 80-159 *Report and Order,* 48 RR 2d 1673 (1981); *Memorandum Opinion and Order,* 50 RR 2d 377 (1981), is still before the Commission and no comment on its particular facts is appropriate here. Our concern here is with the general standards to apply, not whether special circumstances exist in that or any other particular case.

additional competition, not simply presume that such benefits would flow. Here the benefits are clear. Additional needed service can be provided, thus making it possible for the listener to have additional program choices. Moreover, this view is consistent with the Commission's long held position favoring competition through the authorization of additional broadcast services. In fact, the burden in broadcast cases has been on the party opposing competition. Thus in *Carroll* cases,[14] for example, the party opposing the new competitor on economic grounds must establish how the public would be damaged by competition. For these reasons we cannot accept the applicability of PAB's observations about competition.[15] Consequently, we believe that allowing voluntary Class A competition may be the only way to bring new service, and it appears both unnecessary and wasteful to let the channel lie fallow rather than allow such intermixture. In any event, in the ordinary case, making this assignment has no disruptive effect on existing operations.

28. The assignment of a Class B or C channel to a community having only one or more Class A assignments presents a different situation. Although NTIA and NPR supported allowing this form of intermixture as well, the other commenters either opposed it entirely or asked that the existing Class A station by given a controlling preference in a comparative proceeding over use of the Class B/C channel. These comments were based on a concern over the economic impact of such intermixture. They argued that the Class A operation, with its circumscribed coverage area, could not compete with the newcomer with its greater coverage area. According to some, we should not drop our policy against intermixture without first conducting an extensive review of its implications, particularly in view of the other actions being taken by the Commission to bring new AM and FM service. Others suggested an economic exploration of the situation in the particular market before making the assignment. NRBA called for considering this matter as the equivalent of a *Carroll* case objection to a broadcast authorization, namely that the public would suffer a net loss of service if the additional station were to operate. Noting the fact that *Carroll* showings must meet a high standard before the matter can be placed in issue, NRBA asked us to use a "reasonable" standard to govern showings in assignment cases.

29. What NRBA urges is a complete departure from our regular practice in FM assignment cases. We have repeatedly rejected consideration of *Carroll* objections in rule making and have consistently held that such objections should be raised in connection with the application to use the channel. The rule making proceeding is designed to further the 307(b) objectives to provide a fair, efficient and equitable distribution of radio service. This process is not a suitable one for consideration of the economic questions that underlie the *Carroll* issue. In addition, the mere presence of a channel tells little about how or even just where it would be put to use by a particular licensee. Thus, until an application is filed, the Commission is not in any position to resolve any such issue which might arise. Although we understand the concern expressed by existing Class A licensees, we do not feel that the FM rule making context is the proper place to resolve it. If a question properly arises in any individual instance, it can best be handled in the application context where appropriate consideration can be given to the argument in deciding on use of the channel. Our action here to change the policy against intermixture is not intended to foreclose parties from raising objections to the application when the facts warrant. The standards for considering these objections have been long established and parties can expect that any objections will be given appropriate treatment. As to the policy change itself, we believe it is important to bring new and often much needed service even if it involves intermixture. The willingness of newcomers to use Class A facilities in competition with existing Class B/C stations suggests that the competitive position is not as bleak as it has been painted.[16] Also, the effect of allowing intermixture is not much different from letting an AM broadcaster use a lower frequency, thereby serving a much larger area with the same power. In fact, the difference in coverage area of AM stations in the same market can be as great as the difference between a Class A and a Class B FM station's coverage area. We have not prevented AM stations from having such an advantage in coverage area even if the other existing AM stations had circumscribed service areas because of higher frequency or lower power. We believe that competitive market skills may turn out to be far more important than theoretical service area. After all, it is not service area alone that counts but the size of the audience, and that does not necessarily coincide with the station's class or coverage area.

30. We also need to consider what treatment to afford the application of the Class A licensee to use any newly assigned Class B/C channel.[17] This is a question now before the agency as a result of the Court of Appeals remand in *Julie P. Miner* v. *FCC*, 663 F. 2d 152 (D.C. Cir. 1980). We will address this matter at the time we resolve the *Miner* case.

Demographic Showings

31. In connection with the request to assign an FM channel to a locality, petitioners have been called upon to show not only that the proposed location of the channel assignment in fact is a community, but that it needs the assignment. To establish this the petitioner informs the Commission, often at great length, about such things as industries, major businesses, and tourist attractions. In the Notice, we questioned whether there is any valid reason for the Commission to require the submission of this demographic data. If the petitioner believes that the service is needed and that advertising support for it could be generated, what reason is there for the Commission to question this judgment? In fact, in cases where the place's status as a community is clear, we thought there should be no need to submit demographic data at all.

32. Commenting parties who discussed this issue supported the Commission's proposal in cases where the status of the community is not in issue. They agreed that in such cases demographic showings serve no useful purpose. If the place is a community, why should the Commission care if it is a tourist mecca rather than an industrial center or farming town? Even less is there a need to know all the other demographic facets that have no necessary place in Commission evaluation of the proposal. All the present requirement does is make the petitioner prepare and file unnecessary paperwork which the Commission's staff

[14] *Carroll Broadcasting* v. *FCC*, 258 F. 2d. 440 (D.C. 1958).

[15] The PAB comments also relied on the Court of Appeals' decisions in the "Format cases", *FCC* v. *WNCN Listeners Guild*, 450 U.S. 582, 67 L. Ed. 521 (1981), but the Supreme Court has reversed the Court of Appeals and held that the Commission does not need to consider changes in the entertainment format of radio stations. Thus, there is no rejection of the Commission's view that it is appropriate to rely on competitive forces to shape station formats.

[16] Recent examples include: *Jacksonville, Illinois*, BC Docket 80-337, 46 Fed. Reg. 34590 (1981); *Killeen, Texas*, BC Docket 80-236, 46 FR 20674 (1981); and *Spokane, Washington*, BC Docket 80-502, 46 FR 36854 (1981). In the *Spokane* case, the Class A operation was to be in competition with seven existing Class C operations.

[17] Where possible, we have assigned additional Class B/C channel for the use of existing Class A licensees, but here we are dealing with cases where that cannot be done.

is required to study and summarize in the rule making documents. No public loss will attend ending this requirement. Terminating this outdated requirement can only bring important gains for all.

33. Only one minor exception needs to be noted. Section 307(b) of the Communications Act speaks in terms of distribution of facilities among the "several states and *communities*" (emphasis supplied). In this regard, we normally have considered any incorporated place or any other place listed in the census reports as a community. However, from time to time a petitioner will specify a place that is neither incorporated nor listed in the census reports, and we required a demographic showing to indicate that the place was in fact a cognizable community under Section 307(b). To obviate this showing, the Notice herein proposed accepting any population grouping as a community. Virtually no attention was given to this proposal in the comments.

34. In considering this matter further, we have come to believe that our proposal would not significantly facilitate the rule making process. Rather, section 307(b) requires that we continue to require assignments to "communities" as geographically identifiable population groupings. For this purpose it is sufficient that the community is incorporated or is listed in the census. However, if a petitioner desires the assignment of a channel to a place that is neither incorporated nor listed in the census reports, it will be required to supply the Commission with information adequate to establish that such a place is a geographically identifiable population grouping and may therefore be considered a community for these purposes. Failure to file such information with the petition for rule making will delay the Commission's processes.

35. Thus, with this infrequently applicable exception, petitioners need not file demographic data with their requests for rule making to amend the FM Table of Assignments. In situations where a conflict between proposals develops, the information necessary to resolve that conflict can be filed either in response to the Notice of Proposed Rule Making or a counterproposal.

Berwick Issue

36. In rule making a *Berwick* issue is said to arise when someone proposes the assignment of a channel to a particular community and it appears that the petitioner's real purpose may be to use this suburban location to serve another larger community nearby.[18] In line with their views in other regards, NPR and NTIA supported deletion of *Berwick* issues at the rule making stage. NRBA also supported deletion, but its support was premised on the opportunity to raise the issue at the application stage. So long as that opportunity was provided, NRBA saw no purpose in raising it in the rule making. GEBCO argued to the contrary, that the Commission needed to know at the rule making stage if the petitioner intended to serve the specified community. It wanted the Commission to consider this matter when properly raised. ABC took a slightly different tack. It felt that the issue should be considered where it was validly raised but that the standard used to judge the objection should be a high one. NAB also wanted the *Berwick* issue used in rule making and cites *Communications Investment Corp.* v. *FCC*[19] for the proposition that the FCC cannot allow *de-facto* reallocation of FM stations from smaller towns to larger ones without hearing. It also refers to language in that opinion about forestalling excessive concentration of facilities in larger cities and the need to insure adequate service to smaller communities and sparsely settled areas.

37. As NAB acknowledges, *Communications Investment Corp,* was not a case dealing with the FM Table. In fact, the Court acknowledged that the Table is not immutable but can be modified through rule making. Nothing in the Court's opinion suggests that the Commission cannot allocate or reallocate channels through rule making. Nor does the Court indicate the need for hearing in such rule making. As to any question about the *bona fides* of the party involved, we believe that it cannot be effectively resolved in rule making where none of the relevant particulars about the actual use of the channel are available.[20] Also, based on our decision to drop the population guidelines and to alter the priorities, the previous incentive to specify a smaller community will diminish. In any event, we do not believe it is appropriate to question the intent of the party seeking an assignment to a particular community in the rule making process.

[18] *Berwick Broadcasting Co.*, 20 F.C.C. 2d 393 (1969).

[19] 206 U.S. App. D.C. 1, 641 F. 2d 954 (1981).

[20] Thus, in the *Berwick* case itself, it was not the community to which the channel was assigned but where it was to be used under the then "25-mile" rule that raised the problem. The continued applicability of this precedent in hearing cases is beyond the scope of this inquiry.

Assigning a Channel to Avoid a Hearing

38. The next point to consider is the Commission's policy of refusing to assign a channel on a showing that it would avoid a hearing over who is to obtain use of a single vacant channel. While this issue does not arise often, when it does, real delay and expense to all concerned can result. If two applicants seek use of a particular channel, a comparative hearing ordinarily is necessary. However, this could be avoided if a second channel could be assigned. The Commission has a policy of refusing to do so merely to avoid a hearing. This means that action is withheld on the rule making proposal and parties are forced to go through years of prosecuting applications for no real purpose. It would seem preferable that a prompt decision be made on adding a channel, thereby saving time and expense for all concerned. Under current policy, the entire hearing process has to be resolved first or the party must relinquish its right to a hearing without even knowing if a channel actually will be added. Under these circumstances, it is no wonder a party would insist on pursuing its hearing rights first. Under our proposal, the parties could now pursue the rule making alternative without sacrificing their hearing rights.

39. The comments generally support a change in current policy. ABC and others do offer a caveat; in its concern to avoid hearings, the Commission should not put itself in the position of assigning more channels than are warranted and should consider the economic impact of two (rather than one) new assignments before making them. GEBCO concurs and also says the Commission should be ready to consider whether the channel is needed more somewhere else. It was not our intention to suggest that special *favorable* treatment *must* be given if a hearing would be avoided. Rather, our goal was to remove impediments that call automatically for *unfavorable* treatment. We believe that the best situation is one in which each proposal is examined on its own merits. If a second assignment can properly be made, there is every reason to decide this promptly and thereby avoid the high cost and great delay in an evidentiary hearing. If it is not to be assigned because another conflicting proposal is more meritorious, this too should be established early, lest unfairness to one or another litigant result. In non-conflicting cases we do not contemplate refusing an assignment on economic or competitive grounds.

40. The policy changes being made can bring needed simplification to an

unnecessarily cumbersome process and make far better use of the Commission's limited resources. Substantively, too, they represent important new departures more in keeping with our deregulatory goals. The old policies have served their purpose but now must be replaced by new standards which are appropriate to the current environment.

41. Therefore, it is ordered, That the new policies are adopted effective June 21, 1982, and as of that date shall be applied to all applicable proceedings in which a Report and Order has not yet been issued.

Federal Communications Commission.
William J. Tricarico,
Secretary.

[FR Doc. 82-16699 Filed 6-18-82; 8:45 am]
BILLING CODE 6712-01-M

---

47 CFR Part 90

[Docket No. 20846]

Private Land Mobile Radio Services; Policies and Regulations To Govern the Interconnection of Private Land Mobile Radio Systems With the Public Switched Telephone Network in Certain MHz Bands; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: The Commission issued an Erratum to correct Appendix B, § 90.483(b)(2)(ii) in Docket No. 20846, which was released April 8, 1982. The "alerting signal" mandated by this rule was not intended to apply to systems operating at 800 MHz. However, this exclusionary language was inadvertently left out of the rule. The Erratum amends the rule section to conform with paragraph 59 of the text.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Albert J. Catalano, Private Radio Bureau, (202) 634-2443.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 90

Interconnection.

In the matter of amendment of Part 90 of the commission's rules to prescribe policies and regulations to govern the interconnection of private land mobile radio systems with the public switched telephone network in the Bands 806-821 and 851-866 MHz; Docket No. 20846.

Released: June 1, 1982.

On April 8, 1982, the Commission released a *Second Report and Order* in the above-captioned proceeding (FCC 82-130, Mimeo No. 31028). Appendix B, § 90.483(b)(2)(ii), in the document as released is in error. As discussed in paragraph 59 of the text, the "alerting signal" mandated by this rule was not intended to apply to systems operating at 800 MHz. However, this exclusionary language was inadvertently left out of the rule section. Accordingly, Appendix B, § 90.483(b)(2)(ii) is amended to conform with the text and reads as follows:

§ 90.483 Permissible methods and requirements of interconnecting private and public systems of communications.

* * * * *

(b) * * *

(2) * * *

(ii) Initial access from points within the public switched telephone network shall be limited to transmission of a 3 second tone, after which time the transmitter shall close down. No additional signals shall be transmitted until acknowledgement from a mobile station of the licensee is received. Systems above 800 MHz are exempt from this requirement.

* * * * *

Federal Communications Commission.
William J. Tricarico,
Secretary.

[FR Doc. 82-16701 Filed 6-18-82; 8:45 am]
BILLING CODE 6712-01-M

---

47 CFR Part 90

[PR Docket No. 81-1; RM-3365; FCC 82-216]

Geographic Reallocation of Certain Channels in the Detroit Area to the Business Radio Service

AGENCY: Federal Communications Commission.

ACTION: Final Rule.

SUMMARY: On January 26, 1981, the Commission proposed to make available with other private land mobile radio services on a shared basis, five pairs of frequencies in the 450-470 MHz band for use by eligibles in the Business Radio Service within 35 miles of Detroit. Updated information revealed that these five frequency pairs are not actually available for sharing as originally proposed. Therefore, two itinerant use Business channels, have been redesignated for general use in the Detroit area only.

DATES: Effective July 9, 1982.

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

FOR FURTHER INFORMATION CONTACT: Arthur King, Private Radio Bureau, Washington, D.C. 20554, Phone (202) 632-6497.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 90

Private land mobile radio services, Industrial radio services, Business and industry.

Memorandum Opinion and Order

Adopted: May 13, 1982.

Released: June 2, 1982.

By the Commission: Commissioner Quello concurring in the result.

In the matter of amendment of § 90.555(b) of the Commission's rules to provide for Geographic Reallocation of certain channels in the Detrioit area to the Business Radio Service, PR Docket No. 81-1 RM-3365.

1. On January 26, 1981, the Commission released a Notice of Proposed Rule Making (NPRM) in this proceeding to amend Sections 90.75 and 90.555 of the Commission's Rules (47 CFR 90.75 and 90.555) to make available, on a shared basis with other private land mobile radio services, five pairs of frequencies in the 450-470 MHz band for use by eligibles in the Business Radio Service within 35 miles of Detroit. The Commission also proposed to make available two pairs of frequencies presently assigned on an itinerant basis in the Business Radio Service for regular permanent area base station use in Detroit.

Background

2. Our proposal was in response to a petition filed by the National Association of Business and Educational Radio, Inc. (NABER) for amendment of Part 90 of the Commission's Rules to provide for geographic reallocation from other private land mobile radio services to the Business Radio Service of all channels in the bands 150-174 MHz and 450-470 MHz in the Detroit area which showed both zero-measured use and no licensees authorized to use them. NABER's request for reallocation of frequencies was based on the frequency congestion experienced by Business Radio users in the Detroit area and upon the Commission's 1977 Detroit monitoring study which indicated that there was little, if any, use on 76 frequencies (40 in the 150-174 MHz band and 36 in the 450-470 MHz band) in the Detroit area.[1]

[1] See "Land Mobile Spectrum Utilization Detroit, Michigan," FCC Report No. SSB/SMD 78-01, August 1978, (NTIS No. PB 284523).

3. In our Notice of Proposed Rule Making we stated that a review of our data base then indicated that of the 76 frequencies measured as unoccupied in 1977 only 5 channels currently had no base station assignments within 75 miles of Detroit. These 5 channels, all in the 450–470 MHz band, were described as follows: (a) Three Industrial Pool pairs—451.525/456.525, 451.225/456.225, and 451.675/456.675 MHz; and (b) two pairs shared by the Petroleum and Forest Products Radio Services—451.550/456.550 and 451.700/456.700 MHz. We, therefore, proposed to make those 5 channels available on a shared basis with the Business Radio Service within 35 miles of Detroit. Additionally, we proposed to reassign 2 pairs of unused Business frequencies from itinerant to permanent use, in order to aid in the alleviation of unsatisfied business demand.

Comments

4. Comments and reply comments to this Notice were received from eight (8) parties. A list of the commenters is contained at Appendix A attached hereto. Generally speaking, the NPRM received an unenthusiastic response. The parties objecting to the Commission's proposed rule change did so primarily for three reasons. First, such parties' records of frequency assignments indicated most of the channels had been assigned. Second, they claimed that these frequencies are needed for use by future eligibles in the radio services to which they are now allocated. Third, they maintained the proposed rule change would not result in any significant benefit to the Business Radio Service and would only expand the burden of spectrum shortage from the Business Radio Service to other services. Most of the commenters, however, had no objection to designating the two Business Radio Service itinerant UHF pairs for permanent base station operations in Detroit, except one licensee in the Detroit area who operates a temporary base station and mobile units on one of the pairs under consideration for redesignation. This commenter, Adams Distributing Company, requested that the Commission retain itinerant frequencies for those applications and licensees requiring such temporary utilization. We shall amplify these objections in some detail before we turn to our disposition of this matter.

5. Regarding the availability of the five proposed "unused" channels which the Notice of Proposed Rule Making identified, the Manufacturers Radio Frequency Advisory Committee, Inc. (MRFAC) questioned whether two of the three frequency pairs identified in the Industrial Pool are, in fact, available for assignment, and argued that, if they are, present eligibles for the Industrial Pool frequency pairs should have a reasonable opportunity to utilize these frequencies prior to any sharing with the Business Radio Service. Similarly, the Utilities Telecommunications Council (UTC) and the Central Committee on Telecommunications of the American Petroleum Institute (API) maintained that the Industrial Pool channels and the two channels shared by the Petroleum and Forest Products Radio Services are being utilized to a greater extent than evidenced in the NPRM. UTC states that its records reveal that the frequency pair 451.675/456.675 MHz was coordinated for use by the Department of Water Supply of the City of Detroit for a low-power operation on January 9, 1981, and that an application for that channel was filed with the Commission on January 20, 1981. Thus it says the Petroleum Frequency Coordinating Committee's records indicate that in the Detroit area all of the Industrial Pool UHF pairs, including the three pairs at issue in this proceeding, have now been through interservice coordination. As for the two pairs shared by Petroleum and Forest Products eligibles, API states that a Petroleum Radio Service licensee is utilizing the frequency 456.700 MHz in a mobile only mode; and, consequently, it would appear that the channel 451.550–456.550 MHz is the only UHF assignment in the Detroit metropolitan area described in the NPRM that remains unassigned.

6. In response to these objections, in its reply comments, NABER notes that its intention in this proceeding was to request reallocation of "zero used" channels only. In this regard, however, NABER questions API's position that the frequency 456.700 MHz is utilized in Detroit. NABER says its information is that the Petroleum Radio Service licensee on that frequency is authorized for a mobile system in Detroit but, in fact, operates extensively in Ulna, Michigan, approximately 100 miles from Detroit. NABER, therefore, feels that there should be no objection to utilizing the 451.700/456.700 MHz frequency pair within 35 miles of Detroit.[2]

7. API also asserted that the proposed sharing arrangements would be inconsistent with the Commission's recent action in PR Docket No. 79–167, *Inter-Service Frequency Sharing*, 77 FCC 2d 867 (1980). There, the Commission recognized the future growth requirement in the Manufacturers Radio Service and the rule amendment adopted in that proceeding reserved spectrum in specific geographic regions for future use by eligibles in that service. API contends that the same reasoning should be applied here, and that the instant sharing proposal should not be adopted so that provision can be made for the future growth of the Petroleum Radio Service in Detroit.

8. API's strongest objection to the NPRM, however, was centered around its belief that the proposed sharing would simply expand the burden of spectrum exhaustion in Detroit. The reallocation will not solve the problem of the Business Radio Service, it maintains, and will extend congestion to other radio services because Business Radio Service applicants would exhaust the usefulness of the five UHF pairs within a matter of days. NABER's reply is that notwithstanding the limited benefit which would be derived by implementation of the Commission's proposal, even this small step is urgently needed because of the critical shortage of frequencies for users in the Business Radio Service in Detroit.

Decision

9. We are aware of the scarcity of available frequencies in the Detroit area and that is why we proposed the geographic sharing arrangement in the NPRM. As we stated, our proposal was intended only "to provide a small measure of relief," through making available the only 5 frequency pairs our records at the time indicated were unassigned. Now it appears from our current records and from the records of the coordinator groups that one or possibly two channel pairs are unassigned—451.550/456.550 MHz and 451.700/456.700 MHz.

10. Of even greater importance, however, on the issue of the availability of these frequencies is the reaction of Canadian authorities to their use. As we stated in footnote 8 of the NPRM, international coordination with Canada is required prior to actual use of these frequencies.[3] After release of our NPRM, we communicated with the government of Canada regarding use of the 5 frequency pairs. Canada's response was that harmful interference to existing Canadian stations is anticipated from

[2] Our field office monitored frequencies 451.700/456.700 MHz on January 29, 1982, and February 1, 1982, for eight hours each day and no activity was intercepted.

[3] See Arrangement A of Telecommunication Coordination and Use of Radio Frequencies above 30 Megacycles per Second Agreement between the United States of America and Canada, Revising the Technical Annex to the Agreement of October 24, 1962, signed at Ottawa, June 16 and 24, 1965.

further use of all of these frequencies, except the frequency 456.525 MHz, where no harmful interference is anticipated. Thus, the frequency pairs in the Detroit area that appear to be zero loaded (451.550/456.550 MHz and 451.700/456.700 MHz) would cause harmful interference to Canada; and the one frequency that would not cause harmful interference to Canada (456.525 MHz) is not zero-loaded in Detroit. Further, the frequency 456.700 MHz has been successfully coordinated with Canadian authorities in the past, but only for low power uses. The uses of this frequency intended by the NPRM would, unlike the prior uses, cause harmful interference to Canada.

11. It is clear to us then that none of these five frequency pairs are actually available for sharing as we originally proposed for the reasons discussed above. Therefore, the only remaining frequencies in our proposal are the two itinerant use Business channels (464.500/469.500 and 464.550/469.550 MHz) which we proposed to make available to Business eligibles for regular permanent area base station use in the Detroit area. In consideration of the commenter who is already utilizing one of the frequencies for itinerant purposes, and others who may also want to do so in the future, we have decided to redesignate these two frequency pairs for general use in the Detroit area only, rather than itinerant use, which means that they can be used for either itinerant or permanent area base station use. However, Canada has also indicated that it may not be possible to coordinate these frequencies for use in Detroit.

12. Accordingly, it is hereby ordered, that this proceeding is terminated and that pursuant to Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, Part 90 of the Commission's rules is amended, effective July 9, 1982 as set forth in the attached Appendix B. It is further ordered that the Secretary shall have this decision printed in the **Federal Register.**

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix A

Comments

Utilities Communications Council
Forest Industries Telecommunications
Central Committee on Telecommunications of the American Petroleum Institute
National Association of Business and Educational Radio, Inc.
Manufacturers Radio Frequency Advisory Committee, Inc.
Adams Distributing Company

Reply Comments

National Association of Business and Educational Radio, Inc.
Central Committee on Telecommunications of the American Petroleum Institute

Appendix B

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

47 CFR, Part 90 is amended as follows:

Section 90.75(c)(3) is amended to read as follows:

§ 90.75 Business Radio Service.

* * * * *

(c) * * *

(3) This frequency will be assigned only to stations used in itinerant operations, provided, however, within 35 miles (56 km.) of Detroit this station may be used for either itinerant or permanent area base station operation (general use).

[FR Doc. 82-16741 Filed 6-18-82; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 173

[Docket No. HM-176; Amdt. Nos. 173-152]

Specification and Usage Requirements for 3AL Seamless, Aluminum Cylinders; Correction

AGENCY: Materials Transportation Bureau (MTB), Research and Special Programs Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects final rule (46 FR 62452, December 24, 1981), correction document (47 FR 13816; April 1, 1982) and correction document (47 FR 20591, May 13, 1982) relating to new aluminum cylinders which are designated DOT Specification 3AL. This action is necessary to correct the erroneous inclusion of exemption numbers E7446 and E7477 in § 173.23(c) and an omission.

EFFECTIVE DATE: July 2, 1982. However, shipments may be prepared, offered for transportation, and transported in accordance with these amendments beginning April 1, 1982.

FOR FURTHER INFORMATION CONTACT: Arthur Mallen, Chief, Technical Division, Office of Hazardous Materials Regulation, Materials Transportation Bureau, U.S. Department of Transportation, 400 7th Street, S.W., Washington, D.C. 20590 (202-755-4906).

SUPPLEMENTARY INFORMATION: This correction is necessary because the seamless aluminum cylinders manufactured under E7446 are low pressure cylinders and are made in accordance with the DOT Specification 3B requirements (49 CFR 178.38) for seamless steel cylinders. Cylinders manufactured under E7477, although high pressure seamless aluminum cylinders, require different openings and threadings from those specified under the DOT 3AL cylinder specification. The inclusion of E7446 and E7477 in § 173.23(c) was made in error. In correction document (47 FR 13816) two packaging specifications, DOT-4BA 225 and DOT-4B 225 were erroneously omitted.

In consideration of the foregoing, the following corrections are made in FR Docket No. 82-8405 appearing at page 13816 in the issue of April 1, 1982.

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

1. On page 13817 § 173.23(c), the fourth and fifth lines are corrected to read as follows:

§ 173.23 Previously authorized packaging.

* * * * *

(c) * * * DOT exemption E6498, E7042, E8107, E8364, or E8422, * * * (49 U.S.C. 1803, 1804, 1808; 49 CFR 1.53, App. A to Part 1)

Note.—The Materials Transportation Bureau has determined that this document (a) will not result in a "major rule" under the terms of Executive Order 12291; (b) is not a significant regulation under DOT's regulatory policy and procedures (44 FR 11034); and (c) does not require an environmental impact statement under the National Environmental Policy Act (49 U.S.C. 4321 et seq.). A regulatory evaluation and an environmental assessment are available for review in the docket.

2. In correction document (47 FR 13816) the following entry appearing at page 13817 is corrected to read as follows:

§ 173.304 [Corrected]

* * * * *

Chloropentafluorethane, (R-115), 110, DOT-3A225; DOT-3AA225; DOT-3B225; DOT-4A225; DOT-4BA225; DOT-4B225; DOT-4BW225; DOT-3E1800; DOT-39; and DOT-3AL225.

* * * * *

Issued in Washington, D.C. on June 11, 1982.

L. D. Santman,

Director, Materials Transportation Bureau.

[FR Doc. 82-16506 Filed 6-18-82; 8:45 am]

BILLING CODE 4910-60-M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1039, 1090, and 1300

[Ex Parte No. 230 (Sub-5)]

Improvement of TOFC/COFC Regulation

AGENCY: Interstate Commerce Commission.

ACTION: Clarification of Final Rule (Exemption).

SUMMARY: At 46 FR 14348, February 27, 1981, the Commission published a rule exempting rail and truck service provided by rail carriers in connection with trailer on flatcar (TOFC) and container on flatcar (COFC) service from the Title 49, Subchapter IV of the U.S. Code, relating to antitrust immunity. This document clarifies that rulemaking in response to a petition filed with the Commission.

EFFECTIVE DATE: August 20, 1982.

FOR FURTHER INFORMATION CONTACT: Donald J. Shaw, Jr. (202) 275-7656

To purchase copies of the complete decision contact: TS Infosystems, Inc., Room 2227, 12th & Constitution Avenue NW., Washington, D.C. 20423, (202) 289-4357—D.C. Metropolitan Area, (800) 424-5403—toll free for outside D.C. area.

In response to a petition filed by the Association of American Railroads for clarification of the decision served February 19, 1981 in Ex Parte No. 230 (Sub-No. 5), the Commission finds that: (1) Antitrust immunity does not continue for per diem and mileage rates agreements for trailers and containers in intermodal service, Section 5b, Application No. 8, *Railroad Per Diem and Mileage Rates—Agreement*, 357 I.C.C. 394 (1977); (2) antitrust immunity for service and interchange rules does not exist, although remedies may be available; and (3) antitrust immunity for rail flat cars used for intermodal service is retained.

Dated: June 11, 1982.

By the Commission, Chairman Taylor, Vice Chairman Gilliam, Commissioners Gresham, Sterrett, Andre, and Simmons. Commissioner Andre dissented.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-16739 Filed 6-18-82; 8:45 am]

BILLING CODE 7035-01-M

49 CFR Part 1249

[Docket No. 38776]

Revision of Instruction 2-18 for Railroads—Leased Property Improvements and Retirements

AGENCY: Interstate Commerce Commission.

ACTION: Final rule.

SUMMARY: The Commission is revising Instruction 2-18 of Part 1201 in the Code of Federal Regulations (CFR) to correct accounting inconsistencies in the manner that lessees account for the retirement and replacement of lessor's depreciable property when the lessee is not obligated to reimburse the lessor for the retired property other than through the replacement. The present instruction contradicts the texts of accounts 732 and 772. By eliminating the prescribed credit we would correct this accounting inconsistency.

DATES: This rule is effective January 1, 1982.

ADDRESSES: Copies of this rule may be purchased by contacting: TS Infosystems, Inc., Room 2227, 12th & Constitution Ave., NW., Washington, D.C. 20423 (202) 289-4357—D.C. Metropolitan Area; (800) 424-5403—toll free for outside D.C. area.

An original and 10 copies of any comments should also be sent to the above address within 45 days.

FOR FURTHER INFORMATION CONTACT: Wayne Howard (202) 275-7448.

SUPPLEMENTARY INFORMATION: Instruction 2-18 prescribes the lessee's accounting for the retirement and replacement of lessor's depreciable property when the lessee is not obligated to reimburse the lessor for the retired property other than through the replacement. The instruction provides that the lessee shall (1) charge the replacement cost to account 732, Improvements on leased property, and (2) offset such cost by credit to account 732 for the ledger value of the lessor's retired property. Although not specified in the instruction, the contra debits would generally be recorded in accounts 741, Other assets (for salvage value of lessor's property), and 772, Accrued liability: Leased property (for service value of lessor's property), as appropriate.

The amount the lessee spent for the replacement of the retired property should be included in account 732 because it represents the improvement cost to the lessee, and such accounting conforms with the text of this account. However, the prescribed credit for lessor's ledger value is contrary to the intent of the regulations that account 732 shall include only amounts for lessee's improvements. This credit actually becomes a credit balance in account 732 because the contra debit is recorded in the lessor's property account. The net cost (replacement cost less lessor's ledger value) recorded in account 732 will not agree with the actual replacement expenditure which should be used as the depreciation base. Therefore, the related depreciation accruals could exceed the net amount recorded in account 732.

Account 772 is intended to include amounts for lessee's liability when settlement with the lessor is not made currently. Since the replacement is an interim transaction the lessee should not record any entry in account 772. Account 772 should be charged only upon *final settlement* with the lessor. Upon retirement of lessor's property, the lessee should discontinue the associated depreciation accruals as is done for owned property in harmony with Instruction 4-4(a). When recording final settlement, the lessee should jointly consider the amount recorded in account 772 for lessor's retired property, and the respective amounts recorded in accounts 732 and 733 for the new replacement property.

We are revising Instruction 2-18 to conform with the text of accounts 732, 772 and Instruction 4-4. The revision will generally necessitate adjustments to account 732 by affected carriers to clear any existing credit balances in that account representing the cost of lessor's property which was previously retired and replaced. Such credits shall be transferred to account 772 to reverse the original accounting. The compilation of the information needed to record the adjustments should not be burdensome, because it is readily available from the property records required to be maintained by the carriers.

This rule is procedural in nature and the revision eliminates the inconsistencies currently included in Instruction 2-18. Accordingly, the Commission believes that this revision does not require a rulemaking proceeding pursuant to section 553 of the Administrative Procedure Act (5 U.S.C. 553). However, in keeping with our belief that this rule change can benefit from public scrutiny, we are

requesting that the public study the rule and comment within 45 days, concerning any changes which should be made as well as the purpose of the revision.

If the Commission concludes, after reviewing the comments, that it is necessary to change the rule or that the revision should not be adopted, appropriate action will be taken. Otherwise, the revision proposed in this decision will take effect for the year 1982.

List of Subjects in 49 CFR Part 1201

Railroads, Uniform system of accounts.

Regulatory Flexibility Act:

Pursuant to 5 U.S.C. 605(b), the Secretary of the Commission has certified that this Final Rule will not have significant economic impact on a substantial number of small entities. In this proceeding, we do not propose new reporting requirements; rather we seek to eliminate accounting inconsistencies prescribed in our regulations. Thus, we anticipate no adverse economic impact on small businesses, organizations or other entities.

Accordingly, 49 CFR Part 1201 is revised as set forth in the appendix, effective January 1, 1982.

This decision does not significantly affect the quality of the human environment or the conservation of energy resources.

This rule is issued under the authority of 49 U.S.C. 10321 and 5 U.S.C. 553.

Decided: June 14, 1982.

By the Commission, Chairman Taylor, Vice-Chairman Gilliam, Commissioners Gresham, Sterrett, Andre, and Simmons.

Agatha L. Mergenovich,

Secretary.

Appendix

PART 1201—RAILROAD COMPANIES

Amend 49 CFR Part 1201 as follows:

Revise the text of 49 CFR Part 1201, Instruction 2–18 as follows:

2–18 Leased property improvements and retirements.

The cost to lessee of structures, facilities, additions and betterments on leased property and for retirement of property the cost of which is included in account 732 "Improvements on leased property", shall be accounted for in conformity with the principles in the instructions for property owned. When lessor's property is retired and replaced and lessee is not obligated to reimburse the lessor for the retired property other than through the replacement, the lessee shall (1) charge the cost of the replacement to account 732, "Improvements on leased property," (2) discontinue accruing depreciation for lessor's retired property, and (3) when recording final settlement with the lessor, consider jointly the amount accrued in account 772, "Accrued liability; Leased property", for lessor's retired property and the respective amounts for the replacement included in accounts 732, "Improvements on leased property", and 733, "Accumulated depreciation; Improvements on leased property". When lessee is obligated to reimburse the lessor currently or at the termination of the lease for property retired other than through replacement, the lessee shall include the amount of the obligation in the appropriate liability account. The lessee shall furnish the lessor such information as is required to enable the lessor to perform necessary accounting. The accounting by the lessee and the lessor shall be consistent with contractual arrangements.

[FR Doc. 82–16700 Filed 6–18–82; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 91

Migratory Bird Hunting and Conservation Stamp Contest

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule; Notice of contest.

SUMMARY: The Service issues several changes in the annual Migratory Bird Hunting and Conservation Stamp Contest. The changes improve clarity of the contest rules so the public can better comprehend requirements, thereby improving administration of the contest and judging process. A $20.00 entry fee has been determined necessary to recover administrative costs for conducting the contest.

DATES: This rule is effective July 1, 1982. This year's contest will be held on Thursday, November 4, 1982, at 9:00 a.m. Entries will be accepted after July 1 and must be received or postmarked no later than midnight, of October 1, 1982.

ADDRESS: Entries should be addressed to Duck Stamp Contest, Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240. The 1982 contest will be held in the Department of the Interior Auditorium, 18th and C Streets, NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Mr. Peter A. Anastasi, Duck Stamp Contest, Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240, Telephone: (202) 343–5508.

SUPPLEMENTARY INFORMATION: On April 20, 1982 (47 FR 16810), the Service proposed several changes in the annual Migratory Bird Hunting and Conservation Stamp Contest. The changes were explained section by section in the proposed rule.

Discussion of Comments Received: The Service received three comments on the proposed rule. All three comments supported the changes, addressing primarily the new requirement for an entry fee of $20.00. One of the comments also recommended that contestants be allowed multiple entries for the $20.00 fee. Under current rules, contestants are allowed only one entry each year. The Service has not adopted the recommendation for this year, but will consider such a provision when evaluating the impact of the new entry fee on this year's contest. It should be noted that the $20.00 fee would apply to each entry, not several for each contestant.

Statement of Effects and Certification of Effects on Small Entities: The Department has determined that this is not a major rule under Executive Order 12291 and does not have a significant economic effect on a substantial number of small entities, under the Regulatory Flexibility Act. A discussion of the impacts concerning such determination is contained in a "determination of effects" available from the Service at the address listed above.

Information Collection Requirements: The rule does not contain any information collection requirements subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980.

Environmental Effects: This rule would have no significant effect on the quality of the human environment and would not involve unresolved conflicts concerning alternative uses of available resources. Therefore, this action is categorically excluded from further compliance and documentation required by the Environmental Improvement Act of 1970 as amended (42 U.S.C. 4371 et seq.).

Announcement of the 1982 Contest: This year's contest will be held on Thursday, November 4, 1982, beginning at 9 a.m., in the Department of the Interior Auditorium, 18th and C Streets, N.W., Washington, D.C. If the number of entries warrants, preliminary screening will be held the preceding day.

Ineligible Species: By operation of 50 CFR 91.14, the following species will not qualify as the dominant feature for the 1982 "Duck Stamp Contest" because

they have been used within the past 5 years: hooded merganser, green-winged teal, mallard, ruddy duck, and canvasback.

Authorship: The primary author of this rule is Peter A. Anastasi, Duck Stamp Contest, Office of Public Affairs.

Effective Date: It has been determined that delaying the effective date of these rules for 30 days from publication would be impracticable, unnecessary, and contrary to the public interest. An effective date which post-dates the commencement of the period for submitting entries (July 1, 1982) would unnecessarily confuse the public as to the applicability of amended rules to early entries. The rule changes were not controversial and a 30-day delay would not advance the interest of the public; which is to have certainty in applicable regulatory requirements at the earliest possible date, so that designs need not be redone to conform to the criteria for eligibility which will govern this year's contest. Therefore, the effective date of this rulemaking will be July 1, 1982.

List of Subjects in 50 CFR Part 91

Wildlife.

PART 91—MIGRATORY BIRD HUNTING AND CONSERVATION STAMP CONTEST

Regulations Promulgation.

Accordingly, the Service amends 50 CFR Part 91 as shown below.

1. Amend the authority citation for Part 91 to read as follows:

Authority: 5 U.S.C. 301, 31 U.S.C. 483a

2. Revise § 91.2 in its entirety to read as follows:

§ 91.2 Definitions.

For the purpose of this part, the following terms shall be construed, respectively, to mean and to include:

"Contest Coordinator" means the contest official responsible for facilitating the judging process and tabulating the Judges' scores for each entry advanced into preliminary or final consideration. The contest coordinator will be named by the Secretary and will not be a past or present employee of the Fish and Wildlife Service.

"Qualifying entry" means each drawing or original work submitted in the contest which satisfies the technical requirements of design and submission procedures, as outlined in Subpart B of this part.

"Reproduction rights agreement" means the agreement that each contestant must sign and submit which certifies the originality of the entry and acknowledges the entrant's acceptance of the terms and conditions governing the right of the Fish and Wildlife Service to use and reproduce the winning design for the purpose set forth in the agreement.

3. Revise § 91.11 in its entirety to read as follows:

§ 91.11 Contest deadlines.

(a) The contest to select the design for the annual Federal Migratory Bird Hunting and Conservation Stamp will officially open on July 1 of each year.

(b) All persons intending to submit an entry in the contest may request a copy of the contest's regulations and Reproduction Rights Agreement by writing to "Migratory Bird Hunting and Conservation Stamp Contest," Fish and Wildlife Service, United States Department of the Interior, Washington, D.C. 20240. Entries accompanied by the non-refundable remittance required by § 91.12 may be received any time after July 1, but must be received or postmarked no later than midnight of October 1.

4. A new sentence has been added to § 91.12 to read as follows:

§ 91.12 Contest eligibility.

* * * * *

To be eligible, all entrants must submit a non-refundable fee of $20.00. Checks and money orders should be made payable to the Fish and Wildlife Service.

5. Revise § 91.13 in its entirety to read as follows:

§ 91.13 Technical requirements for design and submission of entry.

The design must be a horizontal drawing or painting five inches high and seven inches wide. Each entry may be drawn in any medium desired by the contestant and may be in either multicolor or black and white. No scroll work, lettering, signature, or initials may appear on the design. Each entry must be matted, (over or under) with an eight inch by ten inch mat (color optional) and protected by a covering of acetate or cellophane. Entries must not be framed or under glass.

6. Revise the first sentence of § 91.14 to read as follows:

§ 91.14 Restrictions of subject matter of entry.

A portrayal of live, non-extinct North American migratory ducks, geese, or swans (Family Anatidae) must be the dominant feature of the design.

* * * * *

7. Revise § 91.16 in its entirety to read as follows:

§ 91.16 Submission procedures for entry.

(a) Contestants may submit only one entry. Each entry must be accompanied by a non-refundable entrance fee and a completed Reproduction Rights Agreement. The lower detachable portion of the contestant's Reproduction Rights Agreement must be completed and attached to the back of the entry.

(b) Each contestant must sign and clearly print his or her name, and submit the top portion of the Reproduction Rights Agreement.

(c) Each entry should be protectively wrapped and mailed first class registered to: "Migratory Bird Conservation Stamp Contest," Fish and Wildlife Service, United States Department of the Interior, Washington, D.C. 20240.

8. Revise § 91.21 in its entirety to read as follows:

§ 91.21 Section and qualification of contest Judges.

Five Judges will be selected annually by the Secretary. The Judges will be recognized experts in the fields of ornithology, conservation, and/or art, to include waterfowling. Current employees of the Fish and Wildlife Service and their relatives are ineligible to serve as Judges for the contest. The Judges selected by the Secretary will serve without compensation, except for reasonable travel expenses. Identification of the members of the judging panel will be announced on the date that the judging takes place.

9. Revise § 91.31 in its entirety to read as follows:

§ 91.31 Return of entries after contest.

All entries will be returned by certified mail to the participating artists within 90 days of completion of the contest.

Dated: June 4, 1982.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 82-16656 Filed 6-18-82; 8:45 am]

BILLING CODE 4310-55-M

Proposed Rules

Federal Register
Vol. 47, No. 119
Monday, June 21, 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.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 28

Cotton Testing and Standards, Revision of Fees

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Agricultural Marketing Service is proposing to revise the schedule of fees for performing cotton fiber and processing tests and for cotton standards. These actions would be taken in order to reflect increased costs of providing testing services and preparing standards.

DATE: Comments must be received on or before September 1, 1982.

ADDRESS: Written comments to: Harvin R. Smith, Chief, Standards and Testing Branch, Cotton Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Harvin R. Smith, Chief, Standards and Testing Branch, Cotton Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250 (202/447-2167).

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed under the USDA procedures established in accordance with Executive Order 12291 and has been classified "nonmajor" since the proposed increases in fees are minimal and do not meet the criteria for a "major rule" listed in the Executive Order. William T. Manley, Deputy Administrator, Marketing Program Operations, has determined that this action would not have a significant impact on a substantial number of small entities as defined by the Regulatory Flexibility Act, Pub. L. 96-354 (5 U.S.C. 601) because the fees proposed in this document are not new but merely reflect a minimal increase in the costs currently borne by those entities which elect to utilize certain cotton testing services.

Background

Cotton testing services are provided by a USDA Laboratory in Clemson, S.C., under the authority of the Cotton Statistics and Estimates Act of 1927 (7 U.S.C. 471-476). The tests are available, upon request, to private sources on a fee basis. The Cotton Service Testing Amendment (7 U.S.C. 473d) specifies that the fees for the services are to cover the costs of rendering the services.

Cotton standards are prepared and sold by the Cotton Division offices in Memphis, TN, under the authority of the United States Cotton Standards Act (7 U.S.C. 55). The Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35) directs that the price for standards will cover, as nearly as practicable, the costs of providing the standards.

Options Analysis

During the Regulatory review process undergone in compliance with E.O. 12291 (46 FR 30073, June 5, 1981) it was determined that the cotton fiber and processing tests involved were being "provided at an optimal level for the industry and the government." It was further determined that any reduction in the level of services provided would "be detrimental to the cotton industry and against the mandates of other programs." The option of reducing services was therefore not recommended as a viable one, while the choice of maintaining service at an optimal level, adjusting the fee to stay in line with actual costs, were recommended. The impact on the industry would be minimal.

The manufacture and provision of cotton standards are essential to the orderly marketing of cotton. Without standards cotton cannot be uniformly classed. Further, the provision of standards is benficial to the U.S. export of cotton through the Universal Cotton Standards Agreement. Therefore, any reduction in the level of services provided would be detrimental to the cotton industry and the positive U.S. agricultural trade balance. The proposed fee increases are not for the standards but for the shipping costs involved.

Fees

During FY 1981, 21,423 cotton fiber and processing tests have been performed for private sources. Since the last fee review, the operating costs involved in providing these tests have increased based on (1) labor costs, up 4.8 percent, (2) cost of supplies, up some 25 percent, (3) utility costs, up some 39 percent, and (4) changes in the mix of tests requested as a reflection of technological changes in the textile industry. The fees have been realigned so that the actual costs of providing each test will be accurately reflected by the fee charged for that test.

Since the last review of the fees charged for practical forms of Universal Cotton Standards the costs involved with the shipping of these standards to overseas clients have exceeded the shipping component of the fee charged. As a result, the fee charged for surface delivered standards needs to be increased. There is no need to increase "FOB Memphis" fees.

The proposal of the Department is to increase the fees listed in § 28.123, cotton fiber and processing tests, and § 28.956 practical forms of standards, so as to cover increased costs.

In addition, the Department is proposing to add a chemical finishing test to the list of fiber and processing tests contained in § 28.956 of the cotton classing, testing, and standards regulations (7 CFR Part 28).

List of Subjects in 7 CFR Part 28

Cotton, grades, samples, standards, testing.

PART 28—COTTON CLASSING, TESTING, AND STANDARDS

1. The authority citation for Parts 28, Subparts A and E reads as follows:

Authority: 42 Stat. 1519, 50 Stat. 62, as amended (7 U.S.C. 61, 7 U.S.C. 473).

Accordingly, it is proposed to amend the cotton classing, testing and standards regulations as follows:

2. Section 28.123 (7 CFR 28.123) would be revised to read as follows:

§ 28.123 Costs of practical form of cotton standards.

The costs of practical forms of the cotton standards of the United States shall be as follows:

Standards	Domestic shipments F.O.B. Memphis, Tenn. (dollars each box)	Shipments delivered outside the continental United States (dollars each box)
GRADE STANDARDS		
American Upland:		
12-sample official boxes (Universal Standards)	$150	$180
6-sample guilde boxes	80	105
American Pima:		
6-sample guilde boxes	110	135
STANDARDS FOR LENGTH OF STAPLE		
American Upland (prepared in one pounds rolls for each length)	11	14
American Pima (prepared in one pound rolls for each length)	12	15

3. Section 28.956 (7 CFR 28.956) would be revised to read as follows:

§ 28.956 Prescribed fees.

Fees for fiber and processing tests shall be assessed as listed below:

Item No. and kind of test	Fee per test
1.0 Furnishing USDA calibration cotton in the short, medium, long and extra long staple lengths, including standard values for length by both array and Fibrograph methods, strength by flat bundle method at ⅛-inch gauge, and maturity and fineness by the Causticaire methods:	
a. By surface delivery, 1-lb. sample	$17.00
b. By air delivery within the U.S., 1-lb. sample	20.00
c. By air deliver outside the U.S., 1-lb sample	24.00
2.0 Furnishing international calibration cotton standards with standard values for micronaire reading and Pressley fiber strength and Fibrograph length:	
a. By surface delivery, ½-lb. sample	12.00
b. By air delivery within U.S., ½-lb sample	14.00
c. By air delivery outside the U.S., ½-lb. sample	18.00
3.0 Fiber length array of cotton samples. Reporting the average percentage of fibers by weight in each ⅛-inch group, average length, and average length variability as based on 3 specimens from a blended sample:	
a. Ginned cotton lint, per sample	60.00
b. Cotton comber noils, per sample	75.00
c. Other cotton wastes, per sample	90.00
3.1 Fiber length array of cotton samples. Reporting the average percentage of fibers by weight in each ⅛-inch group, average length, and average length variability as based on 2 specimens from a blended sample:	
a. Ginned cotton lint, per sample	45.00
b. Cotton comber noils, per sample	60.00
c. Other cotton wastes, per sample	75.00
3.2 Fiber array of cotton samples, including purified or absorbent cotton. Reporting the average percentage of fibers ½-inch and longer by weight, the average of fibers shorter than ½-inch by weight, average length, and average, length variability as based on 3 specimens from each samples, per sample	80.00
4.0 Fiber length of ginned cotton lint by Fibrograph method. Reporting the average length and average length uniformity as based on 4 specimens from a blended sampled, per sample	7.00
Minimum fee unless performed in connection with other tests requiring a blended specimen	14.00
4.1 Fiber length of ginnned cotton lint by Fibrograph method. Reporting the average length and average length uniformity as based on 2 specimens from each unblended sample, per sample	4.50
Minimum fee	9.00
5.0 Pressley strength of ginned cotton lint by flat bundle method for either zero or ⅛-inch gage as specified by applicant. Reporting the average strength as based on 6 specimens from a blended sample, per sample	7.50
Minimum fee unless performed in connection with other tests requiring a blended sample	15.00
5.1 Pressley strength of ginned cotton lint by flat bundle method for either zero or ⅛-inch gage as specified by applicant. Reporting the strength as based on 2 specimens for each unblended sample, per sample	4.50
Minimum fee	9.00
5.2 Stelometer strength and elongation of ginned cotton lint by the flat bundle method for ⅛-inch gage. Reporting the average strength and elongation as based on 6 specimens from a blended sample, per sample	7.50
Minimum fee unless performed in connection with other tests requiring blended sample	15.00
5.3 Stelometer strength and elongation of ginned cotton lint by the flat bundle method for ⅛-inch gage. Reporting the strength and elongation as based on 2 specimens from each unblended sample, per sample	4.50
Minimum fee	9.00
6.0 Fiber maturity and fineness of ginned cotton lint by the Causticaire method. Reporting the average maturity, fineness, and micronaire reading as based on 2 specimens from a blended sample, per sample	8.00
Minimum fee	40.00
7.0 Micronaire readings on ginned lint. Reporting the micronaire reading as based on 2 specimens from each sample, per sample	.40
Minimum fee	4.00
8.0 Neps content of ginned cotton lint. Reporting the neps per 100 square inches as based on the web prepared from a 3-gram specimen by using accessory equipment with the mechanical fiber blender per sample	12.00
9.0 Cotton carded yarn spinning test. Reporting data on waste extracted, yarn skein strength, yarn appearance, yarn neps and classification and fiber length as well as comments summarizing any unusual observations as based on the processing of 6 pounds of cotton in accordance with standard laboratory procedures at one of the standard rates of carding of 6-½, 9-½, or 12-½ pounds-per-hour into two of the standard carded yarn number of 8s, 14s 22s, 36s, 44s, or 50s, employing a standard twist multiplier uless otherwise specified, per sample	100.00
9.1 Cotton carded yarn spinning test (open-end) for short staple (31/32nd inches and shorter) cottons. Reporting data on waste extracted, yarn skein strength, yarn appearance, yarn neps, and classification and fiber length as well as comments summarizing any unusual observations as based on the processing of 6 pounds of cotton in accordance with standard laboratory procedures at a carding rate of 12-½ pounds-per-hour into 8s yarn using a sliver weight of 60 grains per yard; a rotor speed of 45,000 RPM; and opening roll speed of 7,200 RPM; a twist multiple of 4.5; and a rotor diameter of 46 millimeters	75.00
10.0 Spinning potentials test. Determining the finest yarn which can be spun with no ends down and reporting spinning potential yard number. This test requires an additional 4 pounds of cotton, per sample	90.00
11.0 Cotton combed yarn spinning test. Reporting data on waste extracted, yarn skein strength, yarn appearance, yarn neps, and classification and fiber length as well as comments summarizing any unusual observations as based on the processing of 8 pounds of cotton in accordance with standard procedures at one of the standard rates of carding of 4-½, or 6-½ or 9-½ pounds-per hour into two of the standard combed yarn numbers of 22s, 36s, 44s, 50s, 60s, 80s, or 100s employing a standard twist multiplier unless otherwise specified, per sample	125.00
12.0 Cotton carded and combed yarn spinning test. Reporting the results as based on the processing of 10 pounds of cotton into two of the standard carded and two of the standard combed yarn numbers employing the same carding rate and the same yarn numbers for both the carded and the combed yarns, per sample	175.00
13.0 Cotton carded and combed yarn spinning test. Reporting the results as based on the processing of 9 pounds of cotton into two of the standard combed yarn numbers employing different carding rates and/or yarn numbers for the carded and combed yarns, per sample	195.00
14.0 Two-pound cotton carded yarn spinning test available to cotton breeders only. Reporting data on yarn skein strength, yarn appearance, yarn neps and the classification and the fiber length of the cotton as well as comments on any unusual processing performance as based on the processing of 2 pounds of cotton in accordance with standard procedures into two standards carded yarn numbers employing a standard twist multiplier, per sample	75.00
15.0 Processing and testing of additional yarn. Any carded or combed yarn number processed in connection with spinning tests including either additional yarn numbers or additional twist multipliers employed on the same yarn numbers, per additional lot of yarn	25.00
15.1 Processing and furnishing of additional yarn: Any yarn number processed in connection with spinning tests. Approximately 300 yards on each of 16 paper tubes for testing by the applicant, per additional lot of yarn	35.00
16.0 Twist in yarns by direct-counting methods. Reporting direction of twist and average turns per inch of yarn:	
a. Single yarns based on 40 specimens per lot of yarn	70.00
b. Plied or cabled yarns based on 10 specimens, per lot of yarn	18.50
17.0 Skein strength of yarn. Reporting data on the strength and the yarn numbers based on 25 skeins from yarn furnished by the applicant, per sample	10.00
17.1 Appearance grade of yarn furnished on bobbins by applicant. Reporting the appearance grade in accordance with ASTM standards as based on yarn wound from one bobbin, per bobbin	4.00
17.2 Furnishing yarn wound on boards in connection with yarn appearance tests, per yarn number	5.00
8.0 Strength of cotton fabric. Reporting the average warp and filling strength by the grab method as based on 5 breaks for both wrap and filling of fabric furnished by the applicant, per sample	15.00
18.1 Cotton fabric analysis. Reporting data on the number of wrap and filling threads per inch and weight per yard of fabric as based on at least three (3) 6 x 6-inch specimens of fabric which were processed or furnished by the applicant, per sample	25.00
19.0 Color of ginned cotton lint. Reporting data on the reflectance in terms of Rd values and the degree of yellowness in terms of b values as based on the Nickerson-Hunter Cotton Colorimeter on samples which measure 5 x 6-½ inches and weigh approximately 50 grams per sample	.60
Minimum fee	6.00
20.0 Furnishing color standards, including a set of standard tiles and a master diagram for use in calibrating Nickerson-Hunter Cotton Colorimeters, per set	90.00
20.1 Furnishing replacement calibration tiles for above sets, each tile	10.00
20.2 Furnishing a Colorimeter calibration sample box containing 6 cotton samples with color values Rd and +b plotted on a color diagram based on the Nickerson-Hunter Cotton Colorimeter, per box	18.00
20.3 Furnishing new Colorimeter readings on samples in calibration boxes returned for check readings, per 6-sample box	5.00
21.0 Furnishing copies of test data worksheets. Includes individual observations and calculations which are not routinely furnished to the applicant, per sheet	2.00
22.0 Foreign matter content of cotton samples. Reporting data on the non-lint content as base on the Shirley-Analyzer separation of lint and foreign matter:	
a. For samples of ginned lint or comber noils, per 100-gram specimen	6.00
Minimum fee	12.00
b. For samples of ginning and processing wastes other than comber noils, per 100-gram specimen	11.00
Minimum fee	22.00

Item No. and kind of test	Fee per test
23.0 Furnishing identified cotton samples. Includes samples of ginned lint stock at any stage of processing or testing, waste of any type, yarn or fabric selected and identified in connection with fiber and/or spinning tests, per identified sample	2.50
24.0 Furnishing additional copies of test reports. Includes extra copies in addition to the 2 copies routinely furnished in connection with each test item, per additional sheet	.75
24.1 Furnishing a certified relisting of test results. Includes samples or sub-samples selected from any previous tests, per sheet	10.00
25.0 High Volume Instrument (HVI) Measurements. Reporting micronaire, length (UHM), length uniformity, ⅛-inch gauge strength, color and trash content. Based on a 6 oz. (170 g) sample, per sample	1.30
Minimum fee	13.00
26.0 Calibration cotton for use with High Volume Instruments, per 5 pound package	75.00
27.0 Sugar content of cotton. Reporting the percent sugar content as based on a quantitative analysis of reducing substances (sugars) on cotton fibers, per sample	4.00
Minimum fee	20.00
28.0 Classification of ginned cotton lint is available in connection with other fiber tests under the provisions of 7 CFR 28, § 28.56, at the fees prescribed by 7 CFR 28, § 28.116. Classification includes grade, staple, and micronaire reading based on a 6 oz (170 g) sample.	
29.0 Chemical finishing tests on finished drawing sliver. The Ahiba Texomat Dyer is used for scouring, bleaching and dyeing of a 3-gram sample. Color measurements are made on the unfinished, bleached and dyed cotton samples, using a Hunterlab Colorimeter, Model 25 M-3. The color values are reported in terms of reflectance (RD), yellowness (+b) and blueness (−b)	10.00
Minimum fee	30.00

* * * * *

Dated: June 16, 1982.

William T. Manley,

Deputy Administrator, Marketing Program Operations.

[FR Doc. 82- 16753 Filed 6-18-82; 8:45 am]

BILLING CODE 3410-02-M

Food and Nutrition Service

7 CFR Parts 272, 273, and 276

Food Stamp Program; Disqualification Penalties for Fraud and Misrepresentation, and Improved Recovery of Overpayments

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rulemaking.

SUMMARY: This rule contains proposed regulations for the Food Stamp Program to implement certain provisions of Pub. L. 97–35, the Omnibus Budget Reconciliation Act of 1981, enacted on August 13, 1981. These provisions are aimed at deterring Food Stamp Program abuse, and improving recovery of overpayments. This rulemaking also proposes related changes based on recommendations and requests for clarification received from State agencies.

DATE: Comments on this proposed rulemaking must be received on or before August 20, 1982 to be assured of consideration.

ADDRESS: Comments should be submitted to Thomas O'Connor, Supervisor, Policy and Regulations Section, Family Nutrition Programs, Food and Nutrition Service, USDA, Alexandria, Virginia, 22302. All written comments will be open to public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5:00 p.m., Monday through Friday), at 3101 Park Center Drive, Alexandria, Virginia, Room 708.

FOR FURTHER INFORMATION CONTACT: Questions regarding this proposed rulemaking should be directed to Mr. O'Connor at the above address or by telephone at (703) 756–3429.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed under Executive Order 12291 and Secretary's Memorandum No. 1512–1, and has been classified "not major". The proposed rule will not have an annual effect on the economy of $100 million or more, nor is it likely to result in a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions. Because this proposed rule would not affect the business community, it would not result in 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.

This proposed rule has also been reviewed with regard to the requirements of Pub. L. 96–354, and the administrator of the Food and Nutrition Service has certified that the proposal does not have a significant economic impact on a substantial number of small entities. The proposal would implement those provisions of Pub. L. 97–35, the Omnibus Budget Reconciliation Act of 1981, aimed at deterring Food Stamp Program abuse and improving recovery of overpayments. State and local welfare agencies would be affected to the extent that they administer the Program. Those most affected would be individuals participating in the Program who are found to have committed intentional misrepresentation or fraud, and households which received an overissuance.

Note.—In accordance with the Paperwork Reduction Act of 1980, (44 U.S.C. 3507), the reporting and recordkeeping provisions that are included in this proposed rule will be submitted for approval to the Office of Management and Budget (OMB). They are not effective until OMB approval has been obtained.

Background

The Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35, enacted on August 13, 1981) amended the Food Stamp Act of 1977 in numerous ways. This rulemaking contains proposed regulations implementing the provisions of the Reconciliation Act relating to the disqualification penalties for misrepresentation or fraud, and the improved recovery of overpayments. The Department issued interim final regulations on September 4, 1981 (at 46 FR 4471) implementing those provisions of the Reconciliation Act aimed at restraining the growth of the Food Stamp Program. Other provisions of the Reconciliation Act, those regarding a mandatory monthly reporting and retrospective accounting system, and a block grant program in the Commonwealth of Puerto Rico, are being addressed in separate rules.

This proposed rulemaking would implement the following provisions of the Reconciliation Act relating to the disqualification penalties for misrepresentation or fraud. First, the basis for disqualification is expanded by adding to the "fraud" offense the intentional making of false or misleading statements, misrepresentations, or the concealment or withholding of facts, as well as the commission of any act that constitutes a violation of any State food stamp statute. Second, the distinction in disqualification periods which may be imposed as a result of administrative hearings or court decisions is eliminated. Mandatory disqualification periods of 6 months for the first offense, 12 months for the second, and permanently for the third offense would be imposed against any individual found to have committed intentional misrepresentation or fraud, regardless of whether the determination was arrived at administratively or through a court of law. Third, State agencies are prohibited from increasing the benefits to the household of a disqualified person because of the disqualification. And fourth, the Department is required to promulgated regulations to ensure that information concerning disqualified individuals is forwarded to the Department.

This proposed rulemaking would also implement several statutory changes with regard to the improved recovery of overpayments. First, the provisions relating to repayment of fraudulent overissuances are expanded to include overissuances which occurred as a

result of intentional misrepresentation. Second, the household of the disqualified individual, rather than the household member guilty of intentional misrepresentation or fraud, is held responsible for repaying the resultant overissuance and must agree to repayment in cash or to a reduction in its allotment. Third, State agencies are required to collect overissuances from those persons still participating in the Program by reducing future allotments in cases not the result of fraud, misrepresentation, or State agency error. Fourth, the amount by which State agencies can reduce the household's monthly allotment in the collection of overissuances not the result of fraud, misrepresentation, or State agency error is limited to 10 percent of the allotment or $10 per month, whichever would result in faster collection. And fifth, State agencies are allowed to retain 50 percent of the value of intentional misrepresentation claims collections and 25 percent of the value of the collection of claims not the result of fraud, misrepresentation, or State agency error.

I. Disqualification Penalties for Fraud and Misrepresentation

1. Income of Disqualified Persons

Under current Food Stamp Program regulations, the resources of a disqualified member continue to be counted in their entirety as available to the household, and the income of the disqualified member is counted after a pro rata share (for the disqualified member) has been taken out. This policy has resulted in certain households receiving increased benefits when a household member is disqualified because the income which is not counted as available to the household may be substantial. The Omnibus Budget Reconciliation Act of 1981, however, prohibits any increase in benefits to the household of a person disqualified for intentional misrepresentation or fraud because of the disqualification. And, Congress has recommended that in addition to the existing regulatory language attempting to prohibited increases in household benefits due to the disqualification of a member for intentional misrepresentation or fraud, the Department should ". . . seriously consider attributing all of the income of the disqualified member to the household (with no pro rata share reduction), during the disqualification period." See S. Rep. No. 97–128, 97th Cong., 1st Sess., p. 57 (1981).

The Department considered two possible methods of preventing any participating household from receiving increased benefits when a member of the household has been disqualified for intentional misrepresentation or fraud. The first alternative considered was to count all of the disqualified member's income as available to the household, and to apply a penalty deduction to the household's allotment, such as a pro-rata or flat percentage reduction for the disqualified member(s). The second alternative considered was to count all of the disqualified member's income as available to the household, but to exclude the disqualified member(s) when determining the household's size for assigning a benefit level to the household, or for comparing the household's monthly income with the income eligibility standards.

The proposed regulations would incorporate the second alternative, which counts all of the disqualified member's income but excludes the disqualified member when determining the household's size. The household's size would be reduced according to the number of persons disqualified, and the household's eligibility and allotment level would be determined by applying that adjusted size and the household's income figures to the appropriate tables. For example, if the allotment of a four person household with a gross monthly income of $725 and a net monthly income of $478 was $90 per month, the disqualification of one person would result in a monthly allotment of $40 for the remaining household members. The disqualification of two persons from that same household would result in ineligibility for the two remaining household members.

Although both of the alternatives considered would effectively prevent any household from receiving increased benefits because of the disqualification of a household member, the Department believes that the proposed method is the most likely to deter future Program abuse. Since the household's size is reduced according to the number of disqualified members while all of the disqualified members' income is counted as available to the remaining household members, this method imposes a fairer penalty than the other possible alternatives considered. It is also the method which provides a more logical approach to the problem of ensuring that the household's benefit level is adjusted to reflect the disqualification of one or more household members. Since a recalculation of the household's monthly budget is needed, in most cases, to reflect the fraudulent activity which led to the disqualification, such as a household's failure to report a change in income, this method should not impose a burden on State agencies. And, the adoption of a method which involves the use of current procedures, rather than the introduction of a new procedure, would avoid increasing the administrative complexity of the Program. (See 7 CFR 273.11(c)).

2. Basis for Disqualification

In the current Food Stamp Program, an individual found to have committed fraud through an administrative hearing or by a court of appropriate jurisdiction is disqualified from Program participation for a specified period of time. The Food Stamp Program's regulations provide a definition of fraud to assist State agencies in determining through an administrative hearing whether or not fraud was committed. This definition identifies fraud as the commission of any action by an individual to knowingly, willfully and with deceitful intent obtain benefits to which the household is entitled. And, specifically mentioned as fraudulent actions under the definition are: making a false statement, concealing information, altering an ATP, using coupons to buy expensive or conspicuous nonfood items, using or possessing improperly obtained coupons or ATPs, or trading or selling coupons or ATPs.

The Omnibus Budget Reconciliation Act of 1981 expands the basis for "fraud" disqualifications in two ways. First, intentionally making false or misleading statements, or misrepresenting concealing or withholding facts is added as a distinct category of offense for which an individual can be disqualified. Second, the commission of any act that constitutes a violation of any State statute relating to the use of food stamps is added to the Food Stamp Act's existing category of offenses involving fraudulent actions.

The proposed rule would incorporate these statutory changes in the basis for disqualification by revising the current definition of fraud and adopting an additional definition of misrepresentation. The proposed rule would also replace the word "fraud" with "misrepresentation of fraud" wherever it occurs in the Program's fraud disqualification regulations at 7 CFR 273.16. Congress expanded the basis for disqualification in order to encourage the use of administrative fraud hearings, rather than prosecution by a court of law, for determining whether or not Program abuse has occurred. State agencies have been reluctant to pursue administrative fraud hearings in the past because they view

findings of fraud to be under the jurisdiction of the legal system. The additional category of misrepresentation should encourage State agencies to pursue more cases of suspected Program abuse through administrative hearings because they would no longer have to prove fraud per se, but only intentional misrepresentation by the household. (See 7 CFR 273.16 (c) and (d)).

3. Disqualification Penalties

Current regulations mandate disqualification periods of three months for persons found to have committed fraud through an administrative hearing, and six to 24 months for persons found to have committed fraud by a court of appropriate jurisdiction. The Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35) eliminates the distinction in disqualification periods between determinations of fraud arrived at through administrative hearings and court decisions, and increases the penalties for those found to have abused the Program. Section 112 of Pub. L. 97–35 amends section 6(b) of the Food Stamp Act of 1977 to require that any individual found to have committed fraud or misrepresentation in connection with the Food Stamp Program would be disqualified for six months for the first violation, 12 months for the second violation, and permanently for the third violation. The proposed rulemaking would, therefore, incorporate these statutory changes into the regulations governing the Food Stamp Program. (See 7 CFR 273.16(b)).

4. Pursuit of Individual Cases

When the Department issued final regulations implementing certain segments of the 1980 Amendments to the Food Stamp Act of 1977 (Pub. L. 96–249) at 47 FR 17756, it decided to delay implementation of some previously proposed changes relating to claims processing. Action was delayed on these proposed changes to provide the Department an opportunity to reevaluate the issues involved in light of more recent legislation, the Omnibus Budget Reconciliation Act of 1981. One of these changes would have increased from $35 to $100 the level of alleged fraud cases which State agencies are required to handle through the fraud hearing system.

The proposed rulemaking would leave it to the State agency's discretion whether or not to pursue an individual case of alleged intentional misrepresentation or fraud. The Department has found that there exists differing State agency attitudes toward the handling of alleged Program violations and the merits of increasing the level for pursuit of such cases. In addition, there are a variety of factors that need to be considered when deciding whether to pursue an individual case, such as the amount involved, the quality of evidence available, and the cost of pursuing the case. Therefore, the Department has determined that it would be more appropriate for a State agency to decide whether to pursue cases of intentional misrepresentation or fraud on a case-by-case basis. (See 7 CFR 273.16(f)(1)).

5. Disqualification Hearings

The proposed rule would rename the administrative "fraud" hearing as an administrative "disqualification" hearing, and reorganize the provisions governing the conduct of such hearings. The change in name to disqualification hearings is necessary in order to clarify that these hearings would be the administrative mechanism for arriving at a determination that intentional misrepresentation has occurred as well as for their present use in determining if fraud has been committeed. The provisions governing the conduct of these administrative hearings have been slightly reorganzied to locate all of the procedures relating to local level hearings at the end of the section rather than scattered throughout. The purpose of this reorganization is to simplify this section of the regulations for the majority of State agencies which provide administrative hearings only at the State level.

The Department is proposing to eliminate the FNS-designed forms for notification of a local level hearing decision and advance notice of a scheduled State level hearing for appeal of a local level decision. These forms would be eliminated because the Department believes that the small number of State agencies (two) which provide administrative fraud hearings at the local level does not warrant the provision of model forms.

The Department is also proposing to provide State agencies the option of using the FNS-designed forms for advance notice of a scheduled State level hearing and notification of a State level hearing decision. State agencies are currently required to utilize the Form FNS–396, Advance Notice of Fraud Hearing, to provide notice of a scheduled State level hearing to the household member suspected of fraud. The Form FNS–394, Action Taken on Your Fraud Hearing (Notice of State Fraud Hearing Decision) is used to notify the household member of the hearing decision if the State level administrative fraud hearing finds that the household member committed fraud. The use of these forms is being made optional because the Department believes that State agencies should have the flexibility to develop forms which meet their needs. The State agency would develop its own set of forms based on the notification requirements for State level hearings contained in the Program's regulations. FNS would continue to provide model forms which the State agency could choose to use or modify to suit its particular needs. However, the State agency would no longer need to obtain FNS approval to modify these FNS-designed forms. (See 7 CFR 273.16(f)(2)).

6. Waiver of Right to Disqualification Hearing

A determination that fraud was committed, arrived at through an administrative fraud hearing or by a court of appropriate jurisdiction, is currently required before a State agency can disqualify an individual suspected of Program abuse. One State agency has requested that the Department consider shortening the disqualification process for those cases of suspected Program abuse which prosecutors have declined to prosecute or which the State agency determines do not warrant referral for prosecution, and which involve individuals who are willing to admit that they committed the act of which they are accused. Existing Food Stamp Program regulations at 7 CFR 273.16(d)(4) require that an administrative disqualification hearing be held even if the household member or its representative cannot be located or fails to appear at the hearing without good cause. The Department has decided that adoption of a procedure whereby an accused individual who admits the alleged abuse could waive his/her right to an administrative disqualification hearing would result in a more efficient disqualification hearing system.

The Department proposes to provide State agencies the option of allowing accused individuals to waive their right to administrative disqualification hearings. This option is intended to provide a mechanism which would be used on a State-wide basis and which would supplement, rather than substitute for, existing administrative disqualification hearing systems. State agencies which provide administrative disqualification hearings only at the State level would be limited to use of this option at that level. Those State agencies which provide a local disqualification hearing in some or all of their project areas with a right to appeal to a State level hearing would be

allowed to utilize this option in the same project areas. An individual determined to have committed intentional misrepresentation or fraud and who has waived his/her right to an administrative disqualification hearing would not be allowed to appeal the disqualification subsequently imposed through either an administrative disqualification hearing or a fair hearing.

The household member suspected of intentional misrepresentation or fraud would be provided written notification of the possibility to waive his/her right to an administrative disqualification hearing. This notification would be included in the advance notice of a hearing which is provided to the accused individual. The State agency would also provide the household member with written notification of the mechanism for waiving his/her right to an administrative disqualification hearing at the same time. This notification would include the date by which the signed waiver must be received, a statement that the hearing will be conducted on the scheduled date unless the signed waiver is received by the specified date, that waiver of hearing would result in automatic disqualification and reduction of the household's allotment for the disqualification period, and a signature block for the accused individual. In order to provide the remaining household members some degree of protection in those cases where the accused individual is not the head of household, the notice would also include a signature block for the head of household and require his/her signature. Although an accused individual's waiver of his/her right to an administrative disqualification hearing can be construed as an admission of the facts as presented by the State agency, this need not be the case. Therefore, the proposed regulations contain suggested language for State agencies to include in the notice so that such individuals could waive the hearing without admitting to a State agency's specific allegations. In addition, the household member would be informed of the name and phone number of the disqualification hearing official to contact should he/she not understand the charge(s) or the implications of waiving his/her right to an administrative disqualification hearing. And, the household member would be advised of the right to remain silent concerning the charge(s) and that anything said or signed by the individual could later be used in a court of law. The Department strongly encourages any State agency which chooses to exercise this option to submit the form which it develops to its State Attorney General's Office for concurrence on legal sufficiency.

Once the State agency receives a signed waiver of the right to an administrative disqualification hearing, the household member suspected of intentional misrepresentation or fraud would be disqualified from participation in the Program. The disqualification periods for individuals who waive their right to administrative hearings would be the same as those for persons found to have committed intentional misrepresentation or fraud through a disqualification hearing or prosecution in a court of law. And, the household member would be provided written notification of the disqualification prior to imposition of a disqualification penalty. The period of disqualification would begin with the first month which follows the date the household member receives notification of the disqualification. The State agency would also initiate collection of the claim which results from the overissuance caused by the household member's intentional misrepresentation or fraud by sending a written demand letter for restitution along with the notification of disqualification.

The proposed procedures were developed with a view towards adequately protecting the accused individuals' due process rights and, at the same time, reducing the amount of time and money which the State agency has to invest in such cases. Although the Department believes that the proposal would accomplish both of these objectives, it recognizes that some State agencies may choose not to take advantage of the option. The Department is especially anxious to receive comments on this proposal and any alternative methods for shortening the administrative disqualification process for accused individuals willing to admit guilt without imposing complex administrative rules on State agencies. (See 7 CFR 273.16(f)(3)).

7. Disqualification Reporting System

Section 112(b)(4) of the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35) requires that the Department promulgate regulations to ensure that information concerning individuals disqualified for intentional misrepresentation or fraud is forwarded to the Department by State agencies for use in administering the misrepresentation and fraud provisions contained in the Food Stamp Act. The Senate Committee Report indicates that Congress intends that State agencies use this information in enforcing disqualifications against individuals who move from one State to another. See S. Rep. No. 97–128, p. 55.

The Department considered three alternative systems for the collection of information concerning individuals disqualified for misrepresentation or fraud. The first alternative considered was to require the reporting of specific information concerning each disqualification on an individual basis, using a specially designed form. The second alternative was to require the reporting of such information as a part of an already existing monthly, quarterly, or biennial report. And the third alternative considered was to establish an automated reporting system to receive the reports. The Department has decided to propose adoption of the third alternative because it avoids the problem of increasing the paperflow responsibilities on administering agencies posed by the first alternative as well as the potential for timelags in the reporting of the information concerning disqualifications inherent in the second. In addition, the chosen method has the advantage of enabling State agencies to readily access information concerning individuals disqualified in another political jurisdiction.

Under the proposed automated reporting system, State agencies would report information on individuals disqualified for intentional misrepresentation or fraud. All of the data submitted by State agencies would be stored in a specially designed computer program and be available to any State agency. The proposed national computer file could be set up so that a State agency could ascertain whether an individual has been disqualified in another State by simply referencing that person's name and social security number. Alternatively, the information in the national file could be made available to a State agency in hard-copy (printed reports), tape, or card medium. The method of access to the information would be a State agency option, allowing a State agency the flexibility to choose the available medium which best suits its particular needs. The State agency would be allowed to access the information for determining the eligibility of individual program applicants, and ascertaining the appropriate penalty to impose in a case under consideration. Information concerning past disqualifications would be especially helpful to State agencies in view of the tiered system of disqualification penalties recently enacted into law.

The State agency would be required to report specific information concerning an individual disqualified for misrepresentation or fraud in a format specified by FNS and within specific timeframes. The reporting requirement would cover any individual disqualified within that State, either through an administrative disqualification procedure or by a court of law. The specified format would ensure that sufficient information is received to identify the individual, the State in which the disqualification occurred, the offense which led to the disqualification, the effective date of the disqualification, and the disqualification penalty imposed. The State agency would report this information within 30 days of the date of the disqualification. These timeframes would allow State agencies either to report the disqualifications individually or to report on all the disqualifications which occured in the most recent 30 day period once a month.

The Department invites all comments on the proposed automated reporting system and would especially like to hear alternative suggestions. Those that address the problem of administrative feasibility would be especially welcome. (See 7 CFR 273.16(h)).

II. Improved Recovery of Overpayments

1. Categories of Claims against Households

Current regulations contain guidelines for State agencies to follow in determining whether to establish fraud and nonfraud claims against participants, and specify certain minimum requirements which State agencies must follow in handling these cases. The Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35) expands the fraud claims provisions to cover intentional misrepresentation claims, and provides a specific method of collection for those claims not resulting from fraud, misrepresentation or State agency error. The proposed rulemaking would incorporate these statutory changes by expanding the category of fraud claims to include intentional misrepresentation claims, and differentiating those nonfraud claims as a result of State agency error from those caused by household misunderstanding. Therefore, the method of handling claims against households would depend on whether they resulted from inadvertent household error, intentional misrepresentation or fraud, or administrative error. (See 7 CFR 273.18(a)).

2. Criteria for Establishing Inadvertent Household and Administrative Error Claims

Existing regulations contain a 12-month time limit for establishing nonfraud claims. This time limit was intended to eliminate the administrative burden of documenting and computing errors that occurred more than a year prior to discovery. Several State agencies have pointed out, however, that this policy has resulted in other administrative burdens. Because there is no 12-month time limit for establishing a fraud claim, a claim being handled as a nonfraud claim prior to the determination of fraud by an administrative fraud hearing or court of law must be recalculated once the determination is obtained. In addition, this policy precludes a State agency billed for negligence by FNS from recovering that portion of its liability which households received more than 12 months before.

The proposed rulemaking would change the 12-month time limit for establishing nonfraud claims into a minimum requirement. Therefore, the State agency would be required, at a minimum, to take action on those claims for which 12 months or less have elapsed between the month an overissuance and the month the State agency discovered a specific case involving the overissuance. The State agency would have the option of taking action on those claims for which more than 12 months have elapsed. This new policy would also apply to both inadvertent household error and administrative error claims.

As part of the criteria for establishing a nonfraud claim contained in current Program regulations, the Department has provided specific instances of overissuances for which the State agency is prohibited from establishing a claim against the household. These instances involve errors relating to the system used to provide benefits to eligible households, such as State agency failure to insure that a household fulfilled certain procedural requirements. The proposed rulemaking would revise two of these instances and include them as examples of administrative errors for which a claim would be established against the household. Therefore, the State agency would establish a claim against the household if it continued to receive an allotment after its certification period expired or its allotment level was not reduced to reflect a change in its public assistance grant. The Department has decided that these two instances do not sufficiently differ from other instances of administrative error involving the assignment of an incorrect allotment to warrant not recovering the overissuance from the households. (See 7 CFR 273.18(b)).

3. Calculating Inadvertent Household and Administrative Error Claims

Under current Program rules, State agencies must exclude those months that are more than 12 months prior to the date the overissuance was discovered when calculating the amount of a nonfraud claim. The proposed rulemaking would change the 12-month limit for calculating the amount of the claim into a minimum requirement. This change is necessary in order for the method of calculating the amount of inadvertent household error and administrative error claims to conform with the revised requirements for establishing such claims. Therefore, the State agency would be required to calculate the amount of these claims based, at a minimum, on those months that are 12 months or less since the date an overissuance was discovered. The State agency would have the option of calculating the amount of the claim back to the month the error occurred, regardless of the length of time that elapsed until the error was discovered. (See 7 CFR 273.18(c)(1)).

4. Collecting Inadvertent Household Error Claims

Section 113 of the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35) requires State agencies to collect inadvertent household error claims by reducing the household's monthly allotment. In addition, the amount by which State agencies can reduce the household's monthly allotment in such collections is limited to 10 percent of the allotment or $10 per month, whichever would result in faster collection. While Congress intends for State agencies to collect inadvertent household error claims from those persons still participating in the Program by reducing future benefits, it also believes that "* * * nothing would preclude the State from seeking to collect overissuances through other means * * *" from persons who no longer receive food stamps. See S. Rep. No. 97–128, p. 57.

The proposed rulemaking would incorporate these statutory changes by requiring State agencies to collect any inadvertent household error claims, regardless of the amount, from households still participating in the Program by reducing their monthly allotment. Prior to reduction, the household would be sent a written demand letter which informs it of the

amount of food stamps to be recovered each month and of the availability of other methods of repayment. The household would also be allowed to repay in cash all at once or in monthly installments, in a downpayment of cash with monthly installments, or with food stamp coupons as partial or full payment. If the household does not respond within 30 days of receipt of the demand letter, the household's allotment would be reduced without further notice being provided. The amount of food stamps to be recovered each month would be the greater of 10 percent of the household's monthly allotment or $10 per month. For households not currently participating in the Program, State agencies would be required to collect inadvertent household error claims by sending the household a written demand letter which informs the household of how it may pay the claim. The household would be able to make cash payments on the claim in one lump sum and/or in regular installments, and the household would be allowed to give the State agency any food stamp coupons remaining from its prior participation as partial or full payment of the claim. If a nonparticipating household does not respond to the first demand letter, additional demand letters would be sent at reasonable intervals until the household responded by paying or agreeing to pay the claim, or until the claim was suspended. The State agency could also pursue other appropriate collection actions against any household which fails to respond to a written demand letter. These provisions would provide State agencies with a widely accepted and effective method of collection for most of the overissuances which result from inadvertent error on the part of households. (See 7 CFR 273.18(d) and (g)).

Current regulations require that a fraud claim be handled as a nonfraud claim prior to the determination of fraud by an administrative fraud hearing or a court of appropriate jurisdiction. State agencies are allowed to postpone collection of a potential fraud claim being handled as a nonfraud claim if they are advised in writing that collection action will prejudice the case. State agencies are also allowed to postpone collection of fraud claims after an administrative determination that fraud has been committed if the legal representative prosecuting a member of the household for fraud advises, in writing, that collection action will prejudice the case.

The Department proposes to revise the claims collection sections by removing the requirement that State agencies obtain a written opinion that collection will prejudice the case in order to postpone collection action against the household. The claim against the household would be handled as an inadvertent household error claim prior to the determination of intentional misrepresentation or fraud, and State agencies would determine whether collection would prejudice the case against a household member referred for possible administrative disqualification or prosecution. This change applies to those claims being handled as inadvertent household error claims prior to administrative determinations of intentional misrepresentation or fraud as well as those claims resulting from activities that are being referred for prosecution in a court of law. (See 7 CFR 273.18(d)(1)(ii) and (d)(2)).

5. Collecting Intentional Misrepresentation or Fraud Claims

The regulations governing the collection of fraud claims require that disqualified individuals who wish to reenter the program after the period of disqualification must agree to repay the value of the food stamps fraudulently obtained. The disqualified individual signs a written agreement letter for restitution, and repayment is made through either a cash payment or a reduction in the household's allotment. If a disqualified individual agrees to make repayment in cash and fails to make the payments, the individual's household allotment is reduced.

Section 113 of the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35) requires that the household of the disqualified individual repay in cash or by allotment reduction the overissuance which resulted from intentional misrepresentation or fraud. The House Report indicates Congressional intent that repayment begin as soon as a court or administrative disqualification determination is made, instead of after the period of disqualification has ended. See H.R. Rep. No. 97–196, 97th Cong., 1st Sess., p. 138 (1981).

The proposed rulemaking would shift the responsibility for repayment of intentional misrepresentation or fraud claims from the disqualified individual to the indivdual's household. The household would be sent a demand letter at the time of the disqualification, and allowed to choose a method of repayment. The household would be allowed to repay in cash all at once or in monthly installments, in a downpayment of cash with monthly installments, with food stamp coupons as partial or full payment, or through a reduction of its monthly allotment. If the household is currently participating in the Program and fails to respond within 30 days of receipt of the demand letter, the household's allotment would be reduced without further notice being provided. If a nonparticipating household fails to respond to the first demand letter, additional demand letters would be sent at reasonable intervals until the household responded by paying or agreeing to pay the claim, or until the State agency suspended collection action. The State agency could also pursue other appropriate collection actions against any household which fails to respond to a written demand letter. These collection procedures should significantly deter future abuse of the Food Stamp Program. (See 7 CFR 273.18(d)(2) and (g)).

The proposed regulations would also reinstate certain provisions governing the suspension of collection for fraud claims which were inadvertently deleted by the regulations issued on January 31, 1980, at 45 FR 7208. The January 31, 1980, regulations implemented provisions of Pub. L. 96–58, the 1979 Amendments to the Food Stamp Act of 1977. Section 5 of Pub. L. 96–58 provided that individuals subject to disqualification from Program participation for fraudulent conduct must agree to either a reduction in the household's food stamp allotment or to a repayment in cash in order to again participate in the Food Stamp Program. When issuing the regulations to implement this provision the Department omitted already existing provisions which dealt with the procedure for State agencies to follow when nonparticipating households fail to respond to demand letters, and the following three criteria for holding a fraud claim in suspense: (i) The household is financially unable to pay the claim, (ii) there is little likelihood that the State agency can collect or enforce collection of any significant sum from the household, and (iii) the cost of further collection action is likely to exceed the amount that can be recovered. The Department has decided to reinstate some of these provisions as well as to clarify that they apply only to households which are not currently participating in the Program. As before, fraud claims against currently participating households would be collected through allotment reduction unless the household agrees to another method of repayment. Two of the three criteria for suspending collection are being eliminated in order to provide for the possible collection of additional overissuances. Therefore, the State agency would suspend collection action of an established intentional misrepresentation or fraud claim only if

the cost of further collection action is likely to exceed the amount that can be recovered. The proposed rulemaking would also make suspension a State agency option.

Under current Program rules, a claim is determined uncollectible after it is held in suspense for three years and the State agency is required to terminate collection action. The proposed rulemaking would make termination of claims a State agency option. This change is necessary in order for the termination procedure to be consistent with the revised suspension requirements and would allow State agencies to collect additional overissuances.

The Department believes that the additional flexibility which will result for State agencies as a result of these changes is warranted in view of the considerable experience and expertise they have obtained in the area of claims collection. (See 7 CFR 273.18 (d) and (e)).

6. Demand Letter for Overissuance

Under existing Program regulations, the State agency initiates collection of a nonfraud claim by sending the household a written demand letter and of a fraud claim by sending the disqualified individual a written agreement letter for restitution. The Form FNS–437, Repayment of Extra Food Stamps (Demand Letter for Overissuance—Non Fraud), is used to inform the household against which a nonfraud claim has been established of the claim and the possible methods for repayment. Similarly, the Form FNS–397, Food Stamp Fraud Repayment Agreement, is sent to an individual against which a fraud claim has been established to provide notice of the need to begin restitution in order to avoid continuing the period of disqualification and of the possible methods for doing so. While the State agency is required to utilize the FNS-designed model forms, it can request FNS approval for deviations to meet its specific needs.

The Department proposes to eliminate the Form FNS–397 (Fraud Repayment Agreement), to revise the Form FNS–437 (Demand Letter for Nonfraud Overissuance) to cover all three types of claims contained in this rulemaking, and to provide State agencies the option of using the FNS-designed form. FNS would provide a model "universal" demand letter for overissuance which the State agency could choose to send the household against which a claim has been established, regardless of whether the claim resulted from an overissuance due to an inadvertent household error, a determination of intentional misrepresentation or fraud, or an administrative error on the part of the State agency. This demand letter for overissuance would inform households of the possible methods for repaying the various types of claims as well as the amount of food stamps to be recovered each month if the State agency imposes allotment reduction to collect an inadvertent household error or intentional misrepresentation or fraud claim. The demand letter would also inform the household that it may request renegotiation of the repayment schedule, and it would provide a signature block. Those State agencies which choose not to utilize the FNS-designed demand letter for overissuance would develop their own forms based on the requirements for collecting claims contained in the Program's regulations. Alternatively, State agencies could modify the model form for demanding restitution provided by FNS to suit their particular needs, however, the State agency would no longer need to obtain FNS approval to modify this particular FNS-designed form. The Department believes that this new approach is consistent with the Administration's desire to further simplify the management responsibilities of administering agencies, is warranted by the proposed changes in collection procedures for the various types of claims, and would provide State agencies the flexibility to develop forms which best suit their particular needs. (See 7 CFR 273.18(d)(3)).

7. Other Collection Actions

Current Food Stamp Program regulations allow State agencies to initiate court action to obtain repayment of an overissuance which resulted from fraud. The regulations do not, however, address the issue of pursuing other collection actions to collect either fraud or nonfraud claims. Several State agencies have requested authority to pursue collection of all types of claims through other methods of collection, such as turning the claims over to professional collection agencies. The proposed rulemaking would allow and, indeed, encourage State agencies to initiate other collection actions, as appropriate, to obtain repayment of a claim. However, the Department believes that, at a minimum, State agencies should initiate collection of claims by sending the household a written demand letter in accordance with Program rules. If the household does not respond to the State agency's written demand letter, the State agency may choose to take other collection actions against the household. (See 7 CFR 273.18(d)(4)).

8. Suspending Inadvertent Household and Administrative Error Claims

Procedures now in use require State agencies to suspend collection of a nonfraud claim if no collection action was initiated because the claim has been collected through offset, the total amount of the claim is less than $35, or the household cannot be located. If collection action was initiated, State agencies are required to suspend collection when: (i) The household is financially unable to pay the claim; (ii) there is little likelihood that the household will pay the claim, (iii) the household cannot be located, or (iv) the cost of further collection action is likely to exceed the amount that can be recovered. State agencies are allowed, however, to use an uncollectible claim to offset restored benefits.

The proposed rulemaking would eliminate two of the suspension criteria, make suspension of inadvertent household and administrative error claims a State agency option, and clarify that suspension does not apply to claims established against currently participating households for an overissuance due to inadvertent household error. The Department has decided that two of the existing suspension criteria are already included under the broader category of the criterion that provides for suspension when the cost of further collection action is likely to exceed the amount that can be recovered, and that their elimination would simplify the claims suspension process. And, since Congress has provided for allotment reduction to collect inadvertent household error claims, the Department believes that suspending collection of such claims against currently participating households would be unwarranted. Therefore, the proposal allows State agencies to suspend collection action of all administrative error claims and of those inadvertent household error claims established against nonparticipating households only when the household cannot be located or the cost of further collection action is likely to exceed the amount that can be recovered. And, as mentioned above, State agencies would no longer be required to terminate collection of a claim after it is held in suspense for three years. (See 7 CFR 273.18(e)).

9. Changes in Household Composition

State agencies are currently required to initiate collection action for nonfraud claims against the head of the household or against the individual who was head

of the household at the time of the nonfraud claim. If the head of the household is no longer living or cannot be located, the State agency initiates collection action against the household containing a majority of the individuals who were household members at the time the error occurred. For fraud claims, State agencies are currently required to initiate collection action against the individual found to have committed fraud. If the household member found guilty of fraud moves, resulting in a change in household membership, the State agency initiates collection action against the household currently containing the fraudulent individual.

As discussed earlier, the proposed rulemaking would shift the responsibility for repayment of intentional misrepresentation or fraud claims from the disqualified individual to the individual's household. The proposal would also hold the household responsible for repayment of inadvertent household error or administrative error claims. Therefore, the Department is proposing to require State agencies to initiate collection action if a change in household membership occurs against the household containing a majority of the individuals who were household members at the time of the activity which resulted in the overissuance. This change would ensure that, regardless of the type of claim, those persons who most benefited from the overissuance are held responsible for repayment. This provision will apply to claims only. The disqualification penalites, on the other hand, will apply only to the household in which the disqualified individual(s) currently reside. (See 7 CFR 273.18(f)).

10. Compromising Claims

The Program's regulations currently require State agencies to compromise any claim if the amount cannot be liquidated within three years. A claim is compromised by reducing it to an amount that will allow the household to make restitution within a three year period. The proposed rulemaking would make compromising of claims a State agency option. This would allow State agencies to collect the full amount of a claim even if it requires collection for more than three years. (See 7 CFR 273.18(g)).

11. $10 Minimum Benefit Level

Current regulations provide a minimum monthly allotment of $10 for all eligible one- and two-person households. A State agency has requested clarification of whether the $10 minimum allotment holds precedence over the reduction of a household's allotment for repayment of a claim. Since the amount of a household's monthly allotment is established before the determination is made concerning the reduction of the allotment for recoupment of any overissuances, the $10 minimum benefit level does not apply to the allotment after it has been reduced. The Department is, therefore, proposing language to clarify that the $10 minimum benefit level applies to the amount of a household's allotment prior to reduction for claims collection. This proposed language is contained in the provision governing the collection of inadvertent household error and intentional misrepresentation or fruad claims through allotment reduction. (See 7 CFR 273.18(g)(3)).

12. State Share of Collected Claims

State agencies are currently allowed to retain 50 percent of the value of claims collected from persons who have committed fraud, and required to return to the Federal Government all of the funds collected from nonfraud claims. The Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35) allows State agencies to also retain 50 percent of the value of intentional misrepresentation claim collections and 25 percent of the value of inadvertent household error claim collections. Although the Department, on June 1, 1982, at 47 FR 23786, issued a public notice of the implementation of the 25 percent State share of collected inadvertent household error claims, the proposed rulemaking would incorporate these statutory changes into the Food Stamp Program's regulations. The ability of State agencies to retain these additional funds should provide them an additional incentive to pursue the collection of these claims.

The Department is proposing amendatory language to clarify that the 50 percent retention is also applicable to that portion of a claim collected prior to a determination that intentional misrepresentation of fraud has occurred. Under the proposed regulations, an administrative disqualification hearing official or a court of appropriate jurisdiction would determine that a household member committed intentional misrepresentation or fraud before such a claim could be established. Prior to such a determination, the claim would be handled as an inadvertent household error claim for collection purposes, and the State agency would retain 25 percent of the amount collected. Once a determination of intentional misrepresentation or fraud was obtained, the State agency would retain additional funds to represent the difference between the two retention rates on the amount already recovered. The State agency would include a note in the remarks section of the Form FNS–209, Status of Claims Against Households, which shows the additional amounts being retained on amounts already recovered as a result of the change in status of the claim.

The proposed rule would also revise the timeframes for submission of the Form FNS–209, Status of Claims against Households. State agencies are currently required to submit monthly a Form FNS–209, which reports the amount of funds recovered from all types of overissuances. The State agency's letter of credit is then adjusted quarterly to reflect the value of recovered funds which the State agency must return to the Federal Government. The Department is proposing to require a quarterly submission of the FNS–209, rather than monthly, to coincide with the letter of credit adjustment. This change would simplify State agency recordkeeping systems as well as reduce their present reporting requirements. (See 7 CFR 273.18(h)).

13. Overpayment of Claims

Current regulations do not address the issue of appropriate action for State agencies to follow when a household has overpaid a claim. Overpayment of a claim could occur, for example, when a household which has made payment on a claim requests a fair hearing on the amount of the claim and the hearing authority determines that the amount of the claim is less than has been paid by the household. Similarly overpayment could occur when payment was made on a claim prior to a legal challenge of the administrative disqualification which led to the claim, and the court action results in a reversal of the administrative determination that the individual committed intentional misrepresentation or fraud. Other instances where overpayment of a claim could occur in include administrative error in calculating the amount of a claim or household error in submitting payment.

The Department proposes to correct this omission by requiring State agencies to pay households any amounts which has been overpaid on a claim. The method of payment would be left to the State agency's discretion, though the Department emphasize that consideration should be given to the household's circumstances. For example, households no longer participating in the Program would have to be provided cash payments.

Participating households would be paid in cash or with food stamps. The proposed rulemaking clarifies that if payment is made from funds collected through overissuance recoveries the State agency must report the payment on the Form FNS–209, Status of Claims Against Households. In addition, the State agency must identify on the Form FNS–209 any claims for which is retained funds but later paid the household for an overpayment. The State agency would show the amounts which were paid to households for overpaid claims out of overissuance recoveries and identify those overpaid claims for which funds had previously been retained by including notes in the remarks section of the FNS–209. (See 7 CFR 273.18(h)(4)).

14. Destruction of Collected Coupons

Existing regulations do not address the subject of disposal for food stamp coupons accepted as payment for claims. The proposed rule would address this issue by clarifying that any coupons or coupon books collected from households as payment for claims must be destroyed. State agencies would destroy such coupons in the same manner that improperly manufactured or mutilated coupons are destroyed under current practices. (See 7 CFR 273.18(h)(6)).

15. Interstate Claims Collection

In some instances where households have moved out of the area under a State agency's jurisdiction, action has not been taken to collect overissuances to the household which occurred while it was still under the State agency's jurisdiction. A number of State agencies have requested clarification of their authority to initiate or continue collection action against households which have moved out of their jurisdiction. The proposed rule would provide clear authority and encourage State agencies to pursue such overissuances across the boundaries of their jurisdictions.

In cases where the State agency which overissued benefits to the household does not take prompt action to collect, the proposed rule would encourage the State agency for the area into which the household has moved to initiate action to collect. Prior to initiating action to collect such overissuances, the State agency for the area into which the household has moved would be required to contact the State agency which overissued benefits to ascertain that it does not intend to pursue prompt collection.

The proposed rule would require that the State share of collected claims (as provided at 7 CFR 273.18(h)) would be retained by the State agency which actually collects the overissuance. The Department intends that the availability of these funds provide additional incentive to pursue collection of claims in these situations. (See 7 CFR 273.18(k)).

III. Implementation

The Department proposes that State agencies implement these regulations no later than the first day of the month 120 days after publication. The State agency may wish to implement these regulations on the first day of the next yearly quarter. This period should provide sufficient time to amend food stamp handbooks and forms, make any necessary changes in data processing systems and administrative procedures, train eligibility workers, and inform food stamp recipients. (See 7 CFR 272.1(g)()).

List of Subjects

7 CFR Part 272

Alaska, Civil rights, Food and nutrition service, Food stamps, Grant programs-social programs, Records, Reporting requirements.

7 CFR Part 273

Administrative practice and procedure, Aliens, Claims, Food and nutrition service, Fraud, Grant programs-social programs, Penalties, Records, Reporting requirements, Social security, Students.

7 CFR Part 276

Administrative practice and procedure, Food and nutrition service, Food stamps, Fraud, Grant programs-social programs, Penalties.

Accordingly, it is proposed that 7 CFR Parts 272, 273, and 276 be amended as follows:

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

1. In § 272.1, a new subparagraph is added to paragraph (g) to read as follows:

§ 272.1 General terms and conditions.

* * * * *

(g) *Implementation.* * * *

( ) *Amendment* . State agencies shall implement the disqualification penalties for fraud and misrepresentation, and the improved recovery of overpayments provisions contained in Amendment —— no later than the first day of the month 120 days following publications. FNS shall return to each State agency 50 percent of the value of all funds collected or allotments recovered on intentional misrepresentation claims beginning the day that the State agency implements the provisions contained in this amendment.

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

2. In § 273.1, paragraph (7) of paragraph (b) is revised to read as follows:

§ 273.1 Household concepts.

* * * * *

(b) *Nonhousehold members.* * * *

(7) *Disqualified individuals or ineligible aliens.* Individuals disqualified for misrepresentation or fraud as set forth in § 273.16, or persons disqualified for failure to obtain social security numbers as set forth in § 273.6, or ineligible aliens determined as such in accordance with § 273.4.

* * * * *

3. In § 273.8, paragraph (j) is revised to read as follows:

§ 273.8 Resource eligibility standards.

* * * * *

(j) *Resources of nonhousehold members.* The resources of nonhousehold members, as defined in § 273.1(b), shall not be counted as available to the household unless the member is disqualified from the program for misrepresentation or fraud in accordance with § 273.16, or for failing to comply with the requirement to provide an SSN in accordance with § 273.6, or is an ineligible alien who would be considered a household member if not for his or her ineligible alien status in accordance with § 273.4.

4. In § 273.9, paragraph (b)(3) is revised to read as follows:

§ 273.9 Income and deductions.

* * * * *

(b) *Definition of income.* * * *

(3) The earned or unearned income of an individual disqualified from the household for misrepresentation or fraud in accordance with § 273.16 shall continue to be attributed in their entirety to the remaining household members. However, the earned or unearned income of individuals disqualified from households for failing to comply with the requirement to provide an SSN in accordance with § 273.6, or for being an ineligible alien in accordance with § 273.4 shall continue to be counted as income, less a pro rata share for the individual. Procedures for calculating this pro rata share are described in § 273.11(c).

* * * * *

5. In § 273.11, paragraph (c) is revised to read as follows:

§ 273.11 Action on households with special circumstances.

* * * * *

(c) *Treatment of income and resources of disqualified members.* Individual household members may be disqualified for intentional misrepresentation or fraud, for refusal to obtain or provide an SSN, or for being an ineligible alien. During the period of time that such household members are ineligible, the eligibility and benefit level of any remaining household members shall be determined in accordance with the procedures outlined in this section.

(1) *Disqualification for misrepresentation or fraud.* The eligibility and benefit level of any remaining household members of a household containing individuals disqualified for intentional misrepresentation or fraud shall be determined as follows:

(i) *Income, resources, and deductible expenses.* The income and resources of the household member(s) disqualified for intentional misrepresentation or fraud shall continue to count in their entirety, and the entire household's allowable earned income, standard, medical, dependent care, and excess shelter deductions shall continue to apply to the remaining household members.

(ii) *Eligibility and benefit level.* An individual disqualified for intentional misrepresentation or fraud shall not be included when determining the household's size for the purposes of assigning a benefit level to the household or of comparing the household's monthly income with the income eligibility standards. The State agency shall ensure that no household's coupon allotment is increased as a result of the disqualification of one or more household member for intentional misrepresentation or fraud.

(2) *Disqualification for others causes.* The eligibility and benefit level of any remaining household members of a household containing individuals disqualified for refusal to obtain or provide an SSN, or for being an ineligible alien shall be determined as follows:

(i) *Resources.* The resources of such disqualified members shall continue to count in their entirety to the remaining household members.

(ii) *Income.* A pro rata share of the income of such disqualified members shall be counted as income to the remaining members. This pro rata share is calculated by first subtracting the allowable exclusions from the disqualified member's income and dividing the income evenly among the household members, including the disqualified members. All but the disqualified member's share is counted as a deductible shelter expense for the remaining household members.

(iii) *Deductible expenses.* The 18 percent earned income deduction shall apply to the prorated income earned by such disqualified members which is attributed to their households. That portion of the household's allowable shelter and dependent care expenses which are either paid by or billed to the disqualified members shall be divided evenly among the household's members, including the disqualified members. All but the disqualified members' share is counted as a deductible shelter expense for the remaining household members.

(iv) *Eligibility and benefit level.* Such disqualified members shall not be included when determining their household's sizes for purposes of assigning a benefit level to the households or for purposes of comparing the household's monthly incomes with the income eligibility standards.

(3) *Reduction or termination of benefits within the certification period.* Whenever an individual is disqualified within the household's certification period, the State agency shall determine the eligibility or ineligibility of the remaining household members based, as much as possible, on information in the case file.

(i) *Disqualification for misrepresentation or fraud.* If a household's benefits are reduced or terminated within the certification period because one of its members was disqualified for intentional misrepresentation or fraud, the State agency shall notify the remaining members of their eligibility and benefit level at the same time the disqualified member is notified of his or her disqualification. The household is not entitled to a notice of adverse action but may request a fair hearing to contest the reduction or termination of benefits.

(ii) *Disqualification for other causes.* If a household's benefits are reduced or terminated within the certification period because one or more of its members refused to obtain or provide an SSN, or is an ineligible alien, the State agency shall issue a notice of adverse action in accordance with § 273.13(a)(2) which informs the household of the disqualification, the reason for the disqualification, the eligibility and benefit level of the remaining members, and the actions the household must take to end the disqualification.

* * * * *

6. Section 273.16 is revised to read as follows:

§ 273.16 Disqualification for misrepresentation and fraud.

(a) *Administrative responsibility.* The State agency shall be responsible for investigating any case of alleged intentional misrepresentation or fraud, and ensuring that appropriate cases are acted upon either through administrative disqualification hearings or referral to a court of appropriate jurisdiction in accordance with the procedures outlined in this section. Administrative disqualification procedures or referral for prosecution action should be initiated by the State agency in cases in which the State agency has sufficient documentary evidence to substantiate that an individual has intentionally made one or more acts of either misrepresentation or fraud as defined in paragraphs (c) and (d) of this section. The State agency may initiate administrative disqualification procedures or refer a case for prosecution regardless of the current eligibility of the individual. The disqualification period for nonparticipants at the time of the administrative disqualification or court decision shall be deferred until the individual applies for and is determined eligible for program benefits.

(b) *Disqualification penalties.* Individuals found to have made an intentional misrepresentation or committed fraud either through an administrative disqualification hearing or by a court of appropriate jurisdiction shall be ineligible to participate in the program for six months for the first violation, 12 months for the second violation, and permanently for the third violation. However, one or more fraud disqualifications which occurred prior to the implementation of these penalties shall be considered as only one previous disqualification when determining the appropriate penalty to impose in a case under consideration. If a court fails to impose a disqualification period for the intentional misrepresentation or fraudulent act, the State agency shall impose the disqualification penalties specified in this section unless it is contrary to the court order. State agencies shall disqualify only the individual found to have made the intentional misrepresentation or committed fraud, and not the entire household. The remaining household members shall agree to make restitution in cash or the household's monthly allotment shall be reduced. If the remaining household members agree to make cash restitution but fail to do so, the State agency shall impose an allotment reduction on the household's monthly allotment. All restitutions shall

be made in accordance with established procedures for cash repayment, allotment reduction, or coupons for repayment.

(c) *Definition of misrepresentation.* For purposes of determining through administrative disqualification hearings whether or not intentional misrepresentation was made, misrepresentation shall consist of intentionally either (1) making a false or misleading statement or (2) misrepresenting, concealing, or withholding facts in order to obtain benefits to which the household is not entitled.

(d) *Definition of fraud.* For purposes of determining through administrative disqualification hearings whether or not intentional fraud was committed, fraud shall consist of intentionally committing any action that constitutes a violation of the Food Stamp Act, the Food Stamp Program Regulations, or any State statute relating to the use of food stamps in order to use, present, transfer, acquire, receive, or possess food stamp coupons or ATPs to which the household is not entitled.

(e) *Notification to applicant households.* The State agency shall inform the household in writing of the disqualification penalties for intentional misrepresentation or fraud each time it applies for program benefits. The penalties shall be in clear, prominent, and boldface lettering on the application form.

(f) *Administrative disqualifications.* (1) Each State agency shall establish a system for conducting administrative disqualifications for intentional misrepresentation or fraud which conforms with the procedures outlined in this section. FNS shall exempt any State agency from the requirement to establish an administrative disqualification system if the State agency has already entered into an agreement with the State's Attorney General's Office or, where necessary, with county prosecutors. The agreement shall provide for prosecution of both misrepresentation and fraud cases, and that prosecution will be pursued in cases where appropriate. This agreement shall include information on how, and under what circumstances, cases will be accepted for possible prosecution and any other criteria set by the prosecutor for accepting cases for prosecution, such as a minimum amount of overissuance which resulted from misrepresentation or fraud. FNS shall also exempt any State agency from the requirement to establish an administrative disqualification system if there is a State law that requires the referral of such cases for prosecution and if the State agency demonstrates to FNS that it is actually referring cases for prosecution and that prosecutors are following up on the State agency's referrals. Any State agency exempted from the requirement to establish an administrative disqualification system in accordance with these regulations shall refer cases of alleged misrepresentation or fraud for prosecution in accordance with its agreement with prosecutors, if one is in effect, or State law. FNS may require a State agency to establish an administrative disqualification system if it determines that the State agency is not promptly or actively pursuing suspected misrepresentation or fraud claims through the courts.

(2) Each State agency shall base administrative disqualifications for intentional misrepresentation or fraud on the determinations of hearing authorities arrived at through administrative disqualification hearings or on determinations reached by courts of appropriate jurisdiction, except that any State agency has the option of allowing accused individuals to waive their rights to administrative disqualification hearings in accordance with § 273.16(f)(3).

(i) *Consolidation of administrative disqualification hearing with fair hearing.* The State agency may combine a fair hearing and an administrative disqualification hearing into a single hearing if the factual issues arise out of the same, or related, circumstances and the household receives prior notice that hearings will be combined. If the disqualification hearing and fair hearing are combined, the State agency shall follow the timeframes for conducting disqualification hearings.

(ii) *Disqualification hearing procedures.* (A) State agencies have the option of using the same hearing officials for disqualification hearings and fair hearings or designating hearing officials to conduct only disqualification hearings.

(B) The provisions of § 273.15 (m), (n), (o), (p), and (q)(1) are also applicable for disqualification hearings.

(C) At the disqualification hearing, the hearing official shall advise the household member or representative that they may refuse to answer questions during the hearing.

(D) Within 90 days of the date the household member is notified in writing that a State or local hearing initiated by the State agency has been scheduled, the State agency shall conduct the hearing, arrive at a decision and initiate administrative action which will make the decision effective. The household member or representative is entitled to a postponement of up to 30 days. If the hearing is postponed, the above time limits shall be extended for as many days as the hearing is postponed.

(E) The State agency shall publish clearly written rules of procedure for disqualification hearings, and shall make these procedures available to any interested party.

(iii) *Advance notice of hearing.* (A) The State agency shall provide written notice to the household member suspected of intentional misrepresentation or fraud at least 30 days in advance of the date a disqualification hearing initiated by the State agency has been scheduled. The notice shall be mailed certified Mail-Return Receipt Requested, and shall contain at a minimum:

(*1*) The date, time, and place of the hearing;

(*2*) the charge(s) against the household member;

(*3*) A summary of the evidence, and how and where the evidence can be examined;

(*4*) A warning that the decision will be based solely on information provided by the food stamp office if the household member fails to appear at the hearing;

(*5*) A warning that a determination of intentional misrepresentation or fraud will result in a six-month disqualification for the first violation, 12-month disqualification for the second violation, and permanent disqualification for the third violation, and a statement of which penalty the State agency believes is applicable to the case scheduled for a hearing;

(*6*) A listing of the household member's right as contained in § 273.15(p);

(*7*) A statement that the hearing does not preclude the State of Federal Government from prosecuting the household member for intentional misrepresentation or fraud in a civil or criminal court action or from collecting the overissuances;

(*8*) A statement that the individual can call the food stamp office to get the name and phone number (if available) of someone who can give free legal advice. If free legal advice is not available, the food stamp office shall provide, when called, the phone number of a lawyer referral service of the local bar association;

(B) A copy of the State agency's published hearing procedures shall be attached to the 30-day advance notice.

(C) Each State agency shall develop an advance notice form which contains the information required by this section. A model form for providing advance notice of a scheduled hearing is

available from FNS for use by any State agency.

(iv) *Scheduling of hearing.* The time and place of the hearing shall be arranged so that the hearing is accessible to the household member suspected of intentional misrepresentation or fraud. If the household member or its representative cannot be located or fails to appear at a hearing initiated by the State agency without good cause, the hearing shall be conducted without the household member represented. Even though the household member is not represented, the hearing official is required to carefully consider the evidence and determine if intentional misrepresentation or fraud was committed based on clear and convincing evidence. If the household member is found to have committed fraud but a hearing official later determines that the household member or representative had good cause for not appearing, the previous decision shall no longer remain valid and the State agency shall conduct a new hearing. The hearing official who originally ruled on the case may conduct the new hearing. The household member has 10 days from receipt of the notice of the disqualification decision to present reasons indicating a good cause for failure to appear. A hearing official must enter the good cause decision into the record.

(v) *Participation while awaiting a hearing.* A pending disqualification hearing shall not affect the individual's or the household's right to be certified and participate in the program. Since the State agency cannot disqualiy a household member for intentional misrepresentation or fraud until the hearing official finds that the individual has committed intentional misrepresentation or fraud, the State agency shall determine the eligibility and benefit level of the household in the same manner it would be determined for any other household. For example, if the misstatement or action for which the household member is suspected of intentional misrepresentation or fraud does not affect the household's current circumstances, the household would continue to receive its allotment based on the latest certification action or be recertified based on a new application and its current circumstances. However, the household's benefits shall be terminated if the certification period has expired and the household, after receiving its notice of expiration, fails to reapply. The State agency shall also reduce or terminate the household's benefits if the State agency has documentation which substantiates that the household is ineligible or eligible for fewer benefits (even if these facts led to the suspicion of intentional misrepresentation or fraud and the resulting disqualification hearing) and the household fails to request a fair hearing and continuation of benefits pending the hearing. For example, the State agency may have facts which substantiate that a household failed to report a change in its circumstances even though the State agency has not yet demonstrated that the failure to report involved an intentional act of misrepresentation or fraud.

(vi) *Criteria for determining intentional misrepresentation or fraud.* The hearing authority shall base the determination of intentional misrepresentation or fraud on clear and convincing evidence which demonstrates that the household member(s) willfully intended to misrepresent or commit fraud, as defined in paragraphs (c) and (d) of this section.

(vii) *Decision format.* The hearing authority's decision shall specify the reasons for the decision, identify the supporting evidence, identify the pertinent FNA regulation, and respond to reasoned arguments made by the household member or representative.

(viii) *Imposition of disqualification penalties.* If the hearing authority rules that the household member has committed intentional misrepresentation or fraud, the household member shall be disqualified in accordance with the disqualification periods specified in paragraph (b) of this section beginning with the first month which follows the date the household member receives written notification of the hearing decision. However, if the act of intentional misrepresentation or fraud which led to the disqualification occurred prior to the implementation of the disqualification periods specified in paragraph (b) of this section, the household member shall be disqualified in accordance with the disqualification periods in effect at the time of the offense. The same act of intentional misrepresentation or fraud which occurred over a period of time shall not be separated so that separate penalties can be imposed. No further administrative appeal procedure exists after an adverse State level hearing. The determination of intentional misrepresentation or fraud made by a disqualification hearing official cannot be reversed by a subsequent fair hearing decision. The household member, however, is entitled to seek relief in a court having appropriate jurisdiction. The period of disqualification may be subject to stay by a court of appropriate jurisdiction or other injunctive remedy.

(ix) *Notification of hearing decision.* (A) If the hearing official finds that the household member did not commit intentional misrepresentation or fraud, the State agency shall provide a written notice which informs the household member of the decision.

(B) If the administrative disqualification hearing official finds that the household member committed intentional misrepresentation or fraud, the State agency shall mail a written notice to the household member prior to disqualification. The notice shall inform the household member of the decision and the reason for the decision. The notice shall also advise the remaining household members, if any, of either the allotment they will receive during the period of disqualification or that they must reapply because the certification period has expired. The procedures for handling the income and resources of the disqualified member are described in § 273.11(c). In addition, the notice shall inform the household member of the date disqualification will take effect. If the individual is no longer participating, the notice shall inform the individual that the period of disqualification will be deferred until such time as the individual again applies for and is determined eligible for program benefits. A written demand letter for restitution, as described in § 273.18(d)(3), shall also be sent.

(C) Each State agency shall develop a form for notifying individuals that they have been found by an administrative disqualification hearing to have committed intentional misrepresentation or fraud. The form shall contain the information required by this section. A model form for notifying individuals of an adverse hearing decision is available from FNS for use by any State agency.

(x) *Local level hearings.* (A) the State agency may choose to provide administrative disqualification hearings at the local level in some or all of its projects areas with a right to appeal to a State level hearing. If a local level disqualification hearing determines that a household member committed intentional misrepresentation or fraud, the notification of hearing decision, as described in paragraph (f)(2)(ix) of this section, shall also inform the household member of the right to appeal the decision within 15 days after the receipt of the notice, the date disqualification will take effect unless a State level hearing is requested, and that benefits will be continued pending a State level hearing if the household is otherwise

eligible. If the household member appeals the local level decision, the advance notice of hearing, as described in paragraph (f)(2)(iii) of this section, shall be provided at least 10 days in advance of the scheduled State level hearing and shall also inform the household member that the local hearing decision will be upheld if the household or its representative fails to appear for the hearing without good cause. When a local level decision is appealed, the State agency shall conduct the State level hearing, arrive at a decision, and initiate administrative action which will make the decision effective within 60 days of the date the household member appealed its case. The prior decision shall not be taken into consideration in a new hearing. In all other respects, local level disqualification hearings shall be handled in accordance with the procedures specified in this section for State level hearings.

(B) The State agency shall develop appropriate forms which contain the information required by this section for notification of a local level hearing decision and advance notice of a scheduled State level hearing for appeal of a local level decision.

(3) Each State agency shall have the option of allowing accused individuals to waive their rights to an administrative disqualification hearing. For State agencies whch choose the option of allowing individuals to waive their rights to an administrative disqualification hearing, the procedures are as follows:

(i) *Advance notification.* (A) The State agency shall provide written notification to the household member suspected of intentional misrepresentation or fraud of the possibility to waive his/her right to an administrative disqualification hearing. This notitification shall be included in the advance notice of a hearing which is provided to the accused individual at least 30 days prior to the date a disqualification hearing initiated by the State agency has been scheduled.

(B) The written notification provided to the household member which informs him/her of the possibility to waive the administrative disqualification hearing shall include, at a minimum:

(*1*) The date that the signed waiver must be received by the State agency to avoid the holding of the hearing on the scheduled date and a signature block for the accused individual, along with a statement that the head of household must also sign the waiver if the accused individual is not the head of household, with an appropriate designated signature block;

(*2*) A statement of the accused individual's right to remain silent concerning the charge(s), and that anything said or signed by the individual concerning the charge(s) can be used against him/her in a court of law;

(*3*) The fact that a waiver of the disqualification hearing will result in an automatic disqualification, and an allotment reduction for the period of disqualification;

(*4*) An opportunity for the accused individual to specify whether or not he/she admits to the facts as presented by the State agency. This opportunity shall consist of the following statements, or statements developed by the State agency which have the same effect, and a method for the individual to designate his/her choice:

(*i*) I admit to the facts as presented, and understand that a disqualification penalty will be imposed if I sign this waiver; and

(*ii*) I do not admit that the facts as presented are correct. However, I have chosen to sign this waiver and understand that a disqualification penalty will result;

(*5*) The name and phone number of the disqualification hearing official responsible for resolving his/her case, and that the accused individual should contact that person to discuss the case if he/she does not understand the charges or the implications of waiving his/her right to an administrative disqualification hearing; and

(6) The fact that the remaining household members, if any, will be held responsible for repayment of the resulting claim.

(C) The State agency shall develop an advance notice of hearing form, as described in paragraph (f)(2)(iii) of this section, which also contains the information required by this section for notifying a household member suspected of intentional misrepresentation or fraud of the possibility to waive his/her right to an administrative disqualification hearing.

(ii) *Imposition of disqualification penalties.* If the household member suspected of intentional misrepresentation or fraud signs the waiver of right to an administrative disqualification hearing and the signed waiver is received within the timeframes specified by the State agency, the household member shall be disqualified in accordance with the disqualification periods specified in paragraph (b) of this section. The period of disqualification shall begin with the first month which follows the date the household member receives written notification of the disqualification. And, the same act of intentional misrepresentation or fraud which occurred over a period of time shall not be separated so that separate penalties can be imposed. No further administrative appeal procedure exists after an individual waives his/her right to an administrative disqualification hearing and a disqualification penalty has been imposed. The disqualification penalty cannot be changed by a subsequent fair hearing decision. The household member, however, is entitled to seek relief in a court having appropriate jurisidiction. The period of disqualification may be subject to stay by a court of appropriate jurisdiction or other injunctive remedy.

(iii) *Notification of disqualification.* The State agency shall mail a written notice to the household member prior to disqualification. The notice shall conform to the requirements for notification of a hearing decision specified in paragraph (f)(2)(ix) of this section. A written demand letter for restitution, as described in §273.18(d)(3), shall also be sent.

(iv) *Waiver of hearing at local level.* Any State agency which has adopted the two-tiered approach for administrative disqualification hearings may also provide for use at the local level of the waiving of right to disqualification hearing procedures outlined in this section.

(g) *Court imposed disqualifications.* (1) A court of appropriate jurisdiction may be requested by the State, a political subdivision of the State, or the United States as prosecutor or plaintiff to order an individual disqualified from participation in the program for the disqualification periods specified in paragraph (b) of this section if the court finds that individual guilty of civil or criminal misrepresentation or fraud.

(2) State agencies are encouraged to refer for prosecution under State or local statutes those individuals suspected of committing intentional misrepresentation or fraud, particularly if large amounts of food stamps are suspected of having been obtained by intentional misrepresentation or fraud, or the individual is suspected of committing more than one act of intentional misrepresentation or fraud. The State agency shall confer with its legal representative to determine the types of cases which will be accepted for possible prosecution. State agencies shall also encourage State and local prosecutors to recommend to the courts that a disqualification penalty as provided in section 6(b) of the Food Stamp Act be imposed in addition to

any other civil or criminal penalties for such violations.

(3) State agencies shall disqualify an individual found guilty of intentional misrepresentation or fraud for the length of time specified by the court. If the court fails to impose a disqualification period, the State agency shall impose a disqualification period in accordance with the provisions in paragraph (b) of this section, unless contrary to the court order. If disqualification is ordered but a date for initiating the disqualification period is not specified, the State agency shall initiate the disqualification period for currently eligible individuals with the first month following the date the disqualification was ordered. Any other court-imposed disqualification shall begin the first month following the date the court found a currently eligible individual guilty of civil or criminal misrepresentation or fraud. If the individual is not eligible for the program at the time the disqualification period is to begin, the period shall be postponed until the individual applies for and is determined eligible for benefits.

(4) If the court finds that the household member committed misrepresentation or fraud, the State agency shall mail a written notice to the household member. The notice shall be sent prior to disqualification, whenever possible. The notice shall inform the household member of the decision and the date disqualification will take effect. The notice shall also advise the remaining household members, if any, of the allotment they will receive during the period of disqualification or that they must reapply because the certification period has expired. The procedures for handling the income and resources of the disqualified member are described in § 273.11(c). In addition, the State agency shall include the written demand letter for restitution described in § 273.18(d)(3).

(h) *Reporting requirements.* (1) Each State agency shall report to FNS information concerning individuals disqualified for intentional misrepresentation or fraud through an administrative disqualification proceeding or by a court of appropriate jurisdiction. This information shall be submitted to FNS so that it is received no later than 30 days after the date the disqualification took effect.

(2) Each State agency shall report information concerning each individual disqualified for intentional misrepresentation or fraud in a format designed by FNS. This format shall include the individual's social security number and full name, the nature of the offense for which the individual was disqualified, the State in which the disqualification took place, the date on which the disqualification took effect, and the length of the disqualification period imposed.

(3) Each State agency shall submit the required information on each individual disqualified for intentional misrepresentation or fraud through an automated reporting system and in machine readable form, in accordance with procedures to be specified by FNS.

(4) All the data submitted by State agencies will be available for use by any State Welfare Agency. State agencies may use the data for the following:

(i) To determine the eligibility of individual program applicants; or

(ii) To ascertain the appropriate penalty to impose in a case under consideration, based on past disqualifications.

(5) The disqualification of an individual for intentional misrepresentation or fraud in one political jurisdiction shall be valid in another. However, fraud disqualifications which occurred prior to the implementation of the penalties contained in these regulations shall not be considered when determining the appropriate penalty to impose in a case under consideration, regardless of where the disqualification took place.

(i) *Reversed disqualifications.* In cases where the determination of intentional misrepresentation or fraud is reversed by a court of appropriate jurisdiction, the State agency shall reinstate the individual in the program if the household is eligible. The State agency shall restore benefits that were lost as a result of the disqualification in accordance with the procedures specified in § 273.17(e).

7. Section 273.18 is revised to read as follows:

§ 273.18 Claims against households.

(a) *Establishing claims against households.* The State agency shall establish a claim against any household that has received more food stamp benefits than it is entitled to receive.

(1) *Inadvertent household error claims.* A claim shall be handled as an inadvertent household error claim if the overissuance was caused by a misunderstanding or unintended error on the part of the household.

(2) *Administrative error claims.* A claim shall be handled as an administrative error claim if the overissuance was caused by a State agency action or failure to take action.

(3) *Intentional misrepresentation or fraud claims.* A claim shall be handled as an intentional misrepresentation or fraud claim only if an administrative disqualification hearing official or a court of appropriate jurisdiction has determined that a household member committed intentional misrepresentation or fraud as defined in § 273.16 (c) or (d). Prior to the determination of intentional misrepresentation or fraud, the claim against the household shall be handled as an inadvertent household error claim.

(b) *Criteria for establishing inadvertent household and administrative error claims.* The State agency shall take action to establish a claim against any household that received an overissuance due to an inadvertent household or administrative error if the criteria specified in this paragraph have been met. At a minimum, the State agency shall take action on those claims for which 12 months or less have elapsed between the month on overissuance occurred and the month the State agency discovered a specific case involving an overissuance. The State agency may choose to take action on those claims for which more than 12 months have elapsed.

(1) Instances of inadvertent household error which may result in a claim include, but are not limited to, the following:

(i) The household unintentionally failed to provide the State agency with correct or complete information; or

(ii) The household unintentionally failed to report to the State agency changes in its household circumstances.

(2) Instances of administrative error which may result in a claim include, but are not limited to, the following:

(i) A State agency failed to take prompt action on a change reported by the household;

(ii) A State agency incorrectly computed the household's income or deductions, or otherwise assigned an incorrect allotment;

(iii) A State agency incorrectly issued duplicate ATP's to a household which were subsequently transacted;

(iv) The State agency determined a household eligible or provided it with more benefits than it was entitled to receive pending a fair hearing decision;

(v) The State agency continued to provide a household food stamp allotments after its certification period had expired without benefit of a reapplication determination; or

(vi) The State agency failed to provide a household a reduced level of food stamp benefits because its public assistance grant changed.

(3) Neither an administrative error claim nor an inadvertent household error claim shall be established if an overissuance occurred as a result of the following:

(i) A State agency failed to insure that a household fulfilled the following procedural requirements:

(A) Signed the application form,

(B) Completed a current work registration form, or

(C) Was certified in the correct project area;

(ii) The household transacted an expired ATP, unless the household altered its ATP.

(c) *Calculating the amount of claims.* (1) *Inadvertent household and administrative error claims.* (i) For each month that a household received an overissuance due to an inadvertent household or administrative error, the State agency shall determine the correct amount of food stamp benefits the household was entitled to receive. The amount of the inadvertent household or administrative error claim shall be calculated based, at a minimum, on the amount of overissuance which occurred during the 12 months preceding the date the overissuance was discovered. However, the State agency may choose to calculate the amount of the claim back to the month the inadvertent household or administrative error occurred, regardless of the length of time that elapsed until the inadvertent household or administrative error was discovered. In cases involving reported changes, the State agency shall determine the month the overissuance initially occurred as follows:

(A) If, due to an inadvertent error on the part of the household, the household failed to report a change in its household circumstances within 10 days of the date the change became known to the household, the first month affected by the household's failure to report shall be the month after the month in which the change occurred.

(B) If the household reported a change within the 10-day limit, but the State agency did not act on the change within the required timeframes, the first month affected by the State's failure to act shall be the first month the State agency should have made the change effective. Therefore, if a notice of adverse action was required but was not sent, the State agency shall assume for the purpose of calculating the claim that the maximum advance notice period as provided in § 273.13(a)(1) would have expired without the household requesting a fair hearing.

(ii) If the household received a larger allotment than it was entitled to receive, the State agency shall establish a claim against the household equal to the difference between the allotment the household received and the allotment the household should have received.

(iii) After calculating the amount of the inadvertent household or administrative error claim, the State agency shall offset the amount of the claim against any amounts which have not yet been restored to the household in accordance with § 273.17. The State agency shall then initiate collection action for the remaining balance, if any.

(2) *Intentional misrepresentation and fraud claims.* For each month that a household received an overissuance due to an act of intentional misrepresentation or fraud, the State agency shall determine the correct amount of food stamp benefits, if any, the household was entitled to receive. The amount of the intentional misrepresentation or fraud claim shall be calculated back to the month the act of intentional misrepresentation or fraud occurred, regardless of the length of time that elapsed until the determination of intentional misrepresentation or fraud was made. If the household member is determined to have committed intentional misrepresentation or fraud by intentionally failing to report a change in its household's circumstances, the first month benefits were overissued shall be the month after the month in which the change occurred. Once the amount of the intentional misrepresentation or fraud claim is established, the State agency shall offset the claim against any amount of lost benefits that have not yet been restored to the household in accordance with § 273.17.

(d) *Collecting claims against households.* (1) *Criteria for initiating collection action on inadvertent household and administrative error claims.* (i) State agencies shall initiate collection action on all inadvertent household or administrative error claims unless the claim is collected through offset or one of the following conditions apply:

(A) The total amount of the claim is less than $35, and the claim cannot be recovered by reducing the household's allotment.

(B) The State agency has documentation which shows that the household cannot be located.

(ii) The State agency may postpone collection action on inadvertent household error claims in cases where an overissuance is being referred for possible prosecution or for administrative disqualification, and the State agency determines that collection action will prejudice the case.

(2) *Criteria for initiating collection action on intentional misrepresentation and fraud claims.* If a household member is found to have committed intentional misrepresentation or fraud (by an administrative disqualification hearing official or a court of appropriate jurisdiction) the State agency shall initiate collection action against the individual's household. In addition, a personal contact with the household shall be made, if possible. The State agency shall initiate such collection unless the household has repaid the overissuance already, the State agency has documentation which shows the household cannot be located, or the State agency determines that collection action will prejudice the case against a household member referred for prosecution. The State shall initiate collection action for an unpaid or partially paid claim even if collection action was previously initiated against the household while the claim was being handled as an inadvertent household error claim. In cases where a household member was found guilty of misrepresentation or fraud by a court, the State agency shall request that the matter of restitution be brought before the court.

(3) *Initiating collection action on claims.* (i) State agencies shall initiate collection action by sending the household a written demand letter which informs the household of the amount owed, the reason for the claim, the period of time the claim covers, any offsetting that was done to reduce the claim, how the household may pay the claim, and the household's right to a fair hearing if the household disagrees with the amount of the claim. For inadvertent household error and intentional misrepresentation or fraud claims, the household shall also be informed of the length of time the household has to decide which method of repayment it will choose and inform the State agency of its decision and of the fact that the household's allotment will be reduced if the household fails to agree to make restitution. In addition, any household against which the State agency has initiated collection action shall be informed of its right to request renegotiation of any repayment schedule to which the household has agreed in accordance with paragraph (g)(2) of this section should the household's economic circumstances change. The demand letter shall provide space for the household to indicate the method of repayment and a signature block.

(ii) Each State agency shall develop a written demand letter for initiating collection action on claims which contains the information required by this section. A model form letter for demanding restitution of an overissuance is available from FNS for use by any State agency.

(iii) If the household pays the claim, payments shall be accepted and submitted to FNS in accordance with the procedures outlined in paragraphs (g) and (h) of this section.

(4) *Action against households which fail to respond.* (i) If the household against which collection action has been initiated for repayment of an inadvertent household error or intentional misrepresentation or fraud claim is currently participating in the program and does not respond to the written demand letter within 30 days of the date of receipt, the State agency shall reduce the household's food stamp allotment.

(ii) If any nonparticipating household or if any currently participating household against which collection action has been initiated for repayment of an administrative error claim does not respond to the first demand letter, additional demand letters shall be sent at reasonable intervals, such as 30 days, until the household has responded by paying or agreeing to pay the claim, or until the criteria for suspending collection action, as specified in paragraph (e) of this section, have been met.

(iii) The State agency may also pursue other collection actions, as appropriate, to obtain restitution of a claim against any household which fails to respond to a written demand letter.

(e) *Suspending and terminating collection of claims.* (1) *Suspending collection of inadvertent household and administrative error claims.* An inadvertent household or administrative error claim may be suspended if no collection action was initiated because of conditions specified in paragraph (d)(1)(i) of this section. If collection action was initiated, and at least one demand letter has been sent, further collection action of an inadvertent household error claim against a nonparticipating household or of any administrative error claim may be suspended when:

(i) The household cannot be located; or

(ii) The cost of further collection action is likely to exceed the amount that can be recovered.

(2) *Suspending collection of intentional misrepresentation and fraud claims.* The State agency may suspend collection action on intentional misrepresentation or fraud claims at any time if it has documentation that the household cannot be located. If the State agency has sent at least one demand letter for claims under $100, at least two demand letters for claims betwen $100 and $400, and at least three demand letters for claims of more than $400, further collection action of any intentional misrepresentation or fraud claim against a nonparticipating household may be suspended when the cost of further collection action is likely to exceed the amount that can be recovered.

(3) *Terminating collection of claims.* A claim may be determined uncollectible after it is held in suspense for 3 years. The State agency may use a suspended or terminated claim to offset benefits in accordance with § 273.17.

(f) *Change in household composition.* (1) *Inadvertent household and administrative error claims.* The State agency shall initiate collection action against the household which received the overissuance for which the inadvertent household or administrative error claim was established. If a change in household membership occurs, the State agency shall initiate collection action against the household containing a majority of the individuals who were household members at the time the error occurred.

(2) *Intentional misrepresentation and fraud claims.* The State agency shall initiate collection action against the household which contained the household member found to have committed intentional misrepresentation or fraud and which received the overissuance for which the claim was established. If a change in household membership occurs, the State agency shall initiate collection action against the household containing a majority of the individuals who were household members at the time of the act(s) of intentional misrepresentation or fraud occurred.

(g) *Method of collecting payments.* State agencies shall collect payments for claims against households as follows:

(1) *Lump sum.* (i) If the household is financially able to pay the claim at one time, the State agency shall collect a lump sum cash payment. However, the household shall not be required to liquidate all of its resources to make this one lump sum payment.

(ii) If the household is financially unable to pay the entire amount of the claim at one time and prefers to make a lump sum cash payment as partial payment of the claim, the State agency shall accept this method of payment.

(iii) If the household chooses to make a lump sum payment of food stamp coupons as full or partial payment of the claim, the State agency shall accept this method of repayment.

(2) *Installments.* (i) The State agency shall negotiate a payment schedule with the household for repayment of any amounts of the claim not repayed through a lump sum payment. Payments shall be accepted by the State agency in regular installments. The household may use food stamp coupons as full or partial payment of any installment. If the full claim or remaining amount of the claim cannot be liquidated in 3 years, the State agency may compromise the claim by reducing it to an amount that will allow the household to pay the claim in 3 years. A State agency may use the full amount of the claim (including any amount compromised) to offset benefits in accordance wih § 273.17.

(ii) If the household fails to make a payment in accordance with the established repayment schedule, (either a lesser amount or no payment), the State agency shall send the household a notice explaining that no payment or an insufficient payment was received. The notice shall inform the household that it may contact the State agency to discuss renegotiation of the payment schedule. The notice shall also inform the household that unless the overdue payments are made or the State agency is contacted to discuss renegotiation of the payment schedule, the allotment of a currently participating household against which an inadvertent household error or intentional misrepresentation or fraud claim has been established may be reduced without a notice of adverse action.

(iii) If the household responds to the notice, the State agency shall take one of the following actions as appropriate:

(A) If the household makes the overdue payments and wishes to continue payments based on the previous schedule, permit the household to do so;

(B) If the household requests renegotiation, and if the State agency concurs with the request, negotiate a new payment schedule;

(C) If the household requests renegotiation of the amount of its repayment schedule but the State agency believes that the household's economic circumstances have not changed enough to warrant the requested settlement, the State agency may continue renegotiation until a settlement can be reached.

(iv) If a currently participating household against which an inadvertent household error or intentional misrepresentation or fraud claim has been established fails to respond to the notice, the State agency shall invoke allotment reduction. The State agency may also invoke allotment reduction if such a household responds by requesting renegotiation of the amount of its repayment schedule but the State agency believes that the household's economic circumstances have not

changed enough to warrant the requested settlement. If allotment reduction is invoked, no notice of adverse action is required.

(v) In cases where the household is currently participating in the program and a payment schedule is negotiated for repayment of an inadvertent household error or intentional misrepresentation or fraud claim, the State agency shall ensure that the amount of the claim recovered through installment payments is not less than the amount which could be recovered through allotment reduction.

(3) *Reduction in food stamp allotment.* State agencies shall collect payments for inadvertent household error claims and intentional misrepresentation or fraud claims from households currently participating in the program by reducing the household's food stamp allotment. Prior to reduction, the State agency shall inform the household of the amount of food stamps to be recovered each month and of the availability of other methods of repayment. If the household requests to make a lump sum cash and/or food stamp coupon payment as full or partial payment of the claim, the State agency shall accept this method of payment. The State agency shall reduce the household's allotment to recover any amounts of the claim not repayed through a lump sum cash and/or food stamp coupon payment, unless a payment schedule has been negotiated with the household. The provision for a $10 minimum benefit level for households with one and two members only as described in § 273.10(e)(2)(ii)(B), shall apply to the allotment prior to reduction in accordance with this paragraph. If the full or remaining amount of the claim cannot be liquidated in 3 years, the State agency may compromise the claim by reducing it to an amount that will allow the household to make restitution within 3 years. A State agency may use the full amount of the claim (including any amount compromised) to offset benefits in accordance with § 273.17. The amount of food stamps to be recovered each month through allotment reduction shall be determined as follows:

(i) *Inadvertent household error claims.* For inadvertent household error claims, the amount of food stamps shall be the greater of 10 percent of the household's monthly allotment or $10 per month.

(ii) *Intentional misrepresentation or fraud claims.* For intentional misrepresentation or fraud claims, the amount of food stamps shall be the lesser of 25 percent of the household's monthly allotment *or* the guilty individual's pro rata share of the entitlement. Recovery of less than these amounts shall be accepted only if it results in equal increments or if the full amount can be recovered within a year using a lesser percentage.

(h) *Submission of payments.* (1) The State agency shall retain the value of funds collected for inadvertent household error, intentional misrepresentation or fraud, or administrative error claims. This amount includes the total value of allotment reductions to collect inadvertent household error and intentional misrepresentation or fraud claims, but does not include the value of the reduction of allotments resulting from a disqualification. The States' letter of credit will be amended on a quarterly basis to reflect the States' retention of 25 percent of the value of inadvertent household error claims and 50 percent of the value of intentional misrepresentation or fraud claims collected, as well as full retention by FNS of all administrative error overissuance recoveries.

(2) Each State agency shall submit quarterly a Form FNS–209, Status of Claims Against Households, to detail the State's activities relating to claims against households. This report is due no later than 30 days after the end of each calendar year quarter and shall be submitted to FNS even if the State agency has not collected any payments. In addition to reporting the amount of funds recovered from inadvertent household error and intentional misrepresentation or fraud claims each quarter on Form FNS–209, the State agency shall also report these amounts on other letter of credit documents as required. In accounting for inadvertent household error and intentional misrepresentation or fraud claims collections, the State agency shall include cash repayments and the value of allotments recovered or offset by restoration of lost benefits. However, the value of allotments reduced during periods of disqualification shall not be considered recovered allotments and shall not be used to offset an intentional misrepresentation or fraud claim. In addition, each State agency shall establish controls to ensure that officials responsible for intentional misrepresentation or fraud determinations will not benefit from the State share of recoveries.

(3) The State agency may retain any amounts recovered on a claim being handled as an inadvertent household error claim prior to obtaining a determination by an administrative disqualification hearing official or a court of appropriate jurisdiction that intentional misrepresentation or fraud was committed at the rate applicable to intentional misrepresentation or fraud claims, once the determination is obtained. In such cases, the State agency shall include a note in the remarks section of the quarterly reporting form specified in paragraph (h)(2) of this section which shows the additional amounts being retained on amounts already recovered as a result of the change in status of the claim.

(4) If a household has overpaid a claim, the State agency shall pay the household any amounts overpaid. The household shall be paid by whatever method the State agency deems appropriate considering the household's circumstances. In cases where payment is made from funds collected through overissuance recoveries, the State agency shall include a note in the remarks section of the quarterly reporting form specified in paragraph (h)(2) of this section which shows the amounts which were paid to households for overpaid claims. The State agency shall also include a note in the remarks section of the quarterly reporting form which identifies any claims for which the State agency retained funds and later paid the household for an overpayment.

(5) In cases where FNS has billed a State agency for negligence, any amounts collected from households which were caused by the State's negligence will be credited by FNS. When submitting these payments, the State agency shall include a note in the remarks section of the quarterly reporting form specified in paragraph (h)(2) of this section which shows the amount that should be credited against the State's bill.

(6) The State agency shall destroy any coupons or coupon books collected from households as payment for claims in accordance with the procedures for destruction of unusable coupons described in § 274.8(b).

(i) *Claims discharged through bankruptcy.* State agencies shall act on behalf of, and as, FNS in any bankruptcy proceeding against bankrupt households owing food stamps claims. State agencies shall possess any rights, priorities, interests, liens or privileges, and shall participate in any distribution of assets, to the same extent as FNS. Acting as FNS, State agencies shall have the power and authority to file objections to discharge, proofs of claims, exceptions to discharge, petitions for revocation of discharge, and any other documents, motions or objections which FNS might have filed. Any amounts collected under this authority shall be

transmitted to FNS as provided in paragraph (h) of this section.

(j) *Accounting procedures.* Each State agency shall be responsible for maintaining an accounting system for monitoring claims against households. At a minimum, the accounting system shall be designed to readily accomplish the following:

(1) Document the circumstances which resulted in a claim, the procedures used to calculate the claim, the methods used to collect the claim and, if applicable, the circumstances which resulted in suspension or termination of collection action.

(2) Identify those situations in which an amount not yet restored to a household can be used to offset a claim owed by the household.

(3) Identify those households that have failed to make installment payments on their claims.

(4) Document how much money was collected in payment of a claim and how much was submitted to FNS.

(k) *Interstate Claims Collection.* In cases where a household moves out of the area under a State agency's jurisdiction, the State agency should initiate or continue collection action against the household for any overissuance to the household which occurred while it was under the State agency's jurisdiction. The State agency which overissued benefits to the household shall have the first opportunity to collect any overissuance. However, if the State agency which overissued benefits to the household does not take prompt action to collect, then the State agency which administers the area into which the household moves should initiate action to collect the overissuance. Prior to initiating action to collect such overissuances, the State agency which administers the area into which the household moves shall contact the State agency which overissued benefits to ascertain that it does not intend to pursue prompt collection. The State share of any collected claims, as provided in § 273.18(h), shall be retained by the State agency which collects the overissuance.

PART 276—STATE AGENCY LIABILITIES AND FEDERAL SANCTIONS

8. § 276.2, paragraph (c) is revised to read as follows:

§ 276.2 State agency liabilities.

* * * * *

(c) *Cash losses.* State agencies are liable to FNS for cash losses when money collected by State agencies from participant claims has been lost, stolen, or otherwise not remitted to FNS by the State agency in accordance with the provisions of § 273.18(h). The amount of such losses shall be determined from sources such as audits, Performance Reporting System reviews, Federal reviews and investigations.

* * * * *

(91 Stat. 958 (7 U.S.C. 2011–2029); and secs. 112, 113 and 114 of Pub. L. 97–35, 95 Stat. 362 (7 U.S.C. 2015, 2022, and 2025))

(Catalog of Federal Domestic Assistance Programs No. 10551, Food Stamp Program)

Dated: June 16, 1982.

Samuel J. Cornelius,

Administrator.

[FR Doc. 82-16658 Filed 6-18-82; 8:45 am]

BILLING CODE 3410-30-M

Agricultural Marketing Service

7 CFR Parts 1011, 1046, and 1098

[Docket Nos. AO-251-A23, AO-123-A48, and AO-184-A43]

Milk in the Tennessee Valley, Louisville-Lexington-Evansville and Nashville, Tennessee, Marketing Areas; Recommended Decision and Opportunity To File Written Exceptions on Proposed Amendments to Tentative Marketing Agreements and to Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision recommends the amendment of the Louisville-Lexington-Evansville order to permit operators of country supply plants to count shipments directly from farms to pool city distributing plants toward meeting up to one-half of the shipments required to maintain pool plant status for the country plant. Also, the decision would amend the Nashville, Tennessee, order to allow diversions of milk between pool plants and provide a procedure whereby a proprietary handler could pay independent producers directly rather than through the market administrator.

This decision further finds that the adoption of a variety of other proposals considered at a public hearing held October 21–23, 1981, in Louisville, Kentucky, is not needed to maintain orderly marketing conditions. The proposals not adopted would have permitted the diversion of limited amounts of milk from the Nashville and Tennessee Valley markets to the Louisville market for Class I use; would have amended the location adjustments applicable to producer milk under the Nashville and Louisville orders; and would have changed the "touch-base" and diversion limits of the Nashville and Louisville orders.

One additional proposal dealing with pooling standards for distributing plants regulated under the Nashville order was adopted in a previous emergency final decision, issued January 21, 1982 (47 FR 2999). The order subsequently was amended effective February 1, 1982.

DATE: Comments are due on or before July 12, 1982.

ADDRESS: Comments (four copies) should be filed with the Hearing Clerk, Room 1077, South Building, United States Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, Dairy Division, Agricultural Marketing Service, United States Department of Agriculture, Washington, D.C. 20250, 202/447-4829.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

This action will not have a significant economic impact on a substantial number of small entities. The amendments would promote orderly marketing of milk by producers and regulated handlers.

Prior documents in this proceeding:

Notice of Hearing: Issued September 4, 1981; published September 11, 1981 (46 FR 45354).

Correction: Published September 22, 1981 (46 FR 46813).

Notice of Rescheduled Hearing: Issued September 24, 1981, published September 29, 1981 (46 FR 47588).

Suspension of Rule: Issued November 24, 1981; published November 30, 1981 (46 FR 58064).

Emergency Partial Final Decision: Issued January 15, 1982, published January 21, 1982 (47 FR 2999).

Final Order: Issued January 26, 1982, published January 29, 1982 (47 FR 4228).

Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to proposed amendments to the tentative marketing agreements and orders regulating the handling of milk in the Tennessee Valley, Louisville-Lexington-Evansville and Nashville, Tennessee, marketing areas. This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.),* and the applicable rules of practice and procedure governing the

formulation of marketing agreements and marketing orders (7 CFR Part 900).

Interested parties may file written exceptions to this decision with the Hearing Clerk, U.S. Department of Agriculture, Washington, D.C., 20250, on or before 21 days after publication in the Federal Register. The exceptions should be filed in quadruplicate. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The proposed amendments set forth below are based on the record of a public hearing held at Louisville, Kentucky, on October 21–23, 1981, pursuant to the notice thereof issued September 4, 1981 (46 FR 45354), the correction published September 22, 1981 (46 FR 46813), and the notice of rescheduled hearing issued on September 24, 1981 (46 FR 47588).

The material issues on the record of hearing relate to:

1. Diversion of limited amounts of Class I milk from the Nashville and Tennesseee Valley markets to the Louisville market. A corollary issue involves changing the out-of-area location adjustments of the Nashville order.

2. Location adjustments applicable to producer milk under the Nashville and Louisville orders.

3. Pooling standards for "country" plants under the Louisville order.

4. Producer delivery requirements and diversion limits of the Nashville and Louisville orders.

5. The provisions of the Nashville order relating to the mechanism for paying producers.

6. Diversions between pool plants under the Nashville order.

7. Pooling standards for distributing plants under the Nashville order.

8. Whether án emergency exists to warrant the omission of a recommended decision on issue No. 7.

Issues Nos. 7 and 8 were dealt with in an earlier decision. The remaining issues. Nos. 1–6, are considered in this decision.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. *Diversion of limited amounts of Class I milk from the Nashville and Tennessee Valley markets to the Louisville market.*

The Nashville and Tennessee Valley orders should not be amended to accommodate diversions of producer milk for Class I use to plants fully regulated under another Federal order. Also, the Louisville order should not be amended to allow milk received at pool city (distributing) plants directly from farms to be excluded from the definition of producer milk if the milk is considered producer milk under another Federal order. Each of these orders now provides that milk received at a pool plant directly from a farm be considered producer milk under the order which regulates the plant where the milk is first received, unless the milk is received as a diversion from an other order plant for Class II or Class III use.

Kraft, Inc., which operates pool plants in all three markets, including pool distributing plants in the Nashville and Louisville markets (Kraft's fluid milk operations also are known by the name Sealtest), initiated several related proposals relative to this issue. Specifically, one of Kraft's proposals would allow a Nashville handler to divert milk to an other order distributing plant for Class I use. Such diversions would be limited to 25 percent of the handler's receipts for the previous month. Milk of an individual producer would not be eligible for such diversion unless at least 50 percent of the producer's milk was received at a Nashville order pool plant. A related proposal would allow milk to be received at pool city plants under the Louisville order directly from the farm without becoming producer milk under that order if such milk was considered producer milk under another Federal order. Another Kraft proposal would change the out-of-area location adjustments of the Nashville order for locations in Kentucky and Indiana so that any milk diverted from Nashville to Louisville for Class I uses would be priced under the Nashville order at the same Class I price that is applicable at those locations under the Louisville order. These proposals were designed to allow milk from producers who regularly ship to Kraft's plant in Nashville to be diverted to Kraft's bottling plant in Louisville for Class I use and remain producer milk under the Nashville order.

Kraft claimed that the need for order changes to accommodate Class I diversions is a product of two circumstances: (1) Kraft's failure to reach an agreement with Dairymen, Inc., the major cooperative association in these markets, for a supply of milk for its Louisville plant, coupled with the lack of economical alternative milk supplies in the Louisville market, and (2) differences between the seasonal production incentive plans under the Nashville and Louisville orders that make it difficult to switch producers between the orders on a seasonal basis without reducing their minimum Federal order payments.

Kraft's witness testified that since September 1980, when negotiations with Dairymen, Inc., failed to result in an agreement acceptable to Kraft, the handler has been unable to obtain an adequate milk supply for its Louisville plant from local producers. The spokesman stated that from September 1980 through August 1981, Kraft purchased milk from producers in Wisconsin to meet the Louisville plant's needs. Since September 1981, the Louisville plant has attempted to meet its demand for bulk milk from local producers. The witness indicated that Kraft's independent producers on the Louisville order produce enough milk to meet the needs of its Louisville plant. Nevertheless, he claimed, many of these producers' farms are located so far away from Louisville that regular shipment of their milk to the Louisville plant is not economically feasible. He further stated that many of Kraft's producers regularly ship their milk to another city plant in Lexington, Kentucky, under a contractual arrangement Kraft has with the operator of that plant.

Kraft's witness testified that Kraft currently transfers significant quantities of milk from its Nashville plant to the Louisville plant to remedy the deficit supply situation. He maintained that adoption of the proposals would, within limits, allow much of the milk now being transferred to Louisville to move directly from the farm to the Louisville plant without becoming producer milk under the Louisville order.

The Kraft spokesman indicated that about 50 producers who historically have been associated with Kraft's Nashville plant are located in South Central Kentucky about halfway between Louisville and Nashville. He stated that Kraft would like to ship some of the milk produced by these farmers directly to its plant in Louisville. However, the witness testified that these producers have been associated with the Nashville market for many years and prefer to be paid on the basis of the Nashville order's base-excess payment plan rather than the Louisville (take out-pay back) payment plan of the Louisville order. He also pointed out that if these producers are shifted between the Nashville and Louisville orders on a month-to-month basis the difference between the base-excess plan and the Louisville plan could significantly reduce the minimum Federal order prices for their milk.

Kraft's witness stated that the company has accommodated these 50

producers by continuing to pool their milk on the Nashville order by first receiving the milk at its Nashville plant and then transferring it to its Louisville plant. The spokesman presented data to indicate that for the past several months Kraft had transferred as much as 1.5 million pounds of milk per month from Nashville to Louisville. He testified that such movements cost Kraft approximately 75 cents per hundredweight but that this cost is still less than the alternative of delivering directly to the Louisville plant the milk of other producers currently pooled on the Louisville order.

Kraft's witness characterized the differences between the producer payment plans of the Nashville and Louisville orders as an impediment to the efficient movement of milk. He stated that this impediment is especially strong for proprietary handlers because they do not have the privilege of reblending that the Act extends to cooperative associations.

According to Kraft's witness, Kraft's proposals would allow up to half of the milk of the 50 producers to be delivered directly from farms to the Louisville plant but remain pooled on the Nashville order. Thus, Kraft could accommodate its producers who wish to be paid on a base-excess plan while saving Kraft the expense of the Nashville-to-Louisville haul now needed to keep the milk pooled under the Nashville order.

Dairymen, Inc. (DI), opposed the adoption of Kraft's proposals. DI's witness stated that the diversion provisions of Federal orders are intended to provide for the orderly disposal of surplus milk supplies. The witness asserted that allowing diversion for Class I use would provide an opportunity for the reserve supplies of one market to displace local supplies in another market, thus allowing the producers of the diverting market to obtain the benefit of the other market's Class I sales. The witness stated that the cooperative supports the usual procedure of pooling a producer's milk on the order that regulates the plant that first receives the milk when some of the milk in the shipment is classified as Class I.

Although DI's spokesman stated that the cooperative opposed any accommodation of Class I diversions, DI proposed that if the Louisville and Nashville orders are amended to allow such movements, then the Tennessee Valley order also should be amended to accommodate Class I diversions to other order plants. The witness indicated that certain DI producers are located such that their milk could be diverted easily from the Tennessee Valley market to the Louisville market for fluid use.

The pool plant qualification and producer milk sections of Federal orders generally have been structured to assure that producers who provide a regular supply of milk for a market share in the market's higher-valued Class I sales by having their milk pooled under the order for that market. One aspect of these provisions in most orders is to pool a producer's milk under the order which regulates the plant that first receives the milk from the farm. If a producer should ship milk during a month to plants regulated by different orders, that farmer is a producer on each such market. The only general exception to this rule has been where a producer's milk is diverted for surplus disposition from a pool plant under one order to a plant regulated by a different order. It has long been held under the order program that milk which is diverted for surplus disposition should remain producer milk on the diverting market since such milk represents the reserve supply for that market. If the milk were moved to another market for surplus disposal and pooled there, the returns to producers regularly supplying this other market would be adversely affected because of the lower-valued use of the milk.

By contrast, most orders provide that if any milk diverted to another market is classified as Class I in the receiving market, it becomes producer milk on that market and is pooled there. The rationale for pooling diverted milk on the receiving market when any of it is classified as Class I is that such classification shows that the milk is serving the fluid needs of that market and, thus, should be treated like any other regular source of supply.

Any departure from this regulatory approach regarding diversions of milk between Federal order markets should be based on a demonstration that this is essentially the only means of dealing with the problems of a particular market situation and that the change is necessary to maintain orderly marketing conditions for producers and handlers. This was not demonstrated in the record for this proceeding.

If Kraft's proposals were adopted, and the volume of diversions remained no greater than current transfers, the significant effects would be (1) the elimination of Kraft's cost of tranferring milk from the Nashville plant to the Louisville plant, and (2) lower returns to the producers whose milk is diverted because of the minus location adjustment that would be applicable for deliveries to Louisville. There would be no substantial change in transportation costs to producers because the producers are almost centrally located between Nashville and Louisville. There also would be no change in the classification of the milk delivered to Louisville, because the Louisville order classifies receipts of transfers and diversions on the same basis. If volumes remain unchanged, the substitution of diversions for transfers would have no perceptible impact on the producer blend prices of either market.

The record shows that Kraft could save as much as $10,000 per month if it eliminated the transfer of milk from Nashville to Louisville. At the same time, producers who would have production diverted to Louisville would receive a lower return under the order because their Louisville deliveries would be subject to a minus location adjustment of 15 cents per hundredweight. However, Kraft probably could more than compensate those producers from the savings generated by its reduced transportation expenses if it wished to do so.

The above discussion is premised on the assumption that the volume of milk to be diverted to Louisville for Class I would not be significantly different from present transfers. However, the record shows (although the figures are not precise) that Kraft's proposed limit on Class I diversions of 25 percent of a handler's supply in the previous month would, under present operating conditions, allow Kraft to divert over twice the present volume of transfers. If such an increase were to occur, and this increase represented a reduction of Class I sales for producers on the Louisville market, the Louisville blend price could be lowered. In addition, the adoption of DI's proposal with respect to the Tennessee Valley order could put even more downward pressure on the Louisville blend price, which would adversely affect producers who regularly supply the Louisville market.

Furthermore, the adoption of Kraft's proposals could result in false production signals to producers in the region. The milk that Kraft would divert to Louisville could be considered surplus to the usual fluid needs of the Nashville market. Normally, such surplus milk supplies would go into manufacturing uses and would be priced below the Class I price. The downward impact on the Nashville blend price would discourage excess production of reserve supplies. However, to the extent that this milk would be used to supply the fluid needs of the Louisville market, the blend price of the Nashville order would be enhanced. Any such increase in the Nashville blend price would give

producers a signal that additional milk supplies are needed to meet the demand of the fluid market when in fact the Nashville market's regular fluid sales are not increasing. Since Kraft's proposals would make it easier to use Nashville reserve supplies for fluid use in Louisville, they would help foster a price level that would not reflect actual demand for milk in the Nashville market.

It is recognized that in the absence of the diversion provisions proposed by Kraft the different producer payment plans in the Nashville and Louisville markets can result in independent producers being reluctant to switch from one order to the other during the course of a year to accommodate Kraft's supply arrangements. If Nashville producers switch to the Louisville market in the spring, they become subject to the Louisville plan deductions in computing the uniform price. If they switch to the Louisville market in the fall, they receive the Louisville plan pay-back money, but they fail to earn a base under the provisions of the Nashville order. It they switch from the Louisville market to the Nashville market without a base, their minimum payment under the Nashville order during the base-paying months would reflect only the excess price for all of their deliveries.

It is noted, however, that the supply problem at Kraft's Louisville plant is not a seasonal problem. Rather, it is a continuing situation that likely will require supplemental milk supplies each month for the next two or three years. Under these circumstances, there appears to be little reason to shift a producer back and forth between markets on a month-to-month basis. Instead, producers should be shifted to the Louisville market on a more a less permanent basis in view of the continuing need for additional milk at the Kraft plant.

Kraft indicated that it does not want to take this action because the producers wish to remain pooled on the Nashville market so that their returns will not be jeopardized. The market statistics included in the record indicate that an average Nashville producer would have his or here minimum Federal order return altered by less than one percent up or down if switched to the Louisville market for an entire 12-month period. In fact, during the period of October 1980 through September 1981, the average Nashville producer would have received a slightly higher return for milk if it had been pooled uder the Louisville order. Unless marketing conditions change dramatically in either market during the next two to three years, Kraft could eliminate the cost of current milk transfers by shifting some producers to the Louisville market without significantly altering the producers' returns. In fact, the producers could be better off on the Louisville market than if they stayed in the Nashville market and operated under Kraft's proposal. Under Kraft's proposal, the producers would be subject to a minus 15-cent location adjustment for all deliveries to Louisville, which could apply to as much 50 percent of a producer's production. Unless marketing conditions change, the Nashville blend price (or weighted average price) minus 15 cents probably will average less over the course of a year than the Louisville blend price. If the producer remained pooled on the Louisville order for a complete year, gross returns could be higher than under Kraft's proposal.

Under these circumstances, the problems outlined by Kraft could be solved by shifting some or all of the approximately 50 producers mentioned earlier to the Louisville market for an indefinite period. This action would not alter producers' returns significantly and would reduce Kraft's transportation costs. Although this alternative would not accommodate the producers' desire to remain pooled on the Nashville market, producers should be responsive to changes in the location of demand for their production. At present that demand is in Louisville, not in Nashville. Thus, it is not necessary to depart from the usual procedure of pooling milk under the order which regulates the plant where the milk is first received when some of the milk is assigned to Class I. Therefore, the proposals dealing with interorder diversions of producer milk for Class I use and the related proposal to restructure the out-of-area location adjustments of the Nashville order to accommodate such interorder diversions are denied.

2. *Location adjustments applicable to producer milk under the Nashville and Louisville orders.*

Three proposals, Nos. 6, 12 and 13, included in the notice of hearing for this proceeding concerned the location adjustments applicable to producer milk under the Nashville and Louisville orders. However, at the hearing representatives of DI (proponent of Nos. 6 and 12) and National Farmers' Organization (proponent of No. 13) withdrew their respective proposals and no other interested party offered testimony related to these proposals. Since the record contains no evidence concerning these proposals, further discussion of this issue is not necessary.

3. *Pooling standards for "country" plants under the Louisville order.*

The pool plant definition of the Louisville order should be amended to allow operators of country (supply) plants to count their deliveries of milk directly from farms to pool city (distributing) plants toward meeting up to one-half of the shipments required to qualify the country plant as a pool plant. Current order language recognizes only actual transfers of milk from the country plant to city plants as shipments that count to qualify a country plant for pool plant status. This change was proposed by Kraft, Inc., and supported by the Armour Food Company. DI opposed adoption of this change and in the alternative proposed that country plants be eliminated from the pool plant definition.

Kraft's witness stated that the purpose of their proposal was to allow country plants to operate in a more efficient manner. The witness stated that Kraft operated a country plant at Lawrenceburg, Kentucky, that qualified as a pool plant under the Louisville order from September 1979 to September 1981. The witness testified that while this plant was in operation the milk on three farm pick-up routes could have been delivered directly to a city plant in Lexington, Kentucky, rather than being hauled to the country plant, unloaded, reloaded, and delivered to Lexington. Testimony was offered showing that while the plant was in operation the proposed change could have saved 495 miles of transportation per day over the actual hauling that took place.

A witness for the Armour Food Company voiced strong support for Kraft's proposal. He stated that Armour operates a country plant regulated by the Louisville order. The witness contended that order provisions should be changed to allow country plants to operate more efficiently because these plants serve the fluid market by providing supplemental shipments to city plants, by giving producers a market alternative, and by helping maintain the economic viability of manufacturing plants in the market that provide an outlet for the market's reserve supplies. The witness indicated that producers representing about 60 percent of the Armour plant's Grade A supplies were located such that their production could be shipped directly to city plants at considerable transportation savings.

DI's witness took the position that there is no need for country plants in the Louisville market. The witness stated that all milk in the market could be shipped directly from farms to city plants and that the only reason for

maintaining country plants is to associate with the market milk to be used in manufacturing plants. The witness, testified that DI believes that marketing orders should be structured to pool only those milk supplies that are closely associated with the needs of the fluid market, including necessary reserve supplies. He asserted that most supplies associated with supply plants are not readily available for the fluid market, and that the order should not be amended to make it easier for country plants to meet the pooling standards. Instead, the witness contended, the order should be amended to remove country plants from the pool plant definition.

DI further contended that the existence of supply plants creates disorderly marketing conditions because the purpose of maintaining a supply plant in today's dairy industry is to obtain milk supplies for manufacturing purposes, not for bottling. DI cited the fact that all supply plants operated in the Louisville market in recent years have been operated in conjunction with a manufacturing facility.

Federal milk orders have accommodated the pooling of milk supplies through country plants because these plants historically have served as a means of getting milk supplies to bottling plants. Before bulk transport for raw milk became generally available, supply plants served as country assembly points for milk supplies for over-the-road shipment to bottling plants in metropolitan areas. Although transporation technology has reduced the need for country assembly points, supply plants have continued to be a source of milk for bottling plants in many markets.

The record contains no rebuttal to DI's claim that the Louisville market can be supplied entirely by direct shipments. However, the feasibility of supplying all distributing plants in a market by direct shipments is not a sufficient reason to deny handlers an alternative means of obtaining supplies. Handlers may choose to obtain a portion of their milk supply through a country plant for any number of reasons. Even though the procurement of milk supplies directly from farms may be the most economically efficient method of obtaining raw milk for bottling, this may be overshadowed by other considerations in the handler's decision-making process. In addition, Federal milk orders are not designed to dictate that handlers use the method of milk procurement that the Department may consider the most efficient. Rather, as long as a procurement method does not result in disorderly marketing conditions, Federal orders should not foreclose an alternative supply option.

DI's contention that the existence of supply plants creates disorderly marketing conditions because they are primarily a vehicle for pooling unneeded milk supplies is not supported by the record. The record does show that Armour (and Kraft when it operated a supply plant) utilizes Grade A milk not shipped to distributing plants in its adjacent manufacturing facility. In addition, Armour's witness acknowledged that Armour needs a supply of Grade A milk for its manufacturing plant and the operation of a country pool plant is the method the company has chosen to obtain that supply. However, the use of a country plant's surplus Grade A milk in a manufacturing plant does not by itself indicate that the country plant is not serving the fluid market. Under the Louisville order, country plants are determined to be serving the fluid market if they meet the shipping requirements that have been established through the hearing procedure. The record shows that the country plant operated by Armour and the country plant recently operated by Kraft have consistently met the shipping requirements of the order. In fact, the Armour plant generally ships milk to city plants every month of the year, even during the heavy production months when shipments are not required. The record also contains statements by representatives of Kraft and Armour that their country plants placed the highest priority on meeting the needs of city plants for shipments of milk. Accordingly, it is not possible to conclude from this record that a plant that is more than meeting the shipping requirements is causing disorderly marketing conditions. In the absence of disorderly marketing conditions, there is no reason to eliminate country plants from the pool plant definition of the Louisville order.

The proposal to recognize direct farm-to-city plant shipments for qualification of country plants should be adopted because it would allow country plants to operate in a more efficient manner without altering the basic standard used to determine whether the plant is serving the fluid market to a degree that warrants pool status for the plant. Although Kraft has closed its country plant, and thus appears unlikely to utilize the changes adopted herein, the Armour country plant regulated by the Louisville order could benefit from the proposed change. The record indicates that producers representing approximately 60 percent of Armour's Grade A milk supply are located such that their production could be delivered directly to city plants rather than by transfer from the country plant at considerable savings to Armour.

DI opposes the change because it believes that the purpose of the proposal is to make it easier to associate with the Louisville pool milk which is intended primarily for Class III use at manufacturing plants. Although this proposal would reduce Armour's cost of operation, it would not change the percent of a country plant's receipts and diversions that must be shipped to city plants to qualify the country plant for pool status. If a country plant operator wishes to increase the quantity of Grade A milk moving to a manufacturing plant, shipments to city plants must increase by a like amount (in the months when the 50 percent shipping requirement applies). The proportion of the country plant's total receipts and diversions that would be free to move to a manufacturing plant would not change under this proposal.

At the hearing and in its brief, DI expressed concern that adoption of this proposal would create an incentive for the operator of a country plant located a considerable distance from the market to associate the plant with the Louisville pool. The adopted pooling change would reduce the proportion of a country plant's milk supply that must actually be transferred to pool city plants to qualify the country plant for pool status during the months of September through February, but it would not change the requirement that at least 50 percent of the plant's milk supply must be made available to city plants by transfer or diversions. By reducing the amount of milk that must be moved to city plants by interplant transfers, the pooling change may reduce the cost of associating a distant country plant with the Louisville market, assuming the country plant has milk supplies conveniently located for delivery directly to city plants. However, there is no indication that this change would alter the operating costs of any country plant in the region to the point that it would be unusually profitable to engage in the extensive hauling of milk that would be necessary to obtain pool status for a distant plant. Kraft and Armour offered information on how the proposed change would benefit their specific operations. The record contains no specific information about other country plants that would benefit from or take advantage of the change. Therefore, DI's concern does not provide sufficient grounds to deny the proposal.

4. *Producer delivery requirements and diversion limits of the Nashville and Louisville orders.*

The producer milk definitions of the Louisville and Nashville orders should not be amended to change the producer delivery ("touch-base") requirements and diversion limits of the orders.

Kraft proposed the elimination of the provision in the Louisville order that limits diversions of milk from pool plants to nonpool plants to 22 days' production during each month of September through February. With respect to the Nashville order, DI proposed an increase in the number of days that a producer must deliver milk to a pool plant (commonly referred to as touching base) if the producer's milk is to be eligible for diversion from pool plants to nonpool plants. Under the proposal, the delivery requirement would be increased from two days' production each month of the year to four days' production in each month of March through July and ten days' production in each month of August through February. DI also proposed that diversions from pool plants regulated under the Nashville order be limited to an amount equal to one-third of the producer milk physically received at the pool plants. The order does not now contain a percentage limitation on diversions to nonpool plants.

Kraft's witness stated that the diversion provisions of the Louisville order, which require touch-base deliveries on as many as nine days during the short production months, result in inefficient handling of milk. The witness asserted that handlers should be given the greatest flexibility possible in determining which milk is to be delivered to pool plants and which is to be diverted to nonpool plants. Although Kraft proposed no overall diversion limits in conjunction with its proposal to lower the touch-base requirements, Kraft's witness indicated that the company would not object to such a limit as long as it was not overly restrictive. In its post-hearing brief, Kraft suggested that a total diversion limit of 50 percent of receipts combined with the existing two-day touch-base delivery requirement would be an adequate limit and would allow for the efficient movement of milk.

Kraft's witness stated that the touch-base requirements are the most burdensome on those producers who have converted from manufacturing grade to Grade A production. The witness indicated that the Kraft organizaton has some milk pick-up routes for manufacturing grade producers that include one or two Grade A producers. He noted that the touch-base provisions require these Grade A producers to ship their milk separately from the other producers on certain days of the month. The witness stated that the resulting dual-route system, one for manufacturing grade producers and one for Grade A producers to meet the touch-base requirement, is an inefficient method of moving milk. The witness said that Kraft's proposal would allow a handler to select producers for diversion in a way that would result in the most efficent movement of milk.

The witness for DI stated that higher touch-base requirements are necessary in these markets to assure the availability of supplies for the fluid market. He maintained that the touch-base provisions of an order require a producer to show at least a limited association with the market before the producer's milk that is diverted to nonpool plants is allowed to participate in the marketwide pool. The witness asserted that the current requirements of the Louisville order have not placed a burden on the pooling of milk which historically has been associated with the market. The witness also expressed the association's view that producers who convert to Grade A production must be willing to ship a certain part of their production to pool plants before all of their milk is allowed to participate in the pool.

In response to the general invitation in the hearing notice for testimony concerning the desirability of an overall diversion limit for the Louisville order, DI's witness suggested that the pool plant definition of the order be amended so that diversions from city plants would be counted as receipts when calculating whether the plant meets the Class I requirement for pool plant status. The spokesman pointed out that diversions to pool and nonpool plants currently are not included in the base used to compute the Class I percentages. He maintained that the DI proposal would be an appropriate method for placing an overall limit on diversions in the Louisville market.

DI's witness contended that market conditions are changing in the Nashville and Louisville areas. He stated that the opening of large distributing plants in Murfreesboro, Tennessee, (in August 1981) and Winchester, Kentucky, (expected in October 1982) and the promulgation of a Federal milk order for the State of Alabama will have a dramatic effect on these markets. The witness predicted that these events would produce a significant increase in the Class I utilization under both the Nashville and Louisville orders. These perceived market changes provide the basic rationale for DI's proposal to increase the touch-base requirements of the Nashville order and to provide for an overall diversion limit of one-third of a handler's receipts. The witness further asserted that markets with high Class I utilization need high touch-base requirements and limited diversions to assure the availability of supplies for fluid use.

Kraft's case for reduced touch-base requirements for the Louisville order stems from the claim that there is a general need for handlers to be given greater flexibility to determine which producers should have their milk diverted and which ones should have their milk delivered to pool plants, and a specific need to accommodate manufacturing grade producers who wish to convert to Grade A production. In this regard, Kraft contended that an overall diversion limit would accomplish the objective of touch-base requirements without producing hauling inefficiencies. There is little evidence in the record, however, to indicate that handlers or producers find the current touch-base requirement burdensome. Kraft indicated that it has producers on the Louisville market that are located in areas that make it more convenient to ship their production to nonpool manufacturing plants on a regular basis rather than deliver the milk to pool plants. At the same time, Kraft is asking the Department to make substantial changes in the order to accommodate its need for additional supplies at its Louisville plant. At least some of this demand could be met by delivering the production of the inconveniently located producers to Louisville for the number of days necessary to meet the touch-base requirement. If there is a need for milk at Louisville, it is reasonable to expect producers associated with the market to respond in some minimum way.

Armour supported Kraft's proposal to eliminate the 22-day diversion limit that applies during September through February and indicated that the change would be beneficial to its operation. However, there is little indication that the current provisions are overly burdensome to Armour's operations. Armour operates a country plant and a manufacturing facility on the same premises at Springfield, Kentucky, and a small manufacturing plant at Elizabethtown, Kentucky. During September through February, Armour must receive half of its Grade A milk supply at its country plant and then deliver it to pool city plants when it wishes to have the country plant qualify as a pool plant. When the country plant is a pool plant, this procedure assures that at least half of the milk meets the

touch-base requirement. It should be noted here that this decision also adopts changes in the Louisville order that would allow Armour to meet up to half of its shipping requirements by delivers of milk directly from farms to city plants. These plants are also pool plants, so these direct shipments would also meet the touch-base requirement.

The advantage that could accrue to Armour from the adoption of this proposal is that the milk of certain producers could be moved directly to its manufacturing facilities on a regular basis, rather than being moved part of the time through the country plant for purposes of qualifying the plant as a pool plant. However, since Armour's largest manufacturing facility is located adjacent to the country plant, milk may be easily delivered to either facility. Thus, loads of milk may be rotated between the country plant and the manufacturing facility in a way that would allow all of Armour's producers to meet the touch-base requirement. From a practical standpoint the proposed change apparently would be of little real benefit to Armour's operation.

The record does not support a conclusion that the 22 days' production diversion limit of the Louisville order should be changed. Moreover, since this proposed change is not adopted, there is not reason to consider DI's suggestion to amend the pool plant definition to include diversions from city plants when calculating the plant's Class I percentage.

Likewise, it cannot be concluded that DI's proposal to raise the touch-base requirement of the Nashville order and impose an overall diversion limit on pool plants should be adopted. DI bases its case for this proposal on the assumption that a series of events, some of which would occur in the future, will dramatically increase the Class utilization of the Nashville market, and on the contention that in a high utilization market there is a need to assure that milk is closely associated with the market. The record does show that changes in marketing conditions have occured over the past two years in the Nashville market. Production has increased but Class I sales have not grown. It is also clear that the implementation of a Federal order in Alabama [1] may result in additional market changes. However, it is not clear that the events discussed by DI will change the market in the manner or to the extent envisioned by the cooperative. The new bottling plant at Murfreesboro, Tennessee, began operation in August 1981, and was a pool plant on the Nashville order for the months of August and September 1981. In October 1981, the plant became regulated by the Georgia Federal order. The apparent overall impact of this plant on the Nashville market thus far has been minimal. Class I utilization has not changed significantly. In fact, Class I utilization was below year earlier levels in October and November 1981 and only slightly above year earlier levels during the months of December 1981 through March 1982.[2] With this result from one of the events cited by DI as foreshadowing a dramatic change in market conditions, it is premature to base a significant change in the touch-base requirement and diversion limits on speculation as to the effects of future events on the Nashville market. Therefore, these proposed changes to the Nashville order are denied.

5. *Provisions of the Nashville order relating to the procedure for paying producers.*

The Nashville order should be amended to allow handlers to pay those producers for whom a cooperative association is not collecting payments.

The order now provides that handlers shall pay the total classified use value of milk to the market administrator, who in turn pays individual producers and cooperative associations the uniform (or base and excess) price for their milk. Both the partial and final payment requirements of the order are handled this way. Under the change adopted herein a handler could request that the market administrator return to the handler an amount equal to the sum of the individual payments otherwise due the handler's producers for partial and final payments in the same manner that lump-sum payments currently are made to cooperative associations. The handler in turn would pay individual producers on or before the dates they otherwise would be paid by the market administrator. Any handler who is determined to be delinquent with respect to any payment obligation under the order would forfeit the opportunity of making such payments to producers.

Kraft, Inc., proposed that handlers be given the option of paying nonmember producers on or before the dates payment would otherwise be made by the market administrator. The witness for Kraft stated that the proposed change would benefit the market by (1) giving proprietary handlers the ability to generate "goodwill" from paying their independent producers with company checks, and (2) reducing the cash-flow burden on handlers that results from the time needed to channel all producer payments through the market administrator.

The witness indicated that Kraft currently pays its independent producers a premium which is made on a company check. Since Kraft maintains a payroll system to process these over-order payments, the witness contended that assuming the entire producer payroll would not significantly affect Kraft's cost of operation, but it would relieve the market administrator of a substantial part of the burden of making payments to each independent producer twice each month.

The Kraft spokesman also emphasized the cost to handlers of the current payment plan, and introduced evidence that the market administrator was able to earn over $63,000 in 1980 from short-term investments of payroll funds. Although the money was distributed to producers in the form of an increased uniform price, Kraft's witness introduced the figure as an estimate of the cost to handlers of the present payment system.

The Kraft witness emphasized the importance Kraft places on paying its producers with a company check. He indicated it was one of the few ways a proprietary handler has of establishing and maintaining a good business relationship with the supplier. The witness stated that as long as producers are assured of receiving prompt and full payment, there is no justification for denying a proprietary handler the opportunity to generate goodwill by paying producers with a company check.

The spokesman for DI indicated that the cooperative association opposed to Kraft proposal because it would reduce the price paid to producers by approximately 2 cents per hundredweight and because it would result in handlers who purchase their supplies from cooperative associations being placed at a competitive disadvantage because they would be forced to make their payments two days earlier than other handlers. The witness stated that the current payment provisions of the Nashville order are appropriate and should not be amended as proposed.

The provisions of the order that specify the procedure for payments to

[1] Official notice is hereby taken of the Assistant Secretary's decision adopting a Federal milk order for the Alabama-West Florida marketing area, issued January 28, 1982 (47 FR 5124). The Alabama-West Florida order became fully effective May 1, 1982.

[2] Official notice is hereby taken of the Statistical Summaries for the months of October 1981 through March 1982, issued by the Market Administrator of the Nashville, Tennessee, order.

producers are designed to assure that producers are paid promptly and properly for their milk. Although the current provisions are adequately serving this purpose, it is concluded that certain modifications can be made in the payment procedure that will accommodate Kraft's basic desire and at the same time recognize certain concerns of DI. Kraft's basic interest appears to be that of making payments on its own checks to the independent producers supplying it with milk. A concern of DI is that any changes in the payment procedure not depart from the current requirement that all handlers in the market make their payments for milk at the same time.

These varying interests can be met by continuing to require that all handlers transfer their partial and final payments for milk to the market administrator. Handlers then should be permitted to request that the market administrator transfer to the handler an amount equal to the sum of the payments due the handler's independent producers at the same time and in the same manner that lump-sum payments are made to cooperative associations. Such handler would then be responsible for paying producers the amounts they otherwise would receive from the market administrator on or before the dates specified for the market administrator to make partial and final payments to producers. To assure prompt payment by handlers, the order should specify that a handler would forfeit the privilege of making payments to producers if the market administrator determines that the handler is delinquent with respect to any payment obligation under the order. A handler could regain the payment privilege by meeting all prescribed payment obligations for three consecutive months.

If payments to the market administrator were not required, as Kraft proposed, handlers that purchase milk from cooperatives would have to make payments two days before payments would be required of handlers that have independent supplies. Therefore, due dates for payments to the market administrator, payments to cooperative associations, and payments to individual producers should not be changed. All handlers thus would continue to be required to make payments to the market administrator at the same time. This places them on an equal footing in terms of the time that they must have money available for their milk purchases. There would be no monetary advantage to handlers based on whether they obtain their supplies from independent producers or from cooperative associations. Handlers who purchase milk from independent producers could receive lump-sum payments representing the sum of the payments due their producers but they would be obligated to pay producers within two days. Since all handlers would continue to pay the market administrator, as is now required, handlers who choose to utilize this payment procedure will not obtain a competitive advantage over other handlers.

It should be recognized that the payment procedure in the order is not designed to enhance producer returns. Any income generated by the market administrator from short-term investments of monies that ultimately will be paid to producers represents only an incidental benefit of the payment plan. The payment plan, however, is not intended to serve as a method of increasing the blend price. Accordingly, loss of interest income should not be a determining factor when changes in the payment plan are considered.

6. *Diversions between pool plants under the Nashville order.*

The Nashville order should be amended to permit milk to be diverted from one pool plant to another, with the diverting handler retaining the responsibility for reporting and paying for the milk.

Kraft, Inc., proposed this change to eliminate unnecessary hauling and pumping of milk which it claims is presently required to accommodate movements of milk between pool plants. Kraft's witness stated that the current order provisions discourage handlers from providing supplemental supplies to other pool plants. He indicated that on at least four occasions over the past three years other pool plants have requested supplemental supplies from Kraft's plant at Nashville. These transactions were complicated, he said, because Kraft could not divert milk directly to the purchasing plant and still consider the producers as Kraft's producers. On one occasion, the witness noted, Kraft "loaned" producers to another plant. The buying handler then became the reporting handler for the milk but paid Kraft an over-order premium. Kraft in turn paid the premium to the producers. The witness indicated that on other occasions Kraft received milk at the Nashville plant, reloaded the milk and transferred it to the other plant. The witness stated that allowing diversions between pool plants would eliminate the paperwork involved in "loaning" producers and the unnecessary pumping and hauling required for transfers.

DI opposed the proposal. Its witness stated that diversion of producer milk between Nashville order pool plants is not required under the marketing conditions that prevail in the Nashville order marketing area. The witness explained that the structure of the Nashville market makes it unlikely that milk will be transferred between pool distributing plant. Only five distributing plants are regularly pooled under the Nashville order. Of these, three are fully supplied by DI, one receives all its milk from independent producers and one (Kraft) receives some milk from NFO and the remainder from independent producers. The witness indicated that in such a market interplant shipments would be rare. In its post-hearing brief, DI further stated that any pool handler who wishes to obtain a supply of milk from independent producers should be willing to be the responsible handler for such producer's milk.

The order should promote the efficient handling of milk by permitting a pool plant operator to divert milk to another pool plant and still retain the producer milk status and payroll responsibility for the milk. This will permit a handler to avoid unnecessary and costly milk movements and handling arrangements merely for the purpose of retaining his status as a handler on the milk. The record indicated that as recently as September 1981, Kraft transferred several loads of milk to a pool distributing plant at Murfreesboro, Tennessee, that could have been shipped directly to Murfreesboro if diversions between pool plants had been recognized by the order.

This change would have no direct effect on the amount of milk pooled, the classification of milk, or the uniform price. It would simply allow shipments between pool plants to be made in a more efficient manner. The fact that in the past the number of shipments that would be affected by this change has been minimal carries little weight. The record shows that the current provisions have caused some inconvenience that can be remedied by the change and that there are no adverse effects on other interested parties in the market.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. The briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the

extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of each of the aforesaid orders and of the previously issued amendments thereto; and all said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

The following findings are made with respect to each of the aforesaid tentative marketing agreements and orders that are hereby proposed to be amended:

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the tentative marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commerical activity specified in, a marketing agreement upon which a hearing has been held.

Recommended Marketing Agreements and Order Amending the Orders

The recommended marketing agreements are not included in this decision because the regulatory provisions thereof would be the same as those contained in the orders, as hereby proposed to be amended. The following order amending the orders, as amended, regulating the handling of milk in the Louisville-Lexington-Evansville and Nashville, Tennessee, marketing areas is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out:

List of Subjects in 7 CFR Parts 1011, 1046, and 1098

Agricultural marketing service, Milk marketing orders, Milk, Dairy products.

PART 1046—MILK IN LOUISVILLE-LEXINGTON-EVANSVILLE MARKETING AREA

1. Section 1046.7(b) is revised to read as follows:

§ 1046.7 Pool plant.

* * * * *

(b) A country plant during any of the months of September through February from which not less than 50 percent, and during other months not less than 40 percent, of milk from persons described in § 1046.12(a)(1) and from handlers described in § 1046.9(c) that is physically received at such plant (except by diversion from other plants), or diverted therefrom pursuant to § 1046.13, is shipped to and received at a city plant(s) in the form of milk or skim milk. The operator of a country plant may include milk diverted pursuant to § 1046.13(b) from such plant to a city plant as qualifying shipments in meeting up to one-half of the shipping percentage(s) specified in this paragraph.

* * * * *

§ 1046.13 [Amended]

2. In paragraph (b) of § 1046.13, the section reference "1046.7(a)" is changed to "1046.7(a), (b), or (c)".

PART 1098—MILK IN NASHVILLE, TENNESSEE, MARKETING AREA

§ 1098.7 [Amended]

1. In § 1098.7(a), add the words "pool or" before the word "nonpool".

2. In § 1098.7(b) add the words "pool or" before the words "nonpool plant pursuant to § 1098.12".

3. In § 1098.13(a), insert the parenthetical phrase "(excluding such milk that is diverted from another pool plant)" after the words "dairy farmer".

4. In § 1098.13, the introductory text of paragraph (b) and paragraph (b)(1) are revised to read as follows:

§ 1098.13 Producer milk.

(b) Diverted by the operator of a pool plant or a cooperative association from a pool to another pool plant without limit during the month, or to a nonpool plant that is not a producer-handler plant, subject to the following conditions:

(1) Such milk shall be accounted for as received by the diverting handler at the location of the plant to which diverted;

* * * * *

5. In § 1098.31, paragraph (c) is redesignated as paragraph (d) and a new paragraph (c) is added to read as follows:

§ 1098.31 Payroll reports.

* * * * *

(c) On or before the 21st day after the end of each month, each handler who elects pursuant to § 1098.73(d) to pay producers shall report to the market administrator the following information with respect to the handler's partial and final payments for producer milk received during the month:

(1) The name and address of each producer;

(2) The amounts paid each producer; and

(3) The dates such payments were made.

* * * * *

§ 1098.41 [Amended]

6. In § 1098.41(b)(2), insert the words "and in milk diverted to such plant from another pool plant" after the phrase "a handler described in § 1098.9(c)".

7. Section 1098.42(a) is revised to read as follows:

§ 1098.42 Classification of transfers and diversions.

(a) *Transfers and diversions to pool plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another pool plant shall be classified as Class I milk unless the operators of both plants request the same classification in another class. In either case, the classification of such transfers or diversions shall be subject to the following conditions:

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee-plant or divertee-plant after the computations pursuant to § 1098.44(a)(12) and the corresponding step of § 1098.44(b);

(2) If the transferor-plant or divertor-plant received during the month other source milk to be allocated pursuant to § 1098.44(a)(7) or the corresponding step of § 1098.44(b), the skim milk or butterfat so transferred or diverted shall be classified as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor-handler or divertor-handler received during the

month other source milk to be allocated pursuant to § 1098.44(a) (11) or (12) or the corresponding steps of § 1098.44(b), the skim milk or butterfat so transferred or diverted, up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant or divertee-plant.

* * * * *

8. In § 1098.73, paragraph (d) is redesignated as paragraph (e) and a new paragraph (d) is added to read as follows:

§ 1098.73 Payments to producers and to cooperative associations.

* * * * *

(d) In making payments to producers pursuant to paragraphs (a) and (b) of this section, the market administrator, on or before the second day prior to the dates specified in such paragraphs, shall pay to each handler who so requests for milk received by the handler from producers for whom a cooperative association is not collecting payments pursuant to paragraph (c) of this section an amount equal to the sum of the individual payments otherwise due such producers pursuant to paragraphs (a) and (b) of this section. The handler then shall pay the individual producers the amounts due them by the respective dates specified in paragraphs (a) and (b) of this section. Any handler who the market administrator determines is or was delinquent with respect to any payment obligation under this order shall not be eligible to participate in this payment arrangement until the handler has met all prescribed payment obligations for three consecutive months. In making payments to producers pursuant to this paragraph, the handler shall furnish each producer the following information:

(1) The identity of the handler and the producer and the month to which the payment applies;

(2) The total pounds and the average butterfat content of milk for which payment is being made, including for the months in which base and excess prices apply, the pounds of base and excess milk;

(3) The minimum rate(s) at which payment to the producer is required by the order and the rate(s) of payment used if such rate(s) is other than the applicable minimum rate(s);

(4) The amount and nature of any deductions from the amount otherwise due to the producer, including the amount and rate per hundredweight of deductions made pursuant to § 1098.86; and

(5) The net amount of payment to the producer.

* * * * *

Signed at Washington, D.C., on June 14, 1982.

Eddie F. Kimbrell,

Acting Deputy Administrator, Marketing Program Operations.

[FR Doc. 82-16751 Filed 6-18-82; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Parts 1106, 1071, 1073, 1104, 1126, and 1132

[Docket Nos. AO-210-A43, et al.]

Milk in the Oklahoma Metropolitan and Certain Other Marketing Areas; Extension of Time for Filing Exceptions to Proposed Amendments to Tentative Marketing Agreements and to Orders

7 CFR parts	Marketing area	Docket Nos.
1106	Oklahoma Metropolitan	AO-210-A43
1071	Neosho Valley	AO-227-A35
1073	Wichita, Kansas	AO-173-A37
1104	Red River Valley	AO-296-A30
1126	Texas	AO-231-A48
1132	Texas Panhandle	AO-262-A32

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Extension of time for filing exceptions to proposed rules.

SUMMARY: This action extends the time for filing exceptions to a recommended decision concerning proposed amendments to the orders for the above-listed marketing areas. Counsel for producers who are the principal suppliers of a Red River Valley milk plant requested the additional time to complete an analysis of the decision.

DATE: Exceptions now are due on or before July 8, 1982.

ADDRESS: Exceptions (five copies) should be filed with the Hearing Clerk, Room 1077, South Building, United States Department of Agriculture, Washington, D.C. 20250.

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

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Hearing—Issued April 25, 1980; published April 30, 1980 (45 FR 28736). Recommended Decision—Issued May 12, 1982; published May 19, 1982 (47 FR 21684).

Notice is hereby given that the time for filing exceptions to the recommended decision on proposed amendments to the Oklahoma Metropolitan and certain other milk orders is hereby extended to July 8, 1982.

This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

List of Subjects in 7 CFR Parts 1106, 1071, 1073, 1104, 1126, and 1132

Milk marketing orders, Milk, Dairy products.

Signed at Washington, D.C. on June 16, 1982.

William T. Manley,

Deputy Administrator, Marketing Program Operations.

[FR Doc. 82-16721 Filed 6-18-82; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 81-AAL-7]

Revocation of Transition and Additional Control Areas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Withdrawal of notice of proposed rulemaking.

SUMMARY: This action withdraws a proposal published in the **Federal Register** on September 24, 1981 (46 FR 47084) that would have designated new Central Alaska Transition Area and new Additional Control Area 1200 located in the Anchorage, AK, Flight Information Region (FIR). The proposal would have revoked several small transition and control areas. After analysis of additional information, the proposal does not satisfy current operational requirements; therefore, this proposal is withdrawn.

EFFECTIVE DATE: June 21, 1982.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Regulations and Obstructions Branch (AAT-230), Airspace and Air Traffic Rules Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-8783.

List of Subjects in 14 CFR Part 71

Aviation safety, Additional control areas, Transition areas.

Withdrawal of the Proposal

Accordingly, pursuant to the authority delegated to me, the proposal to amend § 71.163 and § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as specified in Airspace Docket No. 81–AAL–7 and published in the **Federal Register** on September 24, 1981 (46 FR 47084) is hereby withdrawn.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.69)

Note.—The FAA has determined that this regulation only involves an established body of techincal regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Washington, D.C., on June 15, 1982.

John W. Baier,

Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 82–16634 Filed 6–18–82; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

Obligation of Certain Volunteer Fire Departments

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to obligations of certain volunteer fire departments. Changes to the tax law were made by the Economic Recovery Tax Act of 1981. The regulations would provide guidance to issuers and holders of these obligations.

DATES: Written comments and requests for a public hearing must be delivered or mailed by August 20, 1982. The amendments are proposed to be effective for obligations issued after December 31, 1980.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T, Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: Susan K. Thompson of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, D.C. 20224 (Attention: CC:LR:T) (202–566–3294).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 103 (i) of the Internal Revenue Code of 1954. These amendments are proposed to conform the regulations to section 812 of the Economic Recovery Tax Act of 1981 (95 Stat. 350) and are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

Explanation of New Provisions

Section 812 of the Economic Recovery Tax Act of 1981 adds new subsection 103(i) to the Internal Revenue Code of 1954. Under this new provision, certain volunteer fire departments may issue obligations, the interest on which will be exempt from tax under section 103(a)(1) of the Code. To qualify under this provision, a volunteer fire department must meet two requirements. First, it must be organized and operated to provide firefighting or emergency medical services for persons in an area (within the jurisdiction of the political subdivision) that is not provided with any other firefighting services. Second, the fire department must be required to furnish these services by a written agreement between it and the political subdivision. If these requirements are met, the fire department is a "qualified volunteer fire department". Interest on an obligation of a qualified volunteer fire department will be treated as exempt from tax if substantially all of the proceeds of the issue of which the obligation is a part are to be used for the acquisition, construction, reconstruction, or improvement of a fire house or fire truck used or to be used by the qualified volunteer fire department.

Non-Application of Executive Order 12291

The Treasury Department has determined that this proposed regulation is not subject to review under Executive Order 12291 or the Treasury and OMB implementation of the order dated April 28, 1982.

Regulatory Flexibility Act

Although this document is a notice of proposed rulemaking which solicits public comment, the Internal Revenue Service has concluded that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Comments and Requests for a Public Hearing

Before the adoption of these proposed regulations, consideration will be given to any written comments that are submitted (preferably six copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register.**

List of Subjects in 26 CFR Part 1

Income taxes, Taxable income, Deductions, Exemptions.

Drafting Information

The principal author of these proposed regulations is Susan K. Thompson of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, on matters of both substance and style.

Proposed Amendments to the Regulations

The proposed amendments to 26 CFR Part 1 are as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

A new § 1.103–16 is added immediately following § 1.103–15. New § 1.103–16 reads as follows:

§ 1.103–16 Obligations of certain volunteer fire departments.

(a) *General rule.* An obligation of a volunteer fire department issued after December 31, 1980, shall be treated as an obligation of a political subdivision of a State for purposes of section 103(a)(1) if—

(1) The volunteer fire department is a qualified volunteer fire department

within the meaning of paragraph (b) of this section, and

(2) Substantially all of the proceeds of the issue of which the obligation is a part are to be used for the acquisition, construction, reconstruction, or improvement of a fire house or fire truck used or to be used by the qualified volunteer fire department.

An obligation of a volunteer fire department shall not be treated as an obligation of a political subdivision of a State for purposes of section 103(a)(1) unless both conditions set forth in this paragraph (a) are satisfied. Thus, for example, if an obligation is issued by an ambulance and rescue squad that is a qualified volunteer fire department as required by paragraph (a)(1) of this section, but substantially all of the proceeds of the issue of which the obligation is a part are to be used for the furnishing of emergency medical services, rather than for the purposes specified in paragraph (a)(2) of this section, the obligation shall not be treated as an obligation of a political subdivision of a State for purposes of section 103(a)(1).

(b) *Definition of qualified volunteer fire department.* For purposes of this section, the term "qualified volunteer fire department" means an organization—

(1) That is organized and operated to provide firefighting services or emergency medical services in an area within the jurisdiction of a political subdivision, and

(2) That is required to furnish firefighting services by written agreement with the political subdivision, and

(3) That serves persons in an area within the jurisdiction of the political subdivision that is not provided with any other firefighting services.

A volunteer fire department does not fail to satisfy the requirement of paragraph (b)(3) of this section by furnishing or receiving firefighting services on an emergency basis, or by cooperative agreement with other fire departments, to or from areas outside of the area that the volunteer fire department is organized and operated to serve. The fact that tax revenues of a political subdivision served by a volunteer fire department contribute toward the support of the volunteer fire department in the form of salary, purchase of equipment, or other defrayment of expenses will not prevent the volunteer fire department from being a "qualified volunteer fire department" within the meaning of this paragraph (b). Moreover, an obligation of a volunteer fire department receiving such support may qualify as an obligation of a political subdivision within the meaning of section 103(a)(1) independently of section 103(i) and this section if the requirements of section 103(a) (1) are satisfied. See § 1.103–1(b) for rules relating to qualification under section 103(a)(1).

(c) *"Substantially all" test.* Substantially all of the proceeds of an issue are used for the purposes specified in paragraph (a)(2) of this section if 90 percent or more of the proceeds are so used. Thus, for example, if more than 10 percent of the proceeds of an issue of bonds issued by a qualified volunteer fire department are used for the purchase of an ambulance or for rescue equipment not be used in providing firefighting services, interest on the issue is not exempt from tax under section 103(i) and this section. In computing this percentage, the rules set forth in § 1.103–8(a)(1)(i), relating to amounts allocable to nonexempt uses and amounts chargeable to capital account, apply.

(d) *Refunding issues.* An obligation which is part of an issue issued by a qualified volunteer fire department after December 31, 1980, part or all of the proceeds of which issue are used directly or indirectly to pay principal, interest, call premium, or reasonable incidental costs of refunding a prior issue qualifies as an obligation of a political subdivision under section 103(i) and this section only if—

(1) The prior issue was issued by a qualified volunteer fire department;

(2) Substantially all of the proceeds of the prior issue were used for the purposes described in paragraph (a)(2) of this section;

(3) The prior issue was issued after December 31, 1980; and

(4) The refunding issue is issued not more than 180 days before the date on which the last obligation of the prior issue is discharged (within the meaning of § 1.103–13)(b)(11)).

(e) *Examples.* The provisions of this section may be illustrated by the following examples:

Example (1). The County M Volunteer Fire and Rescue Association provides firefighting, ambulance, and emergency medical services in County M. The board of county commissioners of County M contracts with the County M Volunteer Fire and Rescue Association for these services, and County M is not served by any other firefighting association. On August 1, 1981, the Association issues an obligation for funds to purchase a new fire truck, a new ambulance, and rescue equipment not to be used for fighting fires. Funds to be used for the purchase of the ambulance and rescue equipment constitute more than 10 percent of the proceeds of the obligation. Thus, substantially all of the proceeds of the obligations are not used for one of the purposes described in paragraph (a) (2) of this section. Although the County M Volunteer Fire and Rescue Association is a qualified volunteer fire department under paragraph (b) of this section because it provides firefighting and emergency medical services in an area within County M which is not provided with any other firefighting servicers and is required to provide these services by written agreement with County M, the August 1, 1981, obligation of County M Volunteer Fire and Rescue Association will not be treated as an obligation of a political subdivision of a State under section 103(i) and paragraph (a) of this section because substantially all of the proceeds of the obligation are not to be used for a purpose described in section 103(i)(1)(B) and paragraph (a)(2) of this section. Accordingly, interest on the August 1, 1981, obligation of County M Volunteer Fire and Rescue Association is not exempt from gross income under section 103(a)(1).

Example (2). County N Volunteer Fire Department provides firefighting services in County N by contract with the county, which is not served by any other firefighting association. On June 15, 1982, County N Volunteer Fire Department issues its obligation for funds to construct an addition to its firehouse to house a rescue squad, the rescue squad's vehicle, and rescue equipment not to be used in firefighting. Although the County N Volunteer Fire Department is a qualified volunteer fire department under paragraph (b) of this section, interest on its June 15, 1982, obligation will not be exempt from tax under section 103(i) and this section because the proceeds of this obligation will not be used for the purposes described in paragraph (a) of this section.

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 82–16730 Filed 6–18–82; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Ch. I

[CGD 79–134]

Shipboard Noise Abatement Standards

AGENCY: Coast Guard, DOT.

ACTION: Decision not to propose rules.

SUMMARY: After completing a study on the hazards of shipboard noise, the Coast Guard announced its intention to promulgate regulations to direct the correction of the problem. However, after further analysis, the Coast Guard now believes that the problem can be addressed through non-regulatory means and is terminating the rulemaking proceeding.

EFFECTIVE DATE: This withdrawal is effective on June 21, 1982.

FOR FURTHER INFORMATION CONTACT: Lt Robert F. Murray, Office of Merchant Marine Safety (G–MVI–2/24), U.S. Coast

Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593 (202-426-2183).

SUPPLEMENTARY INFORMATION: For several years, the Coast Guard has been studying the problem of noise on commercial vessels and developing standards to address the hazard. Noise on vessels presents several dangers, not just to crew members, but to the vessels as well. As the most obvious and most serious effect, noise can seriously impair the hearing of crew members. There is also strong argument that noise presents other physiological dangers. Noise can impair the safety of vessels by interfering with communication, by masking alarm signals, and by reducing the effectiveness of the crew by creating annoyance and fatigue.

Until recently, it was the intention of the Coast Guard to promulgate noise abatement standards through regulations. This intent was first reported in the **Federal Register** on June 19, 1980 (45 FR 41562) when the Coast Guard announced it was holding an open public meeting to receive industry comments concerning the contemplated noise standards. Subsequent **Federal Register** notices containing the Department of Transportation's Semi-annual Regulations Agenda (46 FR 20055, April 2, 1981; and 47 FR 14032, April 1, 1982) also listed the project. Furthermore, the agenda for the Towing Safety Advisory Committee (46 FR 26734, 14 May 1981) listed the project as a discussion item.

After further investigation however, the Coast Guard has concluded that the objectives which would have been attained by promulgating regulations on noise could also be achieved by non-regulatory means. The Coast Guard now intends to publish its findings as recommended guidelines in the form of a Navigation and Vessel Inspection Circular (NVC), a medium which the Coast Guard often uses to disseminate information to the maritime industry.

The Coast Guard believes that there is already wide acknowledgement within the maritime industry that the problems associated with high noise conditions must be addressed. It is believed that once a reasonable set of guidelines is published, the industry will voluntarily adopt them as the maritime standard. Since conditions on various types of vessels differ considerably, developing uniform regulations with accompanying enforcement procedures would be difficult. A performance standard, while simpler, would be even more difficult to monitor. However, recommended guidelines are inherently flexible and adaptable to technological innovation. For these reasons the Coast Guard is terminating its rulemaking proceedings on this docket and will, instead, publish recommended guidelines.

It is anticipated that the Coast Guard NVC entitled "Recommendations On Control of Excessive Noise" will be available in July 1982.

Clyde T. Lusk, Jr.,

Rear Admiral, U.S. Coast Guard, Chief, Office of Merchant Marine Safety.

June 9, 1982.

[FR Doc. 82-16413 Filed 6-18-82; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Ch. I

[CC Docket No. 78-72, Phase I; FCC 82-247]

MTS and WATS Market Structure

AGENCY: Federal Communications Commission.

ACTION: Fourth Supplementary Notice of Inquiry and Proposed rule.

SUMMARY: The Commission releases a Supplemental Notice of Inquiry and Proposed Rulemaking regarding the MTS and WATS market structure and is seeking comment on the development of an access charge to compensate local exchanges for exchange facilities to originate or terminate interstate or foreign telecommunications. Comments are sought on principles of charging, extent of aggregation, implementation mechanisms, and on determination of an appropriate rate of return. This action is taken to secure information needed to develop access charge principles.

DATES: Comments are due by August 6, 1982 and replies by September 15, 1982.

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

FOR FURTHER INFORMATION CONTACT: Robert S. Preece, Policy and Program Planning Division, Common Carrier Bureau, Federal Communications Commission, Washington, D.C. 20554, Telephone No. (202) 632-9342.

SUPPLEMENTARY INFORMATION:

Adopted May 27, 1982.

Released: June 4, 1982.

By the Commission: Commissioner Fogarty issuing a separate statement; Commissioner Jones issuing a separate statement in which Commissioners Dawson, Rivera and Washburn join.

I. Introduction

1. In February of 1978, we instituted this proceeding to determine the MTS-WATS market structure which would best serve the public interest. *Notice of Inquiry and Proposed Rulemaking* ("Initial Notice"), 67 FCC 2d 757 (1978) (March 8, 1978; 43 FR 9505). Through a series of notices we sought to resolve this and such closely related issues as whether a uniform, nationwide MTS rate structure is in the public interest and what reimbursement interstate services should make to local operating companies for use of local plant. *See Supplemental Notice of Inquiry and Proposed Rulemaking* ("First Supplemental Notice"), 73 FCC 2d 222 (1979) (August 30, 1979; 44 FR 50866); *Second Supplemental Notice of Inquiry and Proposed Rulemaking* ("Second Supplemental Notice"), 77 FCC 2d 224 (1980) (April 21, 1980; 45 FR 26764); *Report and Third Supplemental Notice of Inquiry and Proposed Rulemaking* ("Third Supplemental Notice"), 81 FCC 2d 177 (1980) (August 21, 1980; 45 FR 55777). In particular, the *Second Supplemental Notice* presented a tentative access charge plan under which interstate service providers would compensate exchange carriers for use of their local plant. In light of the recently announced proposed settlement of the pending government antitrust suit against ATST,[1] as well as comments filed both in response to the Second Supplemental Notice and in related proceedings, *see* paras. 5-7 *infra*, we find that, before we adopt an interim access charge plan, the following issues require further discussion.

(1) Whether some alternative means of cost assignment between the MTS-WATS and private line categories are needed. Specifically, are the Commission's public interest goals best served by a continued policy to charge for non-traffic sensitive ("NTS") costs on a usage basis or is some form of "gross assignment" and flat-rate pricing appropriate;

(2) Whether, in the foreseeable future, with the continuing advancement of technology, the tentative access charge plan would provide to potential users of MTS and MTS alternatives the incentive to bypass the public switched network (PSN);

(3) Whether the uniform nationwide system of access charges proposed in the tentative plan should be disaggregated into a system of charges based upon exchange, local carrier, or state-by-state classifications, and what

[1] While the Commission does not agree with every aspect of the proposed settlement, our *Amicus Brief* states "(t)he basic settlement is reasonable and is likely to enhance competition in several different markets." Brief of the Federal Communications Commission as Amicus Curiae at 7, April 20, 1981.

should be the rates of return on capital assigned to the interstate category;

(4) In a telecommunications industry restructured under the terms of the proposed antitrust settlement, what would be most effective mechanism for implementing and administering the access charge plan we ultimately adopt;

(5) How should an access charge take into account, if at all, the difference in interconnection quality received by different carriers? Is a discount in the share of non-traffic sensitive costs paid by the other common carrier ("OCCs") providing MTS/WATS like services (compared with AT&T) an appropriate mechanism? If some form of non-usage based assignment of much or all NTS costs is undertaken, how should the difference in interconnection quality be dealt with?

For this reason we now issue this Fourth Supplemental Notice of Inquiry and Proposed Rulemaking.

A. The Tentative Access Charge Plan

2. In the *Second Supplemental Notice* we described a tentative plan for prescribing arrangements by which local exchange carriers would be compensated for the use of their exchange plant facilities to originate and terminate interstate and foreign telecommunications. The plan divided interstate services into four categories: MTS/WATS, FX/CCSA access, private line, and OCC–ENFIA. The amount an interexchange carrier would pay for the use of exchange plant to originate or terminate its interstate traffic would be determined by the category to which its service belonged. The plan did not in fact prescribe access charges for each category of service. Instead it defined the method by which such charges were to be computed and left to the industry the tasks of compiling the data needed and of performing the computations required to determine the compensation each interexchange carrier would pay for access service. The plan called for the use of nationwide, average data and the AT&T interstate rate of return to compute the charges allocated to interexchange carrier services.[2]

3. Under the tentative plan, access charge revenues would be pooled in much the same way that "partnership" interstate revenues are now pooled under contractual arrangements in the settlements/division of revenues process except that, for the first time, private line minutes would be included in the process.[3] The amount a local exchange carrier received for interexchange carriers' use of its exchange plant to complete interstate services would be allocated from the pool based upon the carrier's pro rata share of all investment and expenses in exchange plant devoted to interstate service. The anticipated end result would not be substantially different from that produced under the existing settlements and division of revenues processes. These pooled access charge revenues would, however, be segregated from the interexchange pool and would include revenues from services (e.g., ENFIA) and participation of exchange carriers (e.g., Hawaiian and Alaskan exchange carriers) now excluded from the interexchange pool.

4. The tentative plan relied upon AT&T to implement the access service compensation arrangements. Thus, under the plan, it would be AT&T that compiled the data and performed the computations needed to determine actual access charges, filed the required tariffs, and adminstered the access charge revenue pool.

5. The comments that were filed in response to the *Second Supplemental Notice* indicate that the proposal to compute private line access charges upon a usage basis is probably the most controversial aspect of that plan. We have not, as yet, reached any final conclusion with respect to the merits of the arguments that were presented in those comments in favor of usage-based or direct-assignment-based private line access charges. We do believe, however, that significant questions have been raised concerning the impact that the proposed plan might have on the development of "bypass" to the local network. The comments have caused us to question the desirability of the tentative plan and the effect it would have upon the national network. We note, moreover, that the prospect of significant changes in the overall structure of the telecommunications industry has arisen since the issuance of the *Second Supplemental Notice.* A structure in which an overwhelming majority of exchange access service is provided by carriers who are unaffiliated with interstate long distance carriers appears to be developing. We believe that this new industry structure can be conducive to the continued development of competition in intercity communications. It is vital that an access charge framework adopted by the Commission both be suited to the structure of the industry and provide a sound basis for the competitive climate we have found to be in the public interest.

6. On January 8, 1982, the United States Department of Justice (DOJ) and AT&T announced that they had agreed upon the terms of a settlement to terminate litigation of *United States v. AT&T,* Civil Action No. 74–1698 (D.D.C.), an antitrust suit filed by DOJ in 1974. The settlement provided that the 1956 consent decree which had terminated similar litigation brought by DOJ against AT&T in 1949 would be vacated in its entirety and would be replaced by provisions reflecting "technological, economic and regulatory changes which have occurred since the entry" of that decree.[4] The parties simultaneously filed a stipulation for voluntary dismissal of the pending suit with the United States District Court for the District of Columbia and requested the federal court in New Jersey to transfer jurisdiction over the 1956 consent decree to the District of Columbia Court. The transfer motion was granted on January 14, 1982.

7. The United States District Court for the District of Columbia now has the terms of the settlement under consideration. It has required DOJ to prepare a competitive impact statement (CIS) and has provided interested persons the opportunity to comment upon the settlement's potential impact upon the public in general and the telecommunications industry in particular prior to the court's reaching a decision to enter or not to enter the proposed modifications to the 1956 decree.

8. One concern in this proceeding is that we accurately analyze the potential impact of the proposed modifications to the decree upon the tentative access charge plan presented in the *Second Supplemental Notice* and determine whether, in light of that analysis, the tentative plan should be revised.

9. The modified decree would require AT&T to divest its exchange telecommunications [5] and exchange access [6] functions. Section II and Appendix B of the modified decree would require that the divested Bell Operating Companies ("BOCs") [7]

[2] The use of AT&T's interstate rate of return may no longer be reasonable as a result of the proposed settlement. See paragraphs 59–60, *infra,* for further decision.

[3] A desciption of the process appears in the *Second Supplemental Notice,* 77 FCC 2d at 227–29.

[4] Modification of Final Judgment filed on January 8, 1982, in *United States v. Western Electric Company,* Civil Action No. 17–49 (D.N.J.), ("modified decree") at p. 1.

[5] CIS at 28.

[6] Section IV (F).

[7] For purposes of the modified decree, neither Southern New England Telephone Company nor Cincinnati Bell, Inc. are considered Bell Operating Companies.

eventually provide all interexchange carriers with access to BOC exchange facilities which is equal in type, quality, and price to that provided to AT&T and its affiliates.[8] The BOCs must offer these access arrangements on an unbundled, tariffed basis with separate cost-justified charges for each element of access.[9] The access service tariffs would become effective on the date of divestiture, replacing the division of revenues process through which AT&T now reimburses the BOCs for use of their exchange plant to complete interexchange services.

10. Appendix B of the modified decree would require that any differences in charges to carriers be cost-justified on the basis of differences in services provided, where equivalent service is an option. In the CIS, DOJ makes clear its recognition that such a requirement:

> governs only the BOCs' own efforts in formulating rates in order to assure that those efforts do not discriminate among interexchange carriers. It does not prevent appropriate regulatory * * * authorities from requiring that the exchange access charges or any other mechanism prescribed by [them] be utilized as vehicles for payments to BOCs of costs allocated to exchange access by jurisdictional separations * * *. CIS at 35–36.

11. In light of the above discussion, we believe that consideration of certain new access charge proposals is appropriate.

II. Private Line Access Charges and the Bypass Phenomenon

A. Alternative Access Charge Strategies

12. One major goal of the *Second Supplemental Notice* is achievement of an access charge that does not result in unlawful discrimination or preference between private line users and users of switched services. The *Second Supplemental Notice* suggested one approach—that, in general, private lines be treated like the public switched network for purposes of an access charge. Specifically, it was proposed that private lines be allocated a portion of the non-traffic sensitive interstate cost assignment on a per minute basis.

13. This proposal, as we saw it, has the advantage of eliminating any artificial advantage held by private lines as a result of their ability to escape paying full "SPF" usage factor paid by MTS and WATS. A number of parties, however, have argued that this goal is achieved at the expense of substantial distortions to the private line market. Since heavy use of private lines imposes no more cost on the system than does light use, a per-minute charge, even on an average basis as recommended in the *Second Supplemental Notice*, could distort a market where services are, arguably, currently priced appropriately.

14. The obvious alternative is, in principle, to treat the facilities used for local access to the public switched network like private lines. Specifically, the goal of non-discrimination could be achieved if all non-traffic sensitive plant were assigned directly to the customers using it. Thus private line costs would continue to be directly assigned, and MTS and WATS bills would contain a per line NTS assignment that would not vary with usage. Every customer, under this approach, would pay a flat (per line) access charge that did not vary with use, plus usage based interstate charges that reflected only usage sensitive facilities and plus local charges.

15. If the Commission's only concerns were equity between services and economic efficiency, this option would be extremely attractive. This option, however, could result in dramatic changes in the telephone rate structure, an increase in the price of access to the public network and a possible reduction in the subscriber base. These increases could fall most heavily upon those groups least able to pay—small users in high cost (e.g., rural) areas.[10] These apparent drawbacks make us somewhat cautious about its prompt implementation. Nevertheless, this approach would allow economic efficiency gains and resolves the problem of discrimination.

16. Specifically, this approach tends to put costs on the cost-causative customer. A customer who uses little interstate service may require NTS investments that are equal to those required by heavy users, yet this light user now pays much less. This second approach corrects this problem. Several comments have stressed the advantages of some type of direct assignment of NTS costs.

17. In addition to these "pure strategies" (allocation based on "pure" minutes of use or "pure" direct assignment) a number of possible "mixed strategies" are available. Two such strategies are detailed below. Both of these strategies have the advantage that they result in movement toward the more efficient principle of cost allocation on the basis of cost causation. Both, however, attempt to satisfy the Commission's other objectives as well.

18. The costs of local access assigned to the interstate jurisdiction can be disaggregated in various ways. The first mixed strategy would directly attribute all private line costs to the private line category and directly attribute the share of traffic sensitive (switched) costs allocated to the interstate jurisdiction to the MTS/WATS categories.[11]

19. What remains is the allocation of non-traffic sensitive exchange facilities outside of the private line category. The proposal would subdivide these costs into that amount allocated by proportionate usage (SLU) and the remainder (now SPF minus SLU). It would allocate that portion of this revenue requirement determined by SLU to the related switched service, but allocate residual non-traffic sensitive plant ((SPF minus SLU) times total NTS plant costs) between private lines and switched services. The allocator recommended is the proportionate number of *equivalent lines*. A private line loop dedicated to an interstate service would be counted as one equivalent line while a typical subscriber loop in the public switched network would be counted as SLU equivalent lines. Thus, for example, if SLU were 10 percent, 10 loops in the public switched network would be equivalent to one private line loop.

20. This proposal has the alleged advantage that private lines are not asked to contribute according to their actual usage (even on an average basis), but rather are asked to contribute on a per line basis. The public switched network could continue to be priced on a usage basis (with the PSN's share of SPF minus SLU allocated according to use), and any future decision to move toward non-usage sensitive pricing of non-traffic sensitive plant would not be hindered by this plan.

21. Unlike approaches based primarily on direct assignment of NTS costs, this first mixed strategy could easily be implemented in a separations environment much like that of the past. If future Joint Board decisions result in a move from SPF to SLU, the SPF minus SLU revenue requirement would be reduced, and both interstate private line and MTS-WATS rates would be lowered together. Likewise, if the Joint Board and this Commission were to

[8] Appendix B does allow BOCs to phase-in provision of equal exchange access to all interexchange carriers.

[9] Before equal interconnection is made available, however, some form of value of service discounts are permitted.

[10] Those harmed under such a proposal are those who make few interstate calls. These individuals would find themselves required to pay an access charge to access a service for which they have little use. Such a requirement may raise equity concerns and constitute a step away from the almost "universal" service that has developed.

[11] This proposal is derived from a filing made by the Ad Hoc Telecommunications Users Assn. See "Briefing Paper on Access Charges," February 24, 1982.

decide upon a "high cost factor," this factor could easily be brought into the pool and allocated in a way similar to the revenue requirements generated by SPF minus SLU. A movement away from a usage based separation policy would make a charge based on this strategy less appropriate since the strategy is designed around relative use (SLU). We therefore request that parties supporting this first mixed strategy or some variant discuss the desired form of separations that should be associated with such an approach.

22. The second mixed strategy moves much closer to the direct assignment proposal (i.e., the second pure strategy). This second mixed approach recognizes that local non-traffic sensitive facilities are essentially private lines and essentially identical whether used for switched or for private line services. This approach, therefore, would charge multiline business users an identical flat-fee interstate access charge for each access line whether that access line is used for private line services or is used for switched services. In addition, these customers would pay MTS-WATS rates that reflect only traffic sensitive costs for any MTS/WATS calls, would continue to pay local rates for common lines (i.e., lines that can be used for both local and interstate services) and would continue to pay interoffice private line rates for interoffice private lines.

23. Residential and single-line business users would be given a choice between the flat-rate access charge applied to multiline business and the use of an MTS (or WATS) rate that continues to allocate NTS plant on a traffic sensitive basis. By making this option available, the plan lessens the potential danger that direct assignment of all MTS costs would cause substantial rate increases for those who make few interstate calls.

24. Under this second mixed plan, many non-multiline business (i.e., single line business and residential) customers, at least at first, would be uncertain whether they would make sufficient calls to justify the flat fee or whether they would be better off selecting the usage sensitive alternative. One means of eliminating the necessity of making an election would be to cap the amount of non-traffic sensitive plant that a customer will pay for on a usage basis; that is, we could eliminate the need to select an option in advance. Thus, for example, if the flat fee is $X per month, once a customer has paid $X in non-traffic sensitive contribution through usage based pricing in any month, he automatically moves to the rate that recovers traffic sensitive costs only. The level of costs to be recovered on a per call basis could, of course, very from the flat charge collected from multiline business customers.

25. We recognize that such an approach may have certain drawbacks from the standpoint of ease in billing, but also believe that certain consumer benefits could also result. We therefore seek comment on whether such a cap would be reasonable and on the form pricing would take under such an approach. Thus, for example, if the flat fee were $12.00, the non-multiline business subscriber might pay 50¢ per call, plus any usage sensitive cost based rates, for his first twenty-four calls and a rate reflecting only usage sensitive costs for additional calling.

26. This pricing decision need not be made at this time. Specifically, carriers might choose to introduce such a payment cap as one pricing option. We therefore seek additional comment on whether such an approach, even if desirable, need be mandated.

27. The flat-rate access charge would exceed the average per line NTS cost assigned interstate to contribute to the short-fall caused by small users and non-users. One example of such a charge would set the access charge equal to the total average per line NTS cost (i.e. interstate plus intrastate) as a means of equalizing the interstate access charge between private lines and common lines.[13] In addition to the flat-rate NTS charge and the traffic sensitive interstate message rate, customers would continue to pay a local rate. Because the interstate per-message rates paid by these users would be substantially lower than typical MTS rates, these flat-rate users might be expected to increase MTS calling with associated benefits. In the short term, because of the recent SPF freeze (see 89 FCC 2d 1), the increased calling will have no effect on assignment of costs to interstate and, therefore, need not be calculated into the access charge. When the SPF freeze is eliminated, however, changes in the separations manual reflecting the new access charges may well be essential. Specifically, some form of "gross assignment" might be appropriate.

28. This second mixed strategy would essentially shift substantial investment and customers from MTS to a new "direct payment" category. Multiline business NTS plant would be priced the same regardless of whether it has been classified as MTS, WATS, or private line, eliminating much if not all of the incentive to use private lines when MTS is more efficient. Thus past interstate rate differentials between various categories of business NTS plant would be eliminated, achieving one of the goals of this proceeding.[14]

29. One apparent discrimination remains. Specifically, those single-line customers who would select the usage based cost assignment option would pay a different (presumably lower) access charge than would those paying for MTS under the two part access charge plus usage rate. However, in fact, multiline business subscribers impose higher inside wiring and terminal equipment costs on the network than do single-line users. One justification for the requirement that multiline business users pay the flat-rate access charge is to recognize the increased CPE and wiring costs to be recovered from interstate users that have been imposed on the system by multiline business customers.

30. Moreover, while some businesses might find that their combined access charge and usage sensitive rate exceed the price that they currently pay at the level of calls made before the new access charge is implemented, they would be likely to find it in their interests to increase calling in response to the lower per call costs, and may well find themselves better off as a result of this price change. Users other than multiline business users would be unlikely to be harmed by this charge because they would have a choice between continuing under their current type of arrangement or selecting the two-part option.[15] Again, because of the SPF freeze, this option would not result in substantial shifts of costs allocated to the interstate jurisdiction.

31. It is our expectation that requiring multiline users to pay a flat-rate access

[13] It would, of course, be possible to set this "flat fee" at a different level while maintaining the basic structure of this approach. Parties are invited to submit alternative proposals for flat charge levels, indicating how our goals of promoting a nationwide network at reasonable rates and fostering efficient use of the network would be served by such a rate structure.

[14] We note that the approach taken in the example would merely eliminate the *interstate* discrimination between private line and common line NTS facilities. Common line users will still have to pay local rates that reflect NTS costs assigned to the local jurisdiction. This phenomenon would still generate substantial incentives for inefficient use of private lines (which do not pay these local charges). Some form of equalizing charge on private lines might well be appropriate. We therefore request comment on whether such an additional private line charge is either desirable or necessary, and if so, how the Commission could best determine the appropriate level for such a charge.

[15] The economics literature suggests advantage of such a "self-selecting tariff." G.R. Faulhaber and J.C. Panzar, 1977, "Optional Two-Part Tariffs with Self-Selection," Bell Laboratories Economic Discussion Paper 74.

charge that equals their entire NTS cost (rather than merely that share of costs assigned to the interstate jurisdiction) would yield a contribution at least as large as is generated from these customers through the present usage based MTS-WATS charges. We would not anticipate, therefore, that those making few calls would be burdened by larger NTS requirements. We seek, however, comments on the effect of such a proposal on the residual NTS revenue requiremens.

32. To this point we have addressed interstate access charges as if they were related to separations policy only because the separations process determines the revenue requirement that an excess charge must meet. However, charges based on this second mixed strategy might result in significant changes in interstate usage. Specifically, those paying flat-rate access charges plus interstate rates that reflect only traffic sensitive costs could substantially increase their usage of the public switched network. If this second mixed strategy is implemented, therefore, some type of gross assignment-based separation policy may be needed. Such a policy would allocate NTS plant between the interstate and intrastate jurisdiction on a basis other than usage.[16] Some forms of the gross assignments process would shift all NTS costs into the interstate jurisdiction, or all into the intrastate jurisdiction. The interstate access charge level will clearly depend on these proportions.

33. We seek comment on whether this or some related plan is desirable. In addition, we seek comment on whether this plan is implementable in the near term, on whether there are technical difficulties in implementing such a plan in a multi-vendor environment, on what changes in the Separations Manual (if any) might be required or desirable for implementation, and on any effects that this plan would have on local and on interstate rates. Finally, we seek comment on the extent to which flat-rate loop charges should be averaged across exchange boundaries in both the short and long terms. Nationwide averaging and pooling would build in a form of high cost factor, diminishing the need for the Commission to consider more explicit means of subsidizing service. It would also comport more closely with the nationwide averaging in present interstate MTS and WATS tariffs. Nevertheless, nationwide averaging tends to separate prices and costs, making achievement of efficiency more difficult.

B. Bypass

34. Access service has traditionally been a monopoly service of the wireline carrier that provides local exchange telephone service. Interexchange carriers have necessarily relied upon the local exchange telephone company to connect their facilities with the vast majority of customers because wireline distribution was the only practical method of reaching the customers and because such wireline distribution required right-of-way authority to implement. However, new technical developments have already created non-wireline or "bypass" alternatives which are practical now in certain applications and which may become more general of applicable. Local exchange telephone facilities, however, no longer provide the only technically feasible method of local distribution.

35. A number of new technologies have reduced the costs of "building around" the network, making bypass of local exchange facilities potentially economic to a larger number of customers. Dramatic price reductions in domestic satellite transponder rental and in users premises small capacity earth stations has made direct point-to-point satellite transmission feasible in some cases. In addition, new services such as digital termination service will soon be available and could be used to terminate local services, completely avoiding the traditional local loop. Finally, two-way cable television systems have some potential to serve users as a termination device in the increasing number of cabled cities.[17]

36. Many of these technologies are, or soon will be, available. The extent to which they are economically attractive depends in part on regulatory delays in their implementation and on the relative total prices of these systems that use local telephone access and the other alternatives. At present, systems using telephone network have the substantial advantage that virtually everyone can be accessed by telephone while relatively few firms and almost no individuals can be accessed through the alternative technologies. Bypass alternatives, however, have several advantages over traditional wire-pair. Many of these bypass technologies may offer broader bandwidth at a lower cost, digital capacity, or more flexible accessibility. All of these features are increasingly important in today's business environment. Today, domsat based systems are competitive with local telephone network based systems for applications involving large capacity or distribution to many points over a large area. Thus, many users may find it efficient to select services that use bypass technologies even if traditional telpehone company private line access continues to be available at a relatively low rate.

37. Today's systems using private lines for local distribution have competition from other technologies and this competition will probably increase in the future. We believe in letting users choose between local private line-based systems and other systems in a fair marketplace. Thus, we must be mindful not to distort this marketplace by either underpricing or overpricing local private line facilities.

38. Entry of the proposed consent decree would increase the significance of the bypass phenomenon. At the time our tentative plan was developed and the access charge comments were filed, there was no reason to suppose that AT&T would have an incentive to bypass its own local exchange facilities except possibly for some users with specialized requirements. Any possible diversion from traditional telephone private line services to alternative technology services would probably have been limited to alternative technology services of newer entrants. However, when AT&T ceases to own local exchange facilities (apart from its minority interest in Cincinnati Bell and Southern New England Telephone), it will no longer have the same incentive to use these traditional facilities. AT&T may be in a position to construct bypass facilities substantially more rapidly than other interexchange carriers.

39. Therefore, we seek both general comments on the impact of the proposed usage-based private line access charge on the relative attractiveness of bypass systems, and comments on the relationship of the proposed consent decree and the proposed changes in AT&T's structure to the bypass phenomenon. We also encourage interested persons to provide us with additional information that will assist us in evaluating the immediacy and magnitude of the phenomenon and in identifying the level of access charges that would be appropriate if we were ultimately to conclude that a departure from usage-based charges would be justified.

[16] The generic formula proposed in CC Docket 80-296 (Notice of proposed Rulemaking and Establishment of a Joint Board) is sufficiently general to allow such a gross assignment-based separations policy. Gross assignment, it should be noted, is not inconsistent with some form of "high cost factor" designed to benefit high cost exchanges.

[17] Indeed a current experiment achieves end-to-end connectivity viss, DIS, CATV, and domsats. See L. Gould, "Extending Executive Reach Via Communications" *Telecommunications*, Vol. 15, No. 8, August 1981, p. 16-24.

40. In sum, we seek comment on the relative merits of the two "pure" strategies and on the two "mixed strategies" detailed *supra*, and on reasonable variants thereof. Any alternative proposals should attempt to address our concern that the access charge promote nondiscrimination between the public switched network and private lines, limit the use of bypass technology where this technology is inefficient, and limit any substantial setback in the availability of telephone service. We specifically request that any proposed modifications in either of the mixed strategies discussed *supra* be detailed fully and that any alternative strategy be spelled out with sufficient detail to allow critical evluation by both the Commission and other interested persons.

III. The Aggregation of Access Charges

41. Whichever strategy is selected, it will be necessary to determine the extent to which a uniform nationwide access charge is desirable or necessary. We, accordingly, invite further comments with respect to alternative forms of access charges that do or do not involve pooling. We believe that each of the four pure and mixed strategies is consistent with varying degrees of aggregation.

42. Although it appears doubtful that this Commission could review separate access charge schedules for each exchange or even for each exchange carrier, at least four alternatives appear to be feasible in the long run:

(1) Uniform charges for all exchanges for all exchange carriers implemented with an access charge revenue pool;

(2) A tariff that establishes separate schedules for a limited number of classes of exchange carriers (with no revenue pooling);[18]

(3) A tariff that establishes separate schedules for a limited number of classes of exchanges (with no revenue pooling); or

(4) A tariff that established separate schedules for each state with pooling on a state-by-state basis.

43. We tentatively concluded in the *Second Supplemental Notice* that the first alternative would be preferable for the initial access charges because the effort to establish appropriate classes would unduly delay the implementation of initial access charges. While this may still be the case, the other alternatives warrant further consideration in view of the problems a new association might encounter if it were organized to administer a revenue pool and its functions were subsequently contracted as a result of a decision to eliminate pools, and in light of the efficiency drawbacks to an access pool, i.e., that pooling results in prices different from costs.

44. A state-by-state approach, of course, both drawbacks and advantages. Like nationwide pooling through averaging, it separates price from cost, thus encouraging overuse of more costly facilities and underuse of the less costly. Because a state-by-state approach is substantially less aggregated than the nationwide approach, however, this drawback to pooling is reduced. At the same time, a state-by-state access charge would require the Commission to examine a large number of access charges. Clearly, however, about fifty access charges would be far easier to evaluate than the 1500 that might be required if each company were to set its own charge, or the thousands of access charges that would be forthcoming if charges were to be set for each exchange.

45. Advantages of the state-by-state approach follow. First, separations data are collected on a basis that allows for straightforward state-by-state aggregation. The data requirements of this approach are, therefore, smaller than those required under approaches (2) or (3). Second, since access charges in each state will reflect particular access costs of that state, it may be easier to integrate intrastate interexchange access service into the access charges (as is contemplated in some forms of proposed legislation) under this state-by-state approach. Finally, this approach may reduce the bypass problem to the extent that it results in more deaveraged—location specific—charges.

46. Persons who comment on this subject are encouraged to discuss the desirability and feasibility of each alternative. We would particularly appreciate suggestions with respect to the procedures that could be used to designate classes of exchanges or exchange carriers that should have comparable costs, and an estimate of the burden and time that would be required to complete such procedures.

47. We recognize that the selection of an alternative other than uniform access charges with pooling could affect the averaging of MTS rates. Although deaveraged access charges would not inevitably result in deaveraged MTS rates, deaveraged access charges would make deaveraging of end user rates more likely. We encourage interested persons to evaluate and appraise the extent to which deaveraging of MTS access charges would lead to deaveraging of MTS rates, and of any costs that this might impose.

IV. Implementing Access Charges in a Post-Settlement Environment

48. Entry of the proposed decree would require a reevaluation of the tentative plan for the administration of access charges, whichever of the aggregation options is selected. Although the modified decree does not explicitly prohibit AT&T's performing the administrative tasks proposed to be assigned to it under the tentative plan in the *Second Supplemental Notice*, once the modified decree would become effective AT&T would be only one (albeit the largest) among several interexchange carriers dependent upon others to provide needed exchange access services. This altered AT&T role raises substantial concern that AT&T would still be a suitable agent upon which local exchange carriers should rely for preparation and filing of tariffs and administration of any access charge pool. Indeed, even before the proposed modifications of the consent decree, some participants in this proceeding had expressed concern that relying upon AT&T to administer the plan could undermine our efforts to have non-discriminatory access charges. Consequently, we believe that it has become necessary to consider alternative institutional arrangements for administering the access charge plan we adopt.

49. There appear to be four alternatives to the tentative plan's proposal to rely upon AT&T to administer the access charge plan:

(1) Every exchange carrier could compute its own access charges, file its own tariffs, and bill and keep its own access charges;

(2) This Commission or another governmental entity could assume responsibility for all these functions;

(3) A new intra-industry entity could be created to perform the administrative functions required to implement an interim plan and any final plan we adopt; and

(4) This Commission could rely on States to enforce State-by-State access charges, and exercise federal jurisdiction only when discrimination against interstate communications appeared.[19]

[18] Under this approach the Commission might allow carriers who wish to file independent tariffs to do so.

[19] While we believe that the Commission has substantial authority to delegate, we are aware that the limits of this authority are uncler. See paragraph 58 infra.

Of these four alternatives, we believe that the third is the most viable. Specifically, it appears likely that some forms of cooperation among exchange carriers will be necessary under any access charge plan implementing this required cooperation. Assuming that every exchange carrier were able to perform the administrative tasks associated with implementing access charges for interstate services, the FCC's staff could not feasibly complete review of the resulting 1500 tariff filings. Reliance upon some governmental entity to perform these tasks appears even more unrealistic now than it did when we rejected this alternative in the *Second Supplemental Notice. See* 77 FCC 2d at 234. We are unaware of any other governmental entity with either the resources or the charter to perform such a function.

50. We believe that only the industry possesses the resources, including trained personnel, adequate to administer access charges. Some participants have already suggested that an intraindustry association be created to perform this task. None, however, has as yet presented a complete proposal in which the nature, structure and functions of such an entity were detailed. In response to this Notice, we hope to receive such complete proposals and to elicit comments which analyze the strengths and weaknesses of these proposals as well as the one we describe below. We anticipate that the nature of this entity will depend to a large extent on the functions that it is to perform, and expect that comments will relate this entity to these functions. We are also prepared to consider proposals to implement access charges through mechanisms other than an intra-industry association. Such proposals should, however, be made in sufficient detail for us to be able to assess realistically their overall costs and burdens, and likelihood of success.

51. We would propose that an association with responsibility for administering access charges be established to which all exchange carriers would belong. Some parties have suggested that membership in such an organization be extended to interexchange carriers or consumer groups. We find that the Communciations Act already provides safeguards adequate to protect the interests of these groups in the fair, evenhanded implementation of any access charge plan we might adopt.[20] Consequently, while membership in this entity might later be extended to these or other interest groups, we believe that initially membership could and should be restricted only to exchange carriers in order to enhance the association's ability to reach prompt accord on any policy decisions required expeditiously to implement the access charge plan we adopt.

52. The association would require both a governing board to establish policy, and staff to implement that policy and to perform the day-to-day administration of access charges. The access charge plan we ultimately adopt would, of course, determine the nature of these policies and administrative tasks. *See* discussion, *supra* at paras. 12–33 and 42–48. The governing board might, in certain circumstances, also review staff actions challenged by individual members.

53. We would anticipate that the governing board would play a crucial role in assuring the equitable and evenhanded administration of the access charge plan. For this reason we believe that its composition would have to be such that, despite the substantial disparities in size among exchange carriers, the views of each were effectively represented. Some balance must be struck between representation based upon "one carrier, one vote," and representation based upon factors reflecting size alone. One proposal which we believe may be workable would be a nine member board with its membership drawn from different segments of the telco industry (*e.g.*, 4 representatives selected by the BOCs, 1 by GTE, 1 by the next six largest independent telcos,[21] and 3 by the remaining independent exchange carriers) would strike such a balance. Alternatively, a board composed of eight industry representatives (*e.g.*, 3 selected by the BOCs, 2 by the seven largest independents, and 3 selected by the remaining telcos) and one representation member from this Commission, with the latter acting as chairperson and voting only to break a tie vote, would simultaneously achieve this goal and provide some representation of the public interest.

54. At this time it appears that only AT&T has staff adequate in number and expertise to administer acess charges. While under the terms of the modified consent decree, AT&T would no longer perform this task for the BOCs, the decree would permit the BOCs to "support and share the costs of a centralized organization for the provision of * * * administrative and other services which can most efficiently be provided on a centralized basis." Section IB. Thus it appears likely that many of the AT&T personnel with the expertise needed to implement our access charge plan would either join a centralized organization under BOC control or transfer directly to one of the BOCs. In either case, these personnel would be likely to continue to perform such tasks as compiling data, computing access charges, preparing and filing tariffs, and billing and revenue distribution for the BOCs. Implementation of any access charge plan we adopt would require performance of at least some of these tasks. It seems reasonable that the association could contract with the entity already providing such services to the BOCs to perform, on a cost-compensatory basis, those tasks required to administer the access charge plan from day-to-day. The association staff could then be limited in number to those required to perform support functions for the governing board, and to act as liaison between the board and personnel administering access charges on a day-to-day basis.

55. The primary function of the association would be administration of the access charge plan. We could foresee the possibility that the association might in the future perform other functions for its members. Expansion of its role, however, would almost certainly require our prescribing rules for allocating costs between administration of access charges and these other activities and our reviewing the arrangements for funding these activities to assure that access service revenues were not used to subsidize these other activities. Thus, initially we would anticipate that the association's activities woud be restricted to those required to implement access charges as expeditiously as possible.

56. This association might take the form of a non-profit corporation with the various representatives being members of the Board of Directors and with clearly delineated functions in its corporate charter. Such a form might make it clear that the responsibility of each member is to the system as a whole, rather than to the more narrow interests of the company with which the member is associated.

57. Because ths entity would be assuming functions that are today largely executed by AT&T as *de facto* "manager" of the nation's interexchange

[20] *See* 47 U.S.C. 203, 207–09.

[21] These are: United Telecommunications Continental Telephone Corp., Central Telephone and Utilities Corp., Mid-Continent Telephone, Puerto Rico Telephone, and Rochester Telephone Corp. Source: "Phone Facts '82" published by the United States Indpendent Telephone Association.

network, we do not believe that its establishment would constitute a delegation of governmental power to a private or advisory agency. Any exchange carrier who chose not to utilize the association's services would be free to file and administer its tariffs (much as exception rates are filed today). We seek comments, however, on the legality of establishing an exchange carrier association along the lines described above.

58. An additional issue is the appropriate rate of return for investment allocated to the interstate jurisdiction. The *Second Supplemental Notice* proposed that AT&T's interstate rate of return be applied to that portion of exchange capital that is allocated to the interstate jurisdiction. In the past, the bulk of exchange costs assigned to the interstate jurisdiction have been BOC facilities. The cost of capital for these facilities was explicitly considered in determining AT&T's allowed rate of return. As a result of the proposed consent decree, these exchange facilities would be owned by the divested BOCs. There is no reason to believe that AT&T's rate of return would be appropriate to an access charge.

59. We therefore seek comment on an appropriate basis for determining the rate of return to be allowed in setting an access charge. There appear to be two obvious possibilities. First, the Commission could convene a major rate of return case to select an appropriate rate or return level. Second, the Commission could base the access charge rate or return on the particular rates of return allowed by states. This second option would seem particularly desirable if a state-by-state or more highly disaggregated approach were selected.

60. Plant used in provision of both interstate and intrastate service has been subdivided into two components. The first of these, non-traffic sensitive equipment, has been dealt with at some length. Whichever system of allocating non-traffic sensitive plant is selected, it seems reasonable to expect interexchange carriers to compensate exchange carriers for traffic sensitive costs on a traffic sensitive basis.

61. Specifically, we anticipate that exchange carriers will be compensated for the traffic sensitive costs actually imposed by the interexchange carrier. Until the OCCs, or others taking access, are able to achieve access equal to that achieved by AT&T, we anticipate that the OCC's access charge for traffic-sensitive equipment would be lower than would the access charge paid by AT&T.

62. Non-traffic sensitive plant need not be allocated to these interexchange carriers. Rather, exchange carriers may be able to bill their customers directly for this portion of access.

V. Other Subjects

63. We encourage participants to focus upon possible changes in the access charge plan that may be required to adapt to developments that have occurred since the access charge comments were filed.

64. We note that the proposed consent decree would define access service to include billing or billing and collection services and the use of lines or trunks between a telephone company end office and an interexchange switch. Those services and facilities were excluded from the definition of access service in our tentative plan. The divested BOCs could comply with the decree by filing supplemental charges for elements that are excluded from Commission rules for the computation of access charges. Nevertheless, it might be desirable to expand our plan to include charges for such services or facilities. Interested persons are encouraged to submit suggestions for adapting an access charge plan to include such additional services or facilities.

65. The tentative plan in the *Second Supplemental Notice* was based on the premise that initial access charges will become effective before any alternative interconnection arrangements are provided to OCCs. Since that time, AT&T has introduced alternative access arrangements called ENFIA B and C, MCI has negotiated alternative arrangements with independent telephone companies in Iowa and Texas, and the proposed consent decree would establish a schedule for the introduction of new OCC interconnection arrangements by the divested BOCs. In view of those developments, it will apparently be necessary to adapt an access charge plan to fit a more complete range of alternative arrangements. We encourage interested persons to sumit suggestions for accomplishing that purpose.

66. The identification of appropriate differentials for different qualities of interconnection, including the use of a different number of digits to access the interexchange switch, is obviously one of the most difficult aspects of the interconnection issue. Differentials conceivably might be based either upon the difference in the value of service to the user or the cost of modifying existing facilities to improve the quality of OCC interconnection. The access charge comments that were filed in response to the *Second Supplemental Notice* do not provide any concrete information with respect to costs or such value differences. Interested persons are encouraged to provide such information.

67. This *Notice* has argued that the guidlines established in the *Second Supplemental Notice* some two years ago may not be appropriate without modification given the current industry structure. Since the industry structure will continue to change, however, it might be asked whether the type of proposals discussed in this *Notice* might also be outdated by the time that they can be implemented.

68. We believe that the types of principles discussed in this *Notice* are less dependent on industry structure than are those discussed in the *Second Supplemental Notice*. Therefore, even if the proposed modification of the Consent Decree is approved in a somewhat different form than from those that we anticipate, we believe that these approaches will be implementable.

69. We anticipate that a final order, which would spell out specific principles and methodologies to be used in the calculation of an access charge or set of access charges, will be issued by the end of this year. If this goal is realized, access charges based on these principles can be designed and actually in place by the end of the following year. This timetable, while ambitious, is expected to be sufficient to allow development of an access charge that will resolve the major policy difficulties facing this Commission.

70. This *Notice* has called attention to the important interrelationship between an access charge and the separations process. The separations process determines the amount of money that must be recovered through an access charge. There is currently in place a Joint Board that is investigating appropriate separations procedures. We feel confident that this Joint Board will take the configuration of the access charge that will result from the final order in this phase of Docket 78–72 into account in determining its recommendations to the Commission.

71. It appears that the Commission's decision in this proceeding could have a significant economic impact on a substantial number of small independent telephone companies. Accordingly, we are including an initial regulatory flexibility analysis in this *Notice of Inquiry and Proposed Rulemaking* as required by the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* P.C. 96–354, approved September 19, 1981. Many of the points which need to be discussed in the context of an initial regulatory flexibility analysis

have already been dealt with at length above. Therefore, the treatment in this section will be brief, with a citation to our preceding discussion.

72. Action concerning access charges is being considered by the Commission for the following reasons: (1) To accomodate industry changes resulting from competition and the proposed AT&T-Department of Justice Decree Modification; and (2) to eliminate differences in the treatment of services that access the network in identical ways but pay very different prices for access; *See* paras. 1–12 *supra* for further discussion of these points. Any action in this regard would be taken pursuant to the Commission's ratemaking and prescription authority contained in section 201–205 of the Act and other relevant provisions. *See* para. 78 *infra*.

73. There are approximately 1500 independent telephone companies which would be subject to any interstate access rule adopted by the Commission, but not all of these companies qualify as small entities for purposes of the Regulatory Flexibility Act. The reporting, recordkeeping and other requirements imposed by any final decision would depend on which access charge plan is adopted by the Commission. *See* paras. 12–33 for further discussion of these access plans. The Commission has requested comments on a number of alternatives for access charges. Alternatives include several options concerning the level of aggregations access charges. For example, should access charge be developed on a nationwide, state-by-state, company class, or exchange class basis. *See* paras. 41–47 for discussion of the aggregation question. We have also requested comments on a number of implementation options. For example, should access charges be implemented by each carrier, by the Commission, by the independent organization, or by the states. *See* paras. 49–53 *supra* for a discussion of the implementation options. Each of these plans would require accounting and bookkeeping skills of the type presently required by telephone companies although the extent to which these skills would be used would differ depending on the plan adopted. It appears that these alternative plans could have differing effects on small telephone companies, although the extent of the difference is not entirely clear at this point. We specifically request small independent telephone companies, and the organizations representing them, to address the implications of these alternatives for their operations.

74. The regulatory proposals discussed in this item would supersede existing mechanisms such as ENFIA, division of revenues and settlements through which local telephone companies are compenstated for the use of their facilities in the origination and termination of interstate communications. Thus, potentially conflicting regulations would be eliminated if one of these plans is adopted.

75. The possibility of accommodating the circumstances of small telephone companies through the establishment of differing compliance standards or timetables has not been discussed above. While we have some reservations about the feasibility of such approaches due to the need for national uniformity in the principles governing access charges, we also request small independent telephone companies and their representatives to address the question of whether their needs could be accommodated through such approaches.

76. For purpose of this non-restricted notice and comment rulemaking proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a notice of proposed rulemaking until the time a public notice is issued stating that a substantial disposition of the matter is to be considered in a forthcoming meeting or until a final order disposing of the matter is adopted by the Commission, whichever earlier. In general, an *ex parte* presentation is any written or oral communication (other than formal oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceeding. Any person who submits a written *ex parte* presentation must serve a copy of that presentation on the Commission's Secretary for inclusion in the public file. Any person who makes an oral *ex parte* presentation addressing matters not fully covered in any previously-filed written comments for the proceeding must prepare a written summary of that presentation, that written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. See generally, Section 1.1231 of the Commission's rules, 47 CFR 1.123.

Vi. Comment Filings and Ordering Clauses

77. Comments filed in response to this *Fourth Supplemental Notice* should address the issues raised in this notice related to: (a) the appropriate "pure" or "mixed strategy" to pursue in the short and long run; (b) the impact of bypass technology upon the tentative access charge plan; (c) the extent to which access charges should be deaveraged; (d) the institutional arrangements required to administer an access charge plan; and (e) the role of OCC "discounts" in the future.

78. Accordingly, it is hereby ordered, that comments may be filed on the issues and proposals discussed herein no later than August 6, 1982, and that replies may be filed no later than September 15, 1982. In accordance with the provisions of § 1.419 of the Commission's Rules, 47 CFR 1.1419, and original and five copies of all statements, briefs or comments, or replies, shall be filed with the Federal Communications Commission, Washington, D.C. 20554, and all such filings will be available for public inspection in the Docket Reference Room at the Commission's Washington, D.C. office. In reaching its decision, the Commission may consider information and ideas not contained in filings, provided that such information is reduced to writing and placed in the public file, and provided that the fact of the Commission's reliance thereon is noted in the Order.

79. It is further ordered, that, pursuant to 47 U.S.C. 154(i), 154(j), 201–05, 218, 219, 220, 221 and 403, and 5 U.S.C. 553, notice is hereby given of the adoption of new or modified rules, in accordance with the discussion and delineation of issues herein, and on the basis of previous notices and filing in this proceeding.

80. It is further ordered, that the Secretary of the Commission shall cause a copy of this notice to be published in the **Federal Register.**

Federal Communications Commission.

William J. Tricarico,

Secretary.

Concurring Statement of Commissioner Joseph R. Fogarty

In re: Fourth Supplemental Notice of Inquiry and Proposed Rulemaking, MTS and WATS Market Structure, Docket 78–77.

The *MTS/WATS* Rulemaking (Access Charges) is one of the most important proceedings which has come before the Commission during my tenure. The potential impact of what we do here is tremendous. Depending upon which alternative strategy is chosen with regard to the allocation of non-

traffic sensitive (NTS) costs, the Commission can totally reshape the pattern of telecommunications usage in this country.

In choosing among the "mixed" and "pure" NTS cost allocation strategies put forth in this Notice, the Commission must be guided by its statutory mandate which is to regulate "so as to make available, so far as possible, to all the people of the United States a rapid, efficient, Nation-wide and world-wide wire and radio communications service with adequate facilities at reasonable charges * * *" Traditionally, we have viewed the maintenance of "universal service" as the cornerstone of our effort to fulfill this mandate. Maintaining universal service at reasonable rates is as critical a goal today as it was in 1934. With the advent of the "Information Age," and with an ever-increasing share of our Gross National Product attributable to the production, dissemination, and use of information and associated technology, goods, and services, these policy principles have become all the more crucial to our national welfare. We cannot afford to become a nation of "haves" and "have nots" in terms of fair and reasonable access to the telecommunications services which are essential to full participation in our commercial, political and social life. A democratic society ignores the threat of such disparities at its peril. Any approach, no matter how "economically pure" or attractive in theory, which would result in adequate facilities not being available at reasonable prices and thereby disrupt universal service runs completely contrary to our mandate.

It is for this reason that I am troubled by the notion that all NTS costs should be directly assigned, i.e. the second pure strategy (Pure II). I believe this approach to be overly simplistic, not reflective of the practicalities involved in the transition toward Bell divestiture, and, most important, inconsistent with the maintenance of universal service. If adopted as is and implemented on a flash-cut basis, Pure II will result in dramatically higher rates for small MTS users with a resultant loss in the subscriber base as the poor and the elderly are put to the horrendous choice between essentials. Pure II ignores the fact that in the past both this Commission and the state commission have consciously made tradeoffs between socially desirable objectives such as universal service and economic objectives. Now, Pure II proposes to leave the states faced with the impossible task of keeping residential and rural rates low while at the same time adjusting for the impending break-up of the Bell System. Moreover, depending upon how this approach is structured it might conflict with the Supreme Court's holding in *Smith* v. *Illinois Bell Telephone Co.*, 282 U.S. 133 (1930), that costs be apportioned between the intrastate and interstate jurisdictions on the basis of relative use.[1] Only those major businesses, few in absolute number, who make the vast majority of interstate calls will benefit. For such entities the reduction in interstate rates will more than off-set the increase in local rates and the access fee. However, average and small MTS/WATS users will not benefit. No amount of reliance on "economically pure," "Chicago School" cost-causation theory can justify such a result. In our deliberations we cannot ignore local rate impacts.

The Pure II strategy masks the real issue facing the Commission—separations reform. Moreover, the results sought by Pure II's proponents can be best achieved through the revision of the separations process. For example, a shift from SPF to SLU would reallocate two-thrds of the costs which the Pure II strategy would reassign. Simple reassignment, however, will not resolve the pressing questions before the Joint Board in Docket 80-286. It may, however, encourage further delay in the Joint Board proceeding by lessening incentive to shift the interstate separations burden. Consequently, it is crucial that the Commission proceed in tandem with the Joint Board.

I am not necessarily opposed to goals sought to be achieved by adoption of the Pure II strategy. However, at a minimum, a transition period and serious discussion of the subsidy question would be necessary prior to its implementation. If this is not done, I fear that in the rush to find a theoretically pure solution, the Commission may unwittingly abandon the important concept of reasonable rates and universal service.

Statement of Commissioner Anne P. Jones* in Which Commissioners Mimi W. Dawson, Henry M. Rivera and Abbott Washburn Join

In re: MTS and WATS Market Structure CC Docket 78-72, Phase I.

May 27, 1982.

The Fourth Supplemental Notice of Inquiry and Proposed Rulemaking in Phase I of CC Docket 78-72, approved by the Commission today, is a positive step in the direction of solving this complex and important set of problems. Over two years have passed since release of the Commission's tentative access charge plan in the Second Supplemental Notice in this proceeding. The notice released today reflects the many thoughtful and detailed comments received in response to that tentative plan. Today's notice also reflects the Modification of Final Judgment, proposed by AT&T and the Department of Justice last January and now under review by the court.

The concept of charging the subscriber directly for the cost of access to the local switch, in contrast to the current practice of allocating non-traffic-sensitive plant on the basis of usage, is developed in today's notice. As I have discussed elsewhere,* I find this concept attractive because it appears to offer a rather elegant solution to a very difficult set of problems. I hope that commenting parties will give this concept adequate attention. We hope to receive proposals for specific plans and transitional approaches which are based upon this concept. We must understand the overall public-interest consequence of all these plans, and the specific implementation details of each.

Few other issues presently before this Commission combine such importance and difficulty as those under consideration here. If today's notice receives the same careful attention which commenting parties gave to previous notices in this proceeding, the Commission will be in a position to make an informed decision in this matter.

[FR Doc. 82-16280 Filed 6-18-82; 8:45 am]

BILLING CODE 6712-01-M

[1] In Smith v. Illinois Bell Telephone Co., 282 U.S. 133 (1930), the Court rejected a variant of the Pure II approach under which all exchange plant was allocated to the intrastate jurisdicton. The Court state:

> While the difficulty in making an exact apportionment of the property is apparent, and extreme nicety is not required * * * it is quite another to ignore altogether the actual uses to which the property is put. It is obvious that unless an apportionment is made, the intrastate service to which the exchange property is allocated will bear an undue burden * * *" 282 U.S. at 150-151.

* Remarks by Commissioner Anne P. Jones, Session on "Separations Charges and the Joint Board in Light of the AT&T Divestiture," Twenty-First Annual Iowa State Regulatory Conference, Ames, Iowa, May 20, 1982.

---

47 CFR Part 90

[PR Docket No. 82-226; RM-3448; FCC 82-191]

Amendment of the Commission's Rules To Simplify the Requirements for Frequency Coordination in the Business Radio Service

AGENCY: Federal Communications Commission.

ACTION: Notice of inquiry.

SUMMARY: This document requests comments on several issues pertaining to a requested change in the frequency coordination requirements for the Business Radio Service. It is expected that the comments will contain sufficient information to enable the Commission to determine whether such a rule change is in the public interest.

DATES: Comments are due by July 19, 1982 and replies by August 5, 1982.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Eugene Thomson, Private Radio Bureau, (202) 632-6497.

SUPPLEMENTARY INFORMATION:

Adopted: April 22, 1982.

Released: April 29, 1982.

In the matter of an amendment of Part 90 of the Commission's Rules to Simplify the Requirements for Frequency Coordination in the Business Radio Service; PR DOCKET NO. 82-226; RM-3448; notice of inquiry.

1. The Commission has the above-captioned matter under consideration and is requesting comments on certain matters discussed herein.

2. On June 15, 1979, the California Mobile Radio Association (CMRA), now called the National Mobile Radio Association (NMRA), filed a Petition for

Rule Making proposing rule changes which it asserted would simplify what it characterized as certain time-consuming, expensive, and non-beneficial frequency coordination requirements presently existing in § 90.175(a) of the Commission's Rules and Regulations.[1] [2]

3. CMRA stated in its petition that in most cases, applications for additional users for multiple licensed facilities (popularly known as "community repeaters") and applications of existing licensees who propose to change their control station locations, frequency coordination is unnecessary, since the frequency which the applicant wishes to use is already known. CMRA further stated that in the cases of applications for the first user of a newly established community repeater station, or a new single-user system, it is usually the equipment supplier and not the frequency coordinator who makes the frequency selection by either preparing a field study report and notifying the co-channel users or by obtaining the required letter of coordination.

4. CMRA adds that the reason the coordination letter is so often used rather than the field study method, even when the equipment supplier has already selected the most likely frequency, is the difficulty in notifying all co-channel users within 75 miles. CMRA says this notification is not really necessary and adds that this notification requirement does not exist for frequency coordinating committees. CMRA, therefore, requests in its petition that the rules be amended to permit applicants who propose to use frequencies between 450 and 470 MHz in the Business Radio Service to utilize the field study method of coordination without the necessity of notifying co-channel users. It claims this would save Business Radio applicants the three weeks it normally takes to obtain letters of coordination from the frequency coordinating committee,[3] as well as the coordinating fee ($30–$40), if they were allowed merely to attach the field study report to the license application. Only those applicants who propose new systems and those who choose not to select their own frequency would need to employ the services of the coordinating committee.

5. Comments in support of the petition were received from Meridian Communications, Independent Radio Conferences, General Electric, Rand Communications, Kidds Communications, Inc., Merrill T. See, Communications Engineering Co., and Able Communications. Opposition comments were received from NABER. A reply to the opposition was filed by CMRA.

6. NABER, in its opposition comments, argued that coordinating committees are necessary, citing several Commission statements in the Notice of Inquiry of Docket 21229 which dealt with the overall spectrum management considerations in the land mobile services. NABER also stated that the frequency coordinating committee must maintain a complete, current, and accurate data base to fulfill its functions, and that the approach NMRA is suggesting would be detrimental to all Business Radio license applicants. NABER says that adoption of such a rule change would severely undermine the integrity of the coordinator's data base so that in making a frequency recommendation, the coordinating committee would not be certain whether it was recommending the best frequency available for the applicant utilizing complete, current and accurate information. NABER states, "In order to continue to properly perform its function as a frequency coordinator, NABER must maintain as complete and as accurate a data base as possible. Any delay in the receipt of information would only result in confusion and the increased possibility that a subsequent or even currently processed frequency recommendation would not be correct." In addressing CMRA's point that coordinating committees under the rules do not have to notify co-channel users, NABER argues that the coordinator has the data base of all licensees, and therefore, knows who the co-channel users are. It then takes this into account in making the recommendations. In these circumstances, NABER says that there is no reason why it should notify co-channel users.

7. The purpose of this Inquiry is to solicit further input relative to the frequency coordination requirements in the Business Radio Service. Specifically, we solicit comments on the following questions:

(a) What are the advantages and disadvantages of the existing co-channel user notification requirements when an applicant chooses to submit a field study in accordance with the option offered in § 90.175(a)? Should the co-channel user notification requirement apply as it does to all private land mobile radio services? Are there sufficient reasons to justify a modification or change in the notification requirements in any of the services which will not cause potential interference problems or conflict with the frequency coordinators' functions?

(b) What are the advantages and disadvantages of having the same field study requirements for initial users on a given channel and for subsequent users on multiple licensed facilities (community repeaters)?

(c) Are there alternative coordination methods which would result in the same or better level of interference protection and also maintain the accuracy of the coordinator's data base?

8. Information filed in response to this Inquiry will be considered by the Commission in formulating specific rule making proposals, if appropriate, looking towards the most efficient and effective frequency coordination process for applications for 450–470 MHz frequencies in the Business Radio Service, and possibly for other radio services.

9. Authority for this proceeding is contained in sections 4(i), 303, and 403 of the Communications Act of 1934, as amended.

10. Pursuant to applicable procedures set forth in § 1.415 of the Commission's rules, interested persons may file comments on this matter on or before July 19, 1982, and reply comments on or before August 5, 1982.

11. In accordance with the provisions of § 1.419 of the rules and regulations, formal participants shall file an original and five (5) copies of their comments and other materials. Participants wishing each Commissioner to have a personal copy of their comments should file an original and eleven (11) copies. Members of the general public who wish to express their interest by participating informally may do so by submitting one copy. All comments are given the same consideration, regardless of the number of copies submitted. All documents will be available for public inspection during regular business hours in the Commission's Public Reference Room at its headquarters in Washington, D.C.

12. It is ordered that the Secretary shall cause a copy of this notice to be published in the **Federal Register.**

13. For further information concerning this document, contact Eugene Thomson, Private Radio Bureau, Federal

[1] Section 90.175(a) requires applicants for frequencies below 470 MHz to submit either: (1) A report based on a field study indicating the degree of probable interference to all existing co-channel stations within 75 miles of the proposed station together with a statement that all such co-channel licensees have been notified of the applicant's intention to apply; or (2) a statement from a frequency coordinating committee recommending the frequency which, in the opinion of the committee, will result in the least amount of interference to all existing stations operating in the particular area.

[2] A supplement to Petition for Rule Making was submitted on March 25, 1980. On November 17, 1980, this supplement was withdrawn.

Communications Commission, (202) 632-6497.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 82-16720 Filed 6-18-82; 8:45 am]

BILLING CODE 6712-01-M

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

48 CFR Part 53

Forms

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) procurement forms.[1] This is the next to the last segment of the FAR to be published for comment. Availability of the final segment, Part 27—Patents, Data, and Copyrights, will be announced at a later date. The FAR is being developed to replace the current system of procurement regulations.

DATE: Comments must be received on or before July 30, 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 FR 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 53

Government procurement.

The following part of the draft Federal Acquisition Regulation is available upon request for public and Government agency review and comment.

[1] Filed as part of the original document.

PART 53—FORMS

Subpart 53.1—General

This subpart contains requirements and information generally applicable to the forms prescribed by the FAR (e.g., deviations, overprinting, computer preparation, changes, etc.).

Subpart 53.2—Prescription of Forms

This subpart prescribes standard forms, and references optional forms and agency-prescribed forms, for use in acquisition. Consistent with the approach used in Subpart 52.2, this subpart is arranged by subject matter, in the same order as, and keyed to, the parts of the FAR in which the form usage requirements are addressed.

Subpart 53.3—Illustrations of Forms

In its final form this subpart will contain illustrations of forms used in acquisition. However, during the development of the FAR, each part and subpart published for comment generally illustrated the forms applicable to its subject matter. When the FAR is published in its entirety, the illustrations will be consolidated into Subpart 53.3 as indicated in the Table of Contents for Part 53.

Dated: June 14, 1982.

LeRoy J. Haugh,

Associate Administrator for Procurement System Implementation.

[FR Doc. 82-16661 Filed 6-18-82; 8:45 am]

BILLING CODE 3110-01-M

Notices

Federal Register
Vol. 47, No. 119
Monday, June 21, 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

Office of the Secretary

Privacy Act of 1974; Systems of Records

AGENCY: Agricultural Department.

ACTION: Notice of amendment of Privacy Act systems of records.

SUMMARY: The Department of Agriculture hereby gives notice that it is reassigning and amending three previously published systems of records from one agency within the Department of Agriculture to another and is making minor amendments to two previously published systems of records.

EFFECTIVE DATE: June 21, 1982.

FOR FURTHER INFORMATION CONTACT: Burt C. Hawkins, Director, Administrative Services Division, Agricultural Marketing Service, 14th and Independence Ave., Room 1090–S, SW, Washington, D.C. 20250, Phone Number: (202) 447–3955.

SUPPLEMENTARY INFORMATION: On November 2, 1978, the Department of Agriculture, at 43 FR 51305, published a Privacy Act system notice identified as USDA/FSQS–3, Court cases brought by the Government pursuant to the following Acts: Agricultural Marketing Act of 1946, Egg Products Inspection Act. Due to internal reorganizations of the Department, the system has been transferred to the control of the Agricultural Marketing Service. The system is reidentified as USDA/AMS–8. In addition, the Department is amending the system notice by changing the system location and system manager, necessitated by a change in the address where files are maintained.

On the same day, the Department published two Privacy Act system notices identified as USDA/AMS–8, Packers and Stockyards Administrative Records, USDA/AMS and USDA/AMS–9, Persons engaged in business as livestock market agencies and dealers under the provisions of the Packers and Stockyards Act, USDA/AMS. Due to internal reorganizations of the Department the Systems have been transferred to the control of the Packers and Stockyards Administration. The systems will be indentified as USDA/P&SA–1 and USDA/P&SA–2, respectively. These systems are being amended to reflect current locations and system managers.

The Department also amends two previously published Privacy Act systems of records maintained by the Federal Grain Inspection Service (FGIS) which are necessitated by the reorganization of FGIS. System indentified as USDA/FGIS–3, entitled "Subsidiary Personnel and Pay Records, USDA/FGIS" (43 FR 51299 on November 2, 1978) is being amended to delete "and Region," from "System location" because the regional offices of FGIS have been eliminated. The system of records identified as USDA/FGIS–5, Occupational injury/illness and motor vehicle accident case files for U.S. Department of Agriculture (USDA), Federal Grain Inspection Service (FGIS) employees (47 FR 5277, February 4, 1982), was relocated to a new address and are indexed by type of program (West Export, Central Export, East Export, or Domestic) since the Regions have been eliminated.

The changes in the notices are non-substantial and, therefore, do not require "Report on New System" pursuant to 5 U.S.C. 552a(o), as implemented by Transmittal Memoranda 1 and 3 to OMB Circular A–108.

John R. Block,

Secretary of Agriculture.

June 15, 1982.

The text of the four systems will be as follows:

USDA/AMS–8

SYSTEM NAME:

Court cases brought by the Government pursuant to the following Acts: Agriculutral Marketing Act of 1946, Egg Products Inspection Act.

SYSTEM LOCATION:

Agricultural Marketing Service, U.S. Department of Agriculture, 14th & Independence Avenue, SW, Washington, D.C. 20250.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who are regulated by the subject Acts and who may be investigated for possible violations of the Acts and/or against whom the Department recommends that an enforcement action be brought by the Government.

CATEGORIES OF RECORDS IN THE SYSTEM:

The System consists of investigatory material which may include intra- and interdepartmental recommendations pertaining to an alleged violation of the subject Acts.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

7 U.S.C. 1621 et seq., and 1031 et seq.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) Referral to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting a violation law, or of enforcing or implementing a statute, law, rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation or order issued pursuant thereto. (2) Presentation or disclosure to a court, magistrate or administrative tribunal, or to opposing counsel in a proceeding before any of the above, of any record within the system as evidence in a proceeding or which is sought in the course of discovery including disclosure to opposing counsel in the course of settlement negotiations. (3) Presentation, as needed, in the course of presenting evidence, to the appropriate Government officials charged with the responsibility of defending the Government before a court, magistrate, or administrative tribunal. (4) Disclosure may be made to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in the file folders at the applicable address listed above.

RETRIEVABILITY:

Records are indexed by name of the individual.

SAFEGUARDS:

Government office buildings, locked offices or locked file cabinets.

RETENTION AND DISPOSAL:

Records are maintained in conformance with appropriate General Services Administration destruction schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Poultry Division Director at the address cited in the System location.

NOTIFICATION PROCEDURE:

This system has been exempted pursuant to 5 U.S.C. 552a(k)(2) from the requirements of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(g), (h), and (f) because it consists of investigatory material compiled for law enforcement purposes. See 7 CFR 1123. Individual access to these files could impair investigations and alert subjects of investigations that their activities are being scrutinized, and thus allow them time to take measures to prevent detection of illegal action to escape prosecution. Disclosure of investigative techniques and procedures and the existence and identity of confidential sources of information would hamper law enforcement activity.

USDA/FGIS-3

SYSTEM NAME:

Subsidiary Personnel and Pay Records, USDA/FGIS.

SYSTEM LOCATION:

Federal Grain Inspection Service, United States Department of Agriculture, Washington, D.C. 20250, and Field Offices at locations listed in the Federal Grain Inspection Service Field Office Listing publication.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Present and former employees and applicants for reemployent with the Federal Grain Inspection Service.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system consists of copies of materials maintained in Official Personnel Folders, such as personnel action documents, applications for employment, education and training data, performance and appraisal ratings, as well as time and attendance reports, earnings statements, and service record cards.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) By agency officials for purposes of review in connection with appointments, promotions, within-grade increases, training, transfers, and determination of qualification of an individual. (2) To provide information to a prospective employer of a Federal Government employee or former Federal Government employee or to an organization at the request of the individual. (3) Referral to the Office of Personnel Management, Merit Systems Protection Board, Department of Labor, and Office of Management and Budget for required records and reports. (4) Referral to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing the statute, rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation or order issued pursuant thereto. (5) Referral to a court, magistrate or administrative tribunal, or to opposing counsel in a proceeding before any of the above, of any record within this system which constitutes evidence in that proceeding, or which is sought in the course of discovery. (6) Presentation, as needed, in the course of presenting evidence to the appropriate Government officials charged with the responsibility of defending the Government before a court, magistrate or administrative tribunal. (7) Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of the individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders and on file cards at the applicable addresses listed above.

RETRIEVABILITY:

Records are indexed by name of the individual.

SAFEGUARDS:

Government office buildings, locked offices, or locked file cabinets.

RETENTION AND DISPOSAL:

Records are maintained in conformance with appropriate General Services Administration disposal schedules and implemented by AMS Instruction 270–1, Records Management Program.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Personnel Division, AMS, USDA, 14th and Independence Avenue, SW, Washington, D.C. 20250.

NOTIFICATION PROCEDURE:

Any individual may request information concerning himself from this system from the Personnel Division Director or from the individual's supervisor at the appropriate Office having custody of his records. A request for information should be addressed to Director, Personnel Division or to the Officer-in-Charge, as appropriate, at the address shown under Location and should contain: Name, address, and particular information requested.

RECORD ACCESS PROCEDURES:

Any individual may obtain information as to the procedures for gaining access to a record in the System which pertains to him by submitting a written request to the Director, Personnel Division or to the appropriate Officer-in-Charge referred to in the preceding paragraph.

CONTESTING RECORDS PROCEDURES:

Any individual may obtain information as to the procedures for contesting a record in the System which pertains to him by submitting a written request to the Director, Personnel Division or to the appropriate Officer-in-Charge referred to in the preceding paragraph.

RECORD SOURCE CATEGORIES:

Information in this System comes from the individual to whom it applies or is derived from information the indiviudal supplied except information provided by agency officials on performance, appraisal, pay, leave, and allowance records.

USDA-FGIS-5

SYSTEM NAME:

Occupational injury/illness and motor vehicle accident case files for U.S. Department of Agriculture, Federal Grain Inspection Service employees.

SYSTEM LOCATION:

Federal Grain Inspection Service (FGIS), U.S. Department of Agriculture, Washington, D.C. 20250.

CATEGORY OF INDIVIDUALS COVERED BY THE SYSTEM:

Any FGIS employee who suffers an occupational injury/illness or is involved in a motor vehicle accident while in performance of official duties.

CATEGORIES OF RECORDS IN THE SYSTEM:

All forms, correspondence and other data pertinent to processing of illness/injury claims and motor vehicle accident reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Occupational Safety and Health Act of 1970 Pub. L. 91–596, Sec. 19, E.O. 11807 and E.O. 12196, Federal Employees Compensation Act, as amended (5 U.S.C. 8101 et seq.), and 29 CFR 1960.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Use of records will be limited to FGIS employees authorized to assist employees with processing claims for occupational injury and illness under the Federal Employees Compensation Act as amended; submit, in accordance with the Occupational Safety and Health Act of 1970, an annual report of all occupational injury and illnesses which occur within the Agency to the Department of Labor for them to evaluate incidence of injuries and the incidence and nature of illnesses occurring in the Federal Sector; and to develop statistics for analysis of accident and injury rates in the Agency.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in individual file folders at address listed above.

RETRIEVABILITY:

Records are indexed alphabetically by last name of individual, by Program (West Export, Central Export, East Export or Domestic), and by calendar year.

SAFEGUARDS:

Records are maintained in government office building, in locked office or locked file cabinet.

RETENTION AND DISPOSAL:

Records are maintained in conformance with appropriate General Services Administration disposal schedules as implemented by AMS/FGIS Instruction 270–1, Records Management Program.

SYSTEM MANAGER(S) AND ADDRESS:

Head, Safety and Health Unit, Resources Management Division, at the address cited in the System location.

NOTIFICATION PROCEDURE:

Any individual may request information concerning their records by contacting the system manager.

RECORD ACCESS PROCEDURES:

Any individual may obtain information as to the procedure for gaining access to a record in the system that pertains to him/her from the system manager.

CONTESTING RECORD PROCEDURES:

Any individual may obtain information as to the procedure for contesting a record in the system that pertains to him/her from the system manager

RECORD SOURCE CATEGORIES:

Information contained in the system is obtained from employees, their supervisors, physicians, and U.S. Department of Labor, Office of Workers' Compensation Programs (OWCP) claims form and correspondence.

USDA/P&SA–1

SYSTEM NAME:

Packers and Stockyards Administrative administration records, USDA/P&SA.

SYSTEM LOCATION:

Packers and Stockyards Administrative Office, Rm. 3042, South Building, U.S. Department of Agriculture, Washington, D.C. 20250, and the Regional Supervisors in charge of the following regional offices located at: Rm. 338, 1720 Peachtree Street, N.W., Atlanta, Georgia 30309; Turnpike Road, Box 101E, Bedford, Virginia 24523; 208 Livestock Exchange Building, Denver, Colorado 80216; Rm. 8A36, Federal Building, 819 Taylor Street, Fort Worth, Texas 76102; Suite 24, 537 Turtle Creek, South Drive, Indianapolis, Indiana 46227; 828 Livestock Exchange Building, Kansas City, Missouri 64102; Rm. 2W6, 15000 Aviation Boulevard, Lawndale, California 90260; Rm. 459, Federal Building, 167 North Main Street, Memphis, Tennessee 38103; Rm. 303, 825 Georges Road, North Brunswick, New Jersey 08902; 909 Livestock Exchange Building, Omaha, Nebraska 68107; 9370 S. W. Greenburg Road, Suite E, Portland, Oregon 97223; 203 Post Office Building, Box 8, South St. Paul, Minnesota 55075; and 975 Durkin Drive, Suite G, Springfield, Illinois 62704.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Present employees of the Packers and Stockyards Administration.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system includes personnel (personnel record cards reflecting the name, date of birth, grade, salary, and employment history of present employees; performance evaluation forms; requests for training authorizations; recommendations for promotion; copies of personnel actions; and correspondence relating to individual employees' conduct), payroll and fiscal data required to meet the needs of P&SA personnel and fiscal responsibilities.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 7 CFR 2.54.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The data contained in the foregoing records is routinely used to answer inquiries from agencies considering the employees identified in the system for employment as well as for credit checks. This information is also used to initiate requests for investigation of Packers and Stockyards Administration employees for purposes of security and conduct. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

With the exception of personnel record cards, all of these records are maintained on paper in file folders at the appropriate addresses cited.

RETRIEVABILITY:

All of the records are indexed and retrievable by name of the individual employees.

SAFEGUARDS:

The records are maintained in locked files.

RETENTION AND DISPOSAL:

The personnel record cards are maintained until an individual leaves P&SA. The performance evaluation forms for current employees are maintained indefinitely. The Time and Attendance reports are maintained for

the current year and three years thereafter for employees currently on the rolls. Final Time and Attendance reports are maintained for ten years after the date of separation of the employees. Travel vouchers, copies of personnel actions, training documents, and recommendations for promotion are maintained for five years from the date of submission. Correspondence with respect to employee conduct is maintained while the employee remains on the rolls. The administrative officer of the Packers and Stockyards Administration physically mutilates the records on the scheduled disposal date and they are thrown away with the agency's waste.

SYSTEM MANAGER(S) AND ADDRESS:

Administrative Officer, Packers and Stockyards Administration, Rm. 3042, South Building, U.S. Department of Agriculture, Washington, D.C. 20250, and Regional Supervisors of regional offices at locations previously specified.

NOTIFICATION PROCEDURE:

Any individual may request information regarding this system of records or information as to whether the system contains records pertaining to him from the System Manager. Telephone (202–447–7045) or the appropriate Regional Supervisor. Requests for information pertaining to an individual should contain: Name, location at which the individual worked for P&SA and the approximate dates.

RECORD ACCESS PROCEDURES:

Any individual may obtain information as to the procedures for gaining access to a record in the system which pertains to him by submitting a written request to the appropriate officials previously specified.

CONTESTING RECORD PROCEDURES:

Use same procedures as for requesting access.

RECORD SOURCE CATEGORIES:

Information in this system comes primarily from the individuals concerned, personnel, training, travel and payroll records.

USDA/P&SA–2

SYSTEM NAME:

Persons engaged in business as livestock market agencies and dealers under the provisions of the Packers and Stockyards Act, USDA/P&SA.

SYSTEM LOCATION:

Financial Protection Branch, Livestock Marketing Division, Packers and Stockyards Administration, U.S. Department of Agriculture, Washington, D.C. 20250. Also files for specific geographical regions maintained in the thirteen (13) Regional Supervisory Offices of P&SA.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have applied for registration or are registered as livestock market agencies and dealers under the Packers and Stockyards Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system consists of index cards bearing the names of individuals who are registered under the provisions of the Act. Also cross-reference cards bearing the names of individuals who are owners or officers of registrant firms. From the index cards access may be gained to other systems of records identified as follows: (1) Registration Record Cards, (2) Case Record Cards, (3) Bond Claim Record Cards, (4) Registration Jurisdictional Files, and (5) Stockyard Jurisdictional Files.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

7 U.S.C. 181 et seq.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To answer inquiries from Federal and State agencies, livestock trade organizations, and others having a definite and proved interest in such records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in card file cabinets and file folders at the applicable address listed above.

RETRIEVABILITY:

All index cards are maintained in an alphabetical order by name of registrant and by name of owners or officers of registrant firms.

SAFEGUARDS:

Records are kept in locked cabinets under the supervision of competent personnel.

RETENTION AND DISPOSAL:

All files mentioned are maintained during active life of registration. When rendered inactive records are maintained for a period of two years in accordance with an approved records disposition schedule.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Financial Protection Branch, Livestock Marketing Division, Packers and Stockyards Administration, USDA, Washington, D.C. 20250.

NOTIFICATION PROCEDURE:

Any individual may request information regarding this system of records or information as to whether the system contains records pertaining to him from System Manager, Telephone (202–447–4615 or 16). A request for information pertaining to an individual should contain that individual's full name, and current mailing address.

RECORD ACCESS PROCEDURES:

Any individual desiring to gain access to a record maintained in the system which pertains to him may do so by submitting a written request to the appropriate official referred to in the preceding paragraph.

CONTESTING RECORD PROCEDURES:

Use same procedures as followed in seeking access.

RECORD SOURCE CATEGORIES:

Information in this system comes primarily from individuals who make application for registration or who are registered under the Packers and Stockyards Act, 1921, as amended. A limited amount of information in the system is obtained from other sources such as corporate surety companies, persons acting as trustee on bonds or bond equivalents and Packers and Stockyards Administration, Regional Supervisory personnel.

[FR Doc. 82–16997 Filed 6–18–82; 8:45 am]
BILLING CODE 3410–02–M

CIVIL AERONAUTICS BOARD

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q of the Board's Procedural Regulations

See, 14 CFR 302.1701 et seq. week ended June 11, 1982.

Subpart Q Applications

The due date for answers, conforming application, or motions to modify scope are set forth below for each application. Following the answer period the board may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Date filed	Docket No.	Description
June 7, 1982	40752	Air New Zealand Limited, c/o William C. Clarke, Barrett, Smith, Schapiro, Simon & Armstrong, 26 Broadway, New York, N.Y. 10004. Application of Air New Zealand Limited pursuant to Section 402 of the Act and Subpart Q of the Board's Procedural Regulations requests an amendment which deletes the present route description in its permit and substitutes the following: Between a point or points in New Zealand and the Cook Islands, intermediate points in the South Pacific including the Cook Islands and American Samoa, the coterminal points Honolulu, Hawaii and Los Angeles, Calif., and beyond to London, England. Anwers may be filed by July 6, 1982.
June 11, 1982	40765	Aero Uruguay, S.A., c/o George E. Farrell, Healey, Farrell & Lear, 905 Sixteenth Street, N.W., Washington, D.C. 20006. Application of Aero Uruguay, S.A. pursuant to section 402 of the Act and Subpart Q of the Board's Procedural regulations requests the operation of non-regular air transport services of cargo between points in Uruguay and New York, N.Y., U.S.A., with intermediate commercial landings. Answers may be filed by July 9, 1982.

Phyllis T. Kaylor,
Secretary.
[FR Doc. 82-16687 Filed 6-18-82; 8:45 am]
BILLING CODE 6320-01-M

Application of American World Airways, Inc., for a Certificate of Public Convenience and Necessity

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order Instituting a Fitness Investigation of American World Airways, Inc., 82-6-87, Docket 40771.

SUMMARY: The Board is issuing an order instituting a fitness investigation of American World Airways, Inc.

DATE: Persons wishing to file requests for additional evidence or petitions to intervene in the American World Airways Fitness Investigation shall file their requests and petitions in Docket 40771 by July 1, 1982 and serve such filings on all persons listed below.

ADDRESSES: Requests for additional evidence and petitions to intervene should be filed in the Docket Section, Civil Aeronautics Board, Washington, D.C. 20428, in Docket 40771.

In addition, copies of such filings should be served on: American World Airways, Inc. the mayors of Miami, Flordia and Islip, New York, the airport managers of Miami International Airport and Long Island MacArthur Airport, the Florida Department of Transportation, the New York State Department of Transportation and the Federal Aviation Administration.

Service will also be required on any other person filing petitions.

FOR FURTHER INFORMATION CONTACT: Sherry L. Kinland, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428 (202) 673-5333.

SUPPLEMENTARY INFORMATION: The complete text of Order 82-6-87, is available from our Distribution Section, Room 100, 1825 Connecticut Avenue, NW., Washington, D.C. 20428. Persons outside the metropolitan area may send a postcard request for Order 82-6-87 to the Distribution Section, Civil Aeronautics Board, Washington, D.C. 20428.

By the Civil Aeronautics Board: June 15, 1982.

Phyllis T. Kaylor,
Secretary.
[FR Doc. 82-16684 Filed 6-18-82; 8:45 am]
BILLING CODE 6320-01-M

Five Local Service Carriers; Subsidy Rate

This is an order establishing the subsidy rate for five local service carriers for the period January 1, 1982 through September 30, 1982, pursuant to the provisions of Class Rate IX, and proposing to terminate subsidy payments effective October 1, 1982.

AGENCY: Civil Aeronautics Board.

ACTION: Summary of Order 82-6-91, Amendment Seven to Order 79-10-51, and Order to Show Cause.

SUMMARY: The Board has adopted the maximum subsidy rates due and payable to the five local service carriers for the period January 1, 1982 through September 30, 1982. The adjustments in this order are based on operating results for the year ended September 30, 1981, and incorporate certain adjustments which reduce subsidy payments in conformance with the subsidy ceiling restrictions placed by Congress on the expenditure of funds in Pub. L. 97-102. The annual subsidy level effective January 1, 1982 is $84.1 million, which is reduced to $36.7 million on March 29, 1982 by implementation of Congressional subsidy limitations and service suspensions. The upward median percentage change in cost applied to the base period net formula provision and service incentive paymets was 92.39 percent. The carriers are also directed to show cause why subsidy payments should not terminate after September 30, 1982.

DATES: Parties must file exceptions and supporting rational by July 1, 1982 on the rate issues and must file notice of objection on the subsidy termination issue by July 2, 1982 and answers by July 22, 1982.

FOR FURTHER INFORMATION CONTACT: John R. Hokanson, or James Craun, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428, (202) 673-5368.

The complete text of Order 82-6-91 is available from our Distribution Section. Persons outside the metropolitan area may send a postcard request for the order to the Distribution Section, B-22b, Civil Aeronautics Board, Washington, D.C. 20428.

By the Civil Aeronautics Board: June 15, 1982.

Phyllis T. Kaylor,
Secretary.
[FR Doc. 82-16686 Filed 6-18-82; 8:45 am]
BILLING CODE 6320-01-M

Alaska Airlines Inc., et al.; Proposed Termination of Subsidy Payments

This is an order proposing to terminate 406 subsidy payments effective October 1, 1982 to Alaska Airlines Inc., Wien Air Alaska, Inc., Kodiak-Western Alaska Airlines, Inc., and Air Midwest Inc.

AGENCY: Civil Aeronautics Board.

ACTION: Summary of Order 82-6-92, Order to Show Cause.

SUMMARY: Based on the legislative history of Public Law 97-102, Department of Transportation and Related Agencies Appropriations, 1982, December 23, 1981; 95 Stat. 1455, 1456, where the conferees stated that the section 406 program should be terminated and viewed the funding provided in the conference agreement

for section 406 as the final Federal compensation to be made available in order to facilitate an orderly close-out of this program, the Board has adopted an order directing four subsidized carriers show cause why their 406 subsidy rates should not terminate on and after October 1, 1982.

DATES: Parties must file notice of objection by July 2, 1982, and answers by July 22, 1982.

FOR FURTHER INFORMATION CONTACT: John R. Hokanson, or James M. Craun, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428, (202) 673–5368.

The complete text of Order 82–6–92 is available from our Distribution Section. Persons outside the metropolitan area may send a postcard request for the order to the Distribution Section, B–22b, Civil Aeronautics Board, Washington, D.C. 20428.

By the Civil Aeronautics Board: June 15, 1982.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 82–16685 Filed 6–18–82; 8:45 am]

BILLING CODE 6320–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration, National Marine Fisheries Service, Marine Fisheries Advisory Committee; Partially Closed Meeting

AGENCY: National Marine Fisheries Service (NOAA), Commerce.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C., App. (1976), notice is hereby given of a partially closed meeting of the Marine Fisheries Advisory Committee (MAFAC). The Committee meeting (MAFAC XXII) will be held on Tuesday, Wednesday and Thursday, June 29–July 1, 1982, in the auditorium of the Northwest and Alaska Fisheries Center, 2725 Montlake Boulevard East, Seattle, Washington.

The Marine Fisheries Advisory Committee was established by the Secretary of Commerce on February 17, 1971 to advise the Secretary on matters pertinent to the Department's responsibilities for marine fishery resources and on means to facilitate cooperation between public and private interests in these matters. The agenda for the meeting is as follows:

Tentative Agenda

Closed Session—June 29, 1982 (8:30 a.m. to Noon)

a. Consider and discuss the living marine resources proposals of the NOAA FY 1984 budget.

Open Session—June 29, 1982 (1:30 to 5:30 p.m.)

a. Discuss issues concerning the relationship between NMFS developed fishery technology and Sea Grant Marine Advisory Service activities.

b. Dicuss NOAA/NMFS' support role in research in commercial fishing operations.

c. Discuss NOAA/NMFS' role in forecasting and counteracting economic conditions affecting U.S. fishing industries.

Open Session—June 30, 1982 (8:30 a.m. to 5:30 p.m.)

a. Discuss NOAA/NMFS' role in the management and development of chinook salmon fishery.

b. Discuss coordination between National Marine Sanctuary Program and Fishery Management Councils.

c. Discuss NOAA/NMFS' role in habitat conservation, ecosystem management.

Open Session—July 1, 1982 (8:30 a.m. to 3:00 p.m.)

a. Tour NOAA's Sand Point and Pacific Marine Center facilities.

b. Discuss status reports of MAFAC subcommittee Chairpersons.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration of the Department of Commerce, with the concurrence of the General Counsel, formally determined on June 10, 1982 pursuant to section 10(d) of the Federal Advisory Committee Act, that the agenda item to be covered during the closed session may be exempt from the provisions of the Act relating to open meetings and public participation therein, because the item will be concerned with matters that are within the purview of 5 U.S.C. 552b(c)(9)(B), as information the permature disclosure of which will be likely to significantly frustrate the implementation of proposed agency action. (A copy of the determination is available for public inspection and duplication in the Central Reference and Records Inspection Facility, Room 6628, Department of Commerce.) All other portions of the meeting will be open to the public.

FOR FURTHER INFORMATION OR COPIES OF MINUTES CONTACT: Ms. Robin Tuttle Waxman, Acting Executive Secretary, Marine Fisheries Advisory Committee, National Marine Fisheries Service, Washington, D.C. 20235, Telephone: (202) 634–7283.

Dated: June 15, 1982.

Robert K. Crowell,

Deputy Executive Director, National Marine Fisheries Service.

[FR Doc. 82–16706 Filed 6–18–82; 8:45 am]

BILLING CODE 3510–22–M

DEPARTMENT OF DEFENSE

Defense Logistics Agency

Privacy Act of 1974; Establishment of a New System of Records

AGENCY: Defense Logistics Agency, DOD.

ACTION: Establishment of a new system of records.

SUMMARY: The Defense Logistics Agency (DLA) proposes to add a new system of records to its inventory of systems of records subject to the Privacy Act of 1974. The system notice for this system is set forth below.

DATE: This system notice shall be effective July 21, 1982, unless public comments are received which result in a contrary determination.

ADDRESS: Send any comments to: Director, Defense Logistics Agency, Centralized Intern Development Office, 3990 E. Broad Street, Columbus, OH 43215.

FOR FURTHER INFORMATION CONTACT: Mr. Preston B. Speed, Headquarters Defense Logistics Agency (ATTN: DLA-XAM), Cameron Station, Alexandria, VA 22314. Telephone: 202/274–6234.

SUPPLEMENTARY INFORMATION: The Defense Logistics Agency Systems of records subject to the Privacy Act of 1974, Title 5 United States Code, section 552a (Pub. L. 93–579; 44 Stat. 1896, et seq.) has been published in the **Federal Register** at:

FR Doc. 82–674 (46 FR 2544), January 18, 1982
FR Doc. 82–7399 (46 FR 11919), March 18, 1982
FR Doc. 82–10361 (46 FR 16193), April 15, 1982
FR Doc. 82–12693 (46 FR 20016), May 10, 1982
FR Doc. 82–15587 (46 FR 25041), June 9, 1982
FR Doc. 82–15774 (46 FR 25175), June 10, 1982

A new system report as required by 5 U.S.C. 552a(o) was submitted on May 19, 1982.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

June 16, 1982.

S355.02 DCIDO

SYSTEM NAME:

DLA—Intern Records.

SYSTEM LOCATION:

Defense Logistics Agency (DLA) Centralized Intern Development Office (DCIDO–X), Defense Construction Supply Center, 3990 E. Broad Street, Columbus, Ohio 43215; and DLA Civilian Personnel Management Support Office (DCMO), Defense Construction Supply Center, 3990 E. Broad Street, Columbus, Ohio 43215.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All current and former DCIDO interns.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records maintained in this system contain personal and training (formal and on-the-job) data on all interns (past and present) employed by DCIDO. These records contain the name, Social Security Number, name of program, date of birth, sex, minority group designator, entrance on duty, address, recruitment location, education, activity assigned, target position, date of completion of DCIDO training, reasons for non-completion/effective date, formal training received, completion date, on-the-job training received, and completion date.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 4103, 4115, and 4118.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES.

To maintain training records and demographics on all interns employed by DCIDO; to provide information to DLA regarding EEO progress and for effective personnel management and administration. Records the training each intern has received to insure training objectives are being met as required in the Program of Instruction. Also used by staff personnel to evaluate program and individual intern progress.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated files are stored on magnetic tapes/disks. Manual files are stored on 5 x 8 index cards in file cabinets and computer print outs.

RETRIEVABILITY:

Automated records are retrieved by name, social security number, and career intern training program. Manual records are retrieved by employee name and career intern training program.

SAFEGUARDS:

Records are maintained in an area that is accessible to office personnel only. Records are retained in locked cabinets and compute file-safe system soft-ware. Records will be avialable only to authorized personnel on a need-to-know basis in connection with their official duties. Magnetic tapes or disks are stored in a tape library when not used in processing.

RETENTION AND DISPOSAL:

Manual records are retained for current year plus nine prior years. Mechanized listings are retained for one year and then are destroyed by shredding or burning. Tapes and/or disks are retained until no longer needed for reference or ten years, whichever is sooner.

SYSTEM MANAGER(S) AND ADDRESS:

Director, DLA Centralized Intern Development Office, 3990 E. Broad Street, Columbus, Ohio 43215.

NOTIFICATION PROCEDURES:

Written or personal requests for information may be obtained from the System Manager. Individual must provide full name, social security number and career program.

RECORD ACCESS PROCEDURES:

Assistance may be obtained from Administrative Officer, DCIDO, 3990 E. Broad Street, Columbus, Ohio 43215. Written requests or personal visits, individual must provide full name and signature, current address, social security number and career program. Specific proof of identification is not normally required.

CONTESTING RECORD PROCEDURES:

The agency's rules for access to records and for contesting contents and appealing initial determination by the individual concerned may be obtained from the System Manager.

RECORD SOURCE CATEGORIES:

Civilian Personnel Offices; Chiefs, Career Intern Training Programs, information provided by personnel; OJT supervisors and training instructors.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 82–16708 Filed 6–18–82; 8:45 am]
BILLING CODE 3620–01–M

Department of the Army

Privacy Act of 1974; Matching Program—Department of the Army/City of New York

AGENCY: Department of the Army, DOD.

ACTION: Notice of a Matching Program—Department of the Army/City of New York.

SUMMARY: The Department of the Army announces a proposal to match by computer certain U.S. Army allotment records with the listings for recipients of food stamps and public assistance in the City of New York. The matches will be made under a written agreement between the City of New York and the Army. The Army will perform the match using certain data provided by the City and information from existing Army allotment records. A matching report is set forth below.

DATE: The match will begin on July 15, 1982 unless comments are received that result in a contrary determination.

ADDRESS: Send any comments to Office of The Adjutant General, Headquarters, Department of the Army, (HQDA(DAAG–AMR–R)), Hoffman building 1, 2561 Eisenhower Ave., Alexandria, VA 22331.

FOR FURTHER INFORMATION CONTACT:

Mr. Guy B. Oldaker, Office of The Adjutant General, Headquarters, Department of the Army, (HQDA(DAAG–AMR–R)), Hoffman Building 1, 2561 Eisenhower Ave., Alexandria, VA 22331; telephone 703/325–6183.

SUPPLEMENTARY INFORMATION: At the request of the City of New York, the Department of the Army has tentatively agreed to match certain data in the Army records concerning recipients of allotments from Active Duty soldiers with certain welfare records of the City of New York. Set forth below is the information required by paragraph 5.f.1 of the Revised Supplemental Guidance for Conducting Computerized Matching Programs issued by the Office of Management and Budget (47 FR 21656; May 19, 1982). A copy of this notice has been provide both Houses of Congress and the Office of Management and Budget.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense

June 15, 1982.

Report of a Matching Program; Department of the Army/City of New York, New York

a. *Authority:* Title 42, United States Code, Subchapter IV, "Grants to States for Aid and Services to Needy Families with Children and for Child Welfare Services" and Title 7, United States Code, Chapter 51, "Food Stamp Program."

b. *Program Description:* Using a computer tape prepared by the City of New York, the Department of the Army will match the names of the tape against its current computer base for checks issued in response to allotments made by soldiers. The New York tapes will contain only the name mailing address of current recipients of only the name, mailing address and dollar amount of the allotment for each support cycle. The Army will use a specially developed computer program which will be used only to support this program.

c. *Period of the Match:* The matches will begin in July 1982 and continue at intervals of not less than six month, but no more than one year.

d. *Security:* Only the Army personnel who perform the actual match will have access to the Army file and the New York City tapes. Only the "hits" will be turned over to personnel from the City of New York. The New York City personnel will have access only to the details of the "hits" and not other information or names in the Army files. The City intends to retain the listings provided for six months and storage will be locked cabinets. Upon completion of the match the tapes provided by the City will be returned to the City and no copies will be retained by the Army.

e. *Disposition of Records:* The Army will not retain or copy the tapes provided by the City. The tape will be returned to the City along with the "hit" data. The City officials will visually review the "hit" data to ensure that the records pertain to the individuals and to make initial follow up determinations. In those situations where there is any question as to eligibility, the recipient will be personally contacted to resolve the issue. No benefits will be discontinued solely on the basis of the "hit" data listings. The City of New York will retain the listings received from the Army for only six months.

f. *Other Comments:* The Army will not provide the "hit" data developed to any other Federal, State or local agencies. Also no Army bestowed rights, privileges or benefit will be terminated solely based on a "hit" or the records provided by the City of New York in connections with this program.

[FR Doc. 82-16709 Filed 6-18-82; 8:45 am]

BILLING CODE 3710-08-M

Office of the Secretary

Defense Systems Management College; Board of Visitors Meeting

A meeting of the Defense Systems Management College (DSMC) Board of Visitors will be held in Building 202, Fort Belvoir, VA, on Tuesday, 29 June 1982, from 9:00 a.m. until 4:30 p.m. The agenda will include a review of accomplishments related to the system acquisition education, system acquisition research, and information collection and dissemination missions. It will also include a review of the DSMC plans, resources and operations. The meeting is open to the public; however, because of limitiations on the space available, allocation of seating will be made on a first come, first-serve basis. Persons desiring to attend the meeting should cal Lieutenant Commander Judy Ray (703-664-1175) to reserve a seat.

June 15, 1982.

M. S. Healy,

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

[FR Doc. 82-16657 Filed 6-18-82; 8:45 am]

BILLING CODE 3810-01-M

Department of Defense Wage Committee; Closed Meetings

Pursuant to the provisions of section 10 of Pub. L. 92-463, the Federal Advisory Committee Act, notice is hereby given that a meeting of the Department of Defense Wage Committee will be held on Tuesday, August 3, 1982; Tuesday, August 10, 1982, Tuesday, August 17, 1982; Tuesday, August 24, 1982, and Tuesday, August 31, 1982 at 10:00 a.m. in Rom 3D321, the Pentagon, Washington, D.C.

The Committee's primary responsibility is to consider and submit recommendations to the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics) concerning all matters involved in the development and authorization of wage schedules for federal prevailing rate employees pursuant to Pub. L. 92-392. At this meeting, the Committee will consider wage survey specifications, wage survey data, local wage survey committee reports and recommendations, and wage schedules derived therefrom.

Under the provisions of section 10(d) of Pub. L. 92-463, meetings may be closed to the public when they are "concerned with matters listed in 5 U.S.C. 552b." Two of the matters so listed are those "related solely to the internal personnel rules and practices of an agency," (5 U.S.C. 552b. (c)(2)), and those involving "trade secrets and commercial or financial information obtained from a person and privileged or confidential" (5 U.S.C. 552b. (c)(4)).

Accordingly, the Deputy Assistant Secretary of Defense (Civilian Personnel Policy) hereby determines that all portions of the meeting will be closed to the public because the matters considered are related to the internal rules and practices of the Department of Defenese (5 U.S.C. 552b (c)(2)), and the detailed wage data considered by the Committee during its meetings have been obtained from officials of private establishments with a guarantee that the data will be held in confidence (5 U.S.C. 552b. (c)(4)).

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention. Additional information concerning this meeting may be obtained by writing the Chairman, Department of Defense Wage Committee, Room 3D264, the Pentagon, Washington, D.C. 20301.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

June 16, 1982.

[FR Doc. 82-16689 Filed 6-18-82; 8:45 am]

BILLING CODE 3810-01-M

Public Information Collection Requirement Submitted To OMB for Review

The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; (8) The point of contact from whom a copy of the information proposal may be obtained.

Revision

Report of Inventions and Subcontracts (DD Form 882)

This report is essential as it, in accordance with contract terms and conditions (DAR clauses), sets forth information on inventions and election to file domestic and foreign patent applications, for use in establishing the rights the Government obtains in specific inventions.

Contractors (Subcontractors) 2,000 responses; 1,000 hours.

Forward comments to Edward Springer, OMB Desk Officer, Room 3235, NEOB, Washington, DC 20503, and John V. Wenderoth, DoD Clearance Officer, OASD(C), DIRMS, IRAD, Room 1A658, Pentagon, Washington, DC 20301, Telephone (292) 697–1195.

A copy of the information collection proposal may be obtained from Charles W. Lloyd, Room 3D 1028, Pentagon, Washington, DC 20301, Telephone (202) 697–7266.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

June 16, 1982.

[FR Doc. 82-16688 Filed 6-18-82; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF ENERGY

Inventions Available for License

The Department of Energy (DOE) hereby announces a number of inventions available for license, either exclusively or nonexclusively. For further information concerning licensing of the inventions, please contact Robert J. Marchick, Office of the Assistant General Counsel for Patents, GC–42, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585.

Copies of specifications of the listed U.S. patent applications may be obtained, for a modest fee, from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22151.

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

R. Tenney Johnson,

General Counsel, Department of Energy.

Department of Energy

Assistant General Counsel for Patents, Washington, DC. 20585

Patent Application S.N. 183,780, Method and Device for Determining the Position of a Cutting Tool Relative to the Rotational Axis of a Spindle-Mounted Workpiece

Patent Application S.N. 186,869, A Positional Reference System for Ultraprecision Machining

Patent Application S.N. 186,870, Dual Surface Interferometer

Patent Application S.N. 186,886, Self Locking Coupling Mechanism for Engaging and Moving a Load

Patent Application S.N. 187,913, Nuclear Reactor Fuel Rod Attachment System

Patent Application S.N. 187,915, Electron Energy Recovery System for Negative Ion Sources

Patent Application S.N. 188,436, Semiconductor With Protective Surface Coating and Method of Manufacture Thereof

Patent Application S.N. 188,791, Apparatus for Electroplating Particles of Small Dimension

Patent Application S.N. 189,990, Means for the Focusing and Acceleration of Parallel Beams of Charged Particles

Patent Application S.N. 190,303, Non-Intrusive Ultrasonic Liquid-in-Detector for Small Diameter Tubes

Patent Application S.N. 190,304, A Process for Decontaminating Radioactive Liquids Using a Calcium Cyanamide-Containing Composition 5Patent Application S.N. 190,305, Matched Metal Die Compression Molded Structural Random Fiber Sheet Molding Compound Flywheel

Patent Application S.N. 190,306, Rimmed and Edge Thickened Stodola Shaped Flywheel

Patent Application S.N. 191,192, Coded Aperture Imaging With Self-Supporting Uniformly Redundant Arrays

Patent Application S.N. 191,611, Passive Ice Freezing-Releasing Heat Pipe

Patent Application S.N. 192,799, Tracking System for Solar Collectors

Patent Application S.N. 195,543, Denitrification of Combustion Gases

Patent Application S.N. 195,966, Downhole Steam Generator With Improved Preheating/Cooling Features

Patent Application S.N. 195,967, Method for the Preparation of Radon-211

Patent Application S.N. 195,968, Magnetic Resonance Apparatus

Patent Application S.N. 196,710, Zirconium Vanadium Chromium Alloy

Patent Application S.N. 196,998, Vacuum Chamber With a Supersonic Flow Aerodynamic Window

Patent Application S.N. 198,028, Three-Electrode Low Pressure Discharge Apparatus and Method for Uniform Ionization of Gaseous Media

Patent Application S.N. 200,799, Process for Separating Coal Synthesized Methane From Unreacted Intermediate and Contaminant Gases

Patent Application S.N. 201,946, Eddy Current Inspection Tool

Patent Application S.N. 201,947, Method of Measuring Heat Influx of a Cryogenic Transfer System

Patent Application S.N. 201,958, Radiant Energy Receiver Having Improved Coolant Flow Control Means

Patent Application S.N. 201,959, Pressure Wave Charged Repetitively Pulsed Gas Laser

Patent Application S.N. 202,041, Apparatus and Method for Maintaining Low Temperatures About an Object at a Remote Location

Patent Application S.N. 202,042, Imaging Alpha Particle Detector

Patent Application S.N. 202,083, Coherent Multilayer Crystals and Method of Making

Patent Application S.N. 203,193, Crack-Resistant Siloxane Molding Compound

Patent Application S.N. 203,194, Complex of Transferrin With Ruthenium for Medical Applications

Patent Application S.N. 204,121, Device for Detecting Imminent Failure of High-Dielectric Stress Capacitors

Patent Application S.N. 204,450, Open-Gradient Magnetic Method for the Benefication of Dry Pulverized Coal

Patent Application S.N. 204,689, Diffusion Bonded Stainless Steel in a Copper Matrix for Forming Amorphous Metal Shapes

Patent Application S.N. 204,721, Method of Assaying Uranium With Prompt Fission and Thermal Neutron Borehole Logging Adjusted by Borehole Physical Characteristics

Patent Application S.N. 205,043, Switching Power Pulse System

Patent Application S.N. 205,070, Klystron Having Electrostatic Quadrupole Focusing Arrangements

Patent Application S.N. 205,075, Method for Separating Actinides

Patent Application S.N. 205,076, Efficient Optical Pulse Stacker System

Patent Application S.N. 205,077, Convectively Cooled Electrical Grid Structure

Patent Application S.N. 205,397, Fast Closing Valve

Patent Application S.N. 205,398, Penning Discharge Ion Source With Self-Cleaning Aperture

Patent Application S.N. 206,221, Amorphous Metal Composites and Method of Making Composites

Patent Application S.N. 206,222, Long-Life Leak Standard Assembly

Patent Application S.N. 206,231, Nuclear Reactor Fuel Assembly Duct-Tube To-Inlet-Nozzle Attachment System

Patent Application S.N. 206,232, Hot Air Drum Evaporator

Patent Application S.N. 206,233, Rotatable Seal Assembly

Patent Application S.N. 206,234, Method for Uniformly Distributing Carbon Flakes in a Positive Electrode, the Electrode Made Thereby and Compositions

Patent Application S.N. 208,099, Alarm Toe Switch

Patent Application S.N. 208,100, Device for Detecting the Specific Gravity of a Liquid

Patent Application S.N. 208,218, Catalytic Cartridge SO_3 Decomposer

Patent Application S.N. 209,920, Method for Selectively Removing Fluorine and Fluorine-Containing Contaminants From Gaseous UF_6
Patent Application S.N. 209,921, Solar Receiver Protection Means and Method for Loss of Coolant Flow
Patent Application S.N. 209,928, Method and Apparatus for Acoustically Monitoring the Flow of Suspended Solid Particulate Matter
Patent Application S.N. 209,929, Situ Measurement System
Patent Application S.N. 210,485, Fermentative Alcohol Production
Patent Application S.N. 210,486, Regenerative Air Heater
Patent Application S.N. 210,487, Fluidic Assembly for an Ultra-High-Speed Chromosome Flow Sorter
Patent Application S.N. 210,488, High Power Linear Pulsed Beam Annealer
Patent Application S.N. 210,716, Laser-Assisted Isotope Separation of Tritium
Patent Application S.N. 212,005, Method for Producing Hydrocarbon and Alcohol Mixtures
Patent Application S.N. 212,045, Control System to Reduce the Effects of Friction in Drive Trains of Continuous-Path-Positioning Systems
Patent Application S.N. 212,310, Temperature Profile Detector
Patent Application S.N. 213,267, Laser Weld Jig
Patent Application S.N. 213,275, Superconducting Var Control
Patent Application S.N. 213,276, Radiation Detector
Patent Application S.N. 214,801, Fluid Force Transducer
Patent Application S.N. 214,802, Scanning Ultrasonic Probe
Patent Application S.N. 214,805, Optical Fuel Pin Scanner
Patent Application S.N. 214,806, Hand-Held Optical Fuel Pin Scanner
Patent Application S.N. 214,807, Heat Pump Apparatus
Patent Application S.N. 215,767, Fluorometric Method of Quantitative Cell Mutagenesis
Patent Application S.N. 215,770, Negative Ion Source With Hollow Cathode Discharge Plasma
Patent Application S.N. 217,355, Apparatus for Electrode Current Control in Linear MHD Generators
Patent Application S.N. 217,356, Method for Making Nuclear Reactor Fuel Microspheres
Patent Application S.N. 217,357, Method for Cleaning Solution Used in Nuclear Fuel Reprocessing
Patent Application S.N. 217,358, Photovoltaic Radiation Detector Element
Patent Application S.N. 218,242, Molten Tin Reprocessing of Spent Nuclear Fuel Elements
Patent Application S.N. 218,243, Glass Fiber Composition
Patent Application S.N. 218,248, Fire Suppressing Apparatus
Patent Application S.N. 221,745, Method of Removing PU(IV) Polymer From Nuclear Fuel Reclaiming Liquid
Patent Application S.N. 222,854, Downhole Steam Generator Having a Downhole Oxidant Compressor
Patent Application S.N. 222,855, Downhole Steam Generator With Improved Preheating, Combustion and Protection Features
Patent Application S.N. 222,864, Electric Power Generating Plant Having Direct Coupled Steam and Compressed Air Cycles
Patent Application S.N. 222,865, Method for Proving Uranium Articles With a Corrosion Resistant Anodized Coating
Patent Application S.N. 222,866, Solid State Optical Microscope
Patent Application S.N. 222,867, Dose Equivalent Neutron Dosimeter
Patent Application S.N. 222,868, Automatic Grinding Apparatus To Control Uniform Specimen Thicknesses
Patent Application S.N. 223,546, Method and Apparatus for Effectively Eliminating Tarforming Fractions and Light Oils From Gases Produced by Coal Gasification
Patent Application S.N. 223,547, Coprocessed Nuclear Fuels Containing (U, Pu) Values as Oxides, Carbides for Carbonitrides
Patent Application S.N. 224,994, Josephson Junction in High T_c Superconductors
Patent Application S.N. 225,219, Use of Tertirary Nitrogen Heterocyclic Material to Reduce Moisture-Induced Damage in Asphalt-Aggregate Mixtures
Patent Application S.N. 225,492, New and Improved Apparatus and Method for Monitoring the Intensities of Charged Particle Beams
Patent Application S.N. 225,493, Solar Collector Apparatus Having Increased Energy Rejection During Stagnation
Patent Application S.N. 226,283, Multichannel Homodyne Receiver
Patent Application S.N. 226,575, Segmented Pyroelectric Detector
Patent Application S.N. 226,576, Method for Improved Decomposition of Metal Nitrate Solutions
Patent Application S.N. 226,577, Magnetic Field Dosimetry System
Patent Application S.N. 228,002, Method of Enhancing the Wettability of Boron Nitride for use as an Electrochemical Cell Separator
Patent Application S.N. 228,035, Low-Drag Electrical Contact Arrangement for Maintaining Continuity Between Horizontally Movable Members
Patent Application S.N. 228,036, Method of Separating Boron Isotopes
Patent Application S.N. 228,836, Active Magnetic Regenerator
Patent Application S.N. 228,837, Method of Bonding Diamonds in a Matrix and Articles Thus Produced
Patent Application S.N. 229,023, Ring Cavity for a Raman Capillary Waveguide Amplifier
Patent Application S.N. 229,024, Apparatus for Monitoring Tritium in Tritium Contaminating Environments
Patent Application S.N. 229,421, High Temperature Sensor
Patent Application S.N. 229,422, Liquid Level Detector
Patent Application S.N. 229,423, Water Level Sensor and Temperature Profile Detector
Patent Application S.N. 229,496, Temperature Profile Detector
Patent Application S.N. 229,497, High Temperature Measuring Device
Patent Application S.N. 229,498, High Temperature Liquid Level Sensor
Patent Application S.N. 231,085, Harc Compositions and Method of Preparation
Patent Application S.N. 229,424, Liquid Level Sensing Device
Patent Application S.N. 233,341, Method of Forming Cavitated Objects of Controlled Dimension
Patent Application S.N. 233,354, High Temperature Pressure Coupled Ultrasonic Waveguide
Patent Application S.N. 233,365, Entirely Passive Heat Pipe Apparatus Capable of Operating Against Gravity
Patent Application S.N. 233,530 Single Electron Beam RF Feedback Free Electron Laser
Patent Application S.N. 233,532, Method for Enhancing Signals Transmitted Over Optical Fibers
Patent Application S.N. 233,533, Reduction in Maximum Time Uncertainty of Paired Time Signals
Patent Application S.N. 235,775, Substantially self-Powered Method and Apparatus for Recovering Hydrocarbons From Hydrocarbon-Containing Solid Hydrates
Patent Application S.N. 238,234, Method and Apparatus for Melt Growth of Crystalline Semiconductor Sheets
Patent Application S.N. 238,235, Method for Making Block Siloxane Copolymers
Patent Application S.N. 238,236, Optogalvanic Intracavity Quantitative Detector and Method for its use
Patent Application S.N. 238,711, Process for Preparing a Chemical Compound Enriched in Isotope Content
Patent Application S.N. 238,908, Tubing Crimping Pliers

Patent Application S.N. 239,227, Detection Device
Patent Application S.N. 239,228, Cleaning Method and Apparatus
Patent Application S.N. 239,866, Moment Free Toroidal Magnet
Patent Application S.N. 240,673, Electrochemical Cell Having Cylindrical Electrode Elements
Patent Application S.N. 240,676, Nuclear Reactor Fuel Assembly Duct-Tube-To-Handling-Socket Attachment System
Patent Application S.N. 240,688, Improved Collecting Apparatus
Patent Application S.N. 241,350, Process of Making Solar Cell Module
Patent Application S.N. 242,806, Groove Refinishing Tool
Patent Application S.N. 242,807, Method of Forming Metallic Coatings on Polymeric Substrates and of Forming Graded Polymeric Coatings or Films
Patent Application S.N. 243,307, System for Utilizing Shale Oil Fines
Patent Application S.N. 243,308, Receiver for Solar Energy Collector Having Improved Aperture Aspect
Patent Application S.N. 243,309, Combination Ring Cavity and Backward Raman Waveguide Amplifier
Patent Application S.N. 243,318, Steering System for a Train of Rail-Less Vehicles
Patent Application S.N. 243,395, Seal Assembly
Patent Application S.N. 244,571, Coal Gasification Vessel
Patent Application S.N. 244,573, Continuous Chain Bit With Downhole Cycling Capability
Patent Application S.N. 246,975, Transistorized Power Switch and Base Drive Circuit Therefore
Patent Application S.N. 246,976, Method and Appartus for the Formation of a Spheromak Plasma
Patent Application S.N. 247,708, Hydrosulfurization and Hydrodenitrogenation Catalysts Obtained From Coal Mineral Matter
Patent Application S.N. 247,709, Minimally Refined Biomass Fuel
Patent Application S.N. 249,782, Multiple Sextupole System for the Correction of Third and Higher Order Aberration
Patent Application S.N. 249,783, Method and Appartus for Recovering Unstable Cores
Patent Application S.N. 249,798, Cermets and Method for Making Same
Patent Application S.N. 251,643, Radioactive Hot Cell Access Hole Decontamination Machine
Patent Application S.N. 251,660, Dust Feed Mechanism
Patent Application S.N. 251,662, Solar Coal Gasification Reactor With Pyrolysis
Patent Application S.N. 251,663, In-Situ Vitrification of Soil
Patent Application S.N. 253,121, Americium Purification by a Combined Anion Exchange and Bidentate Organophosphorus Solvent Extraction Process
Patent Application S.N. 253,125, System for Producing a Uniform Rubble Red for In Situ Processes
Patent Application S.N. 253,490, Capacitively-Coupled Inductive Sensor
Patent Application S.N. 253,625, Compressor Surge Counter
Patent Application S.N. 253,641, Neutral Beamline With Improved Ion Energy Recovery
Patent Application S.N. 253,953, Neutral Beamline With Improved Ion Energy Recovery
Patent Application S.N. 254,708, Iron Active Electrode and Method of Making Same
Patent Application S.N. 254,709, Nuclear Reactor Control Apparatus
Patent Application S.N. 255,974, Instrument and Method for Focusing X-Rays, Gamma Rays and Neutrons
Patent Application S.N. 256,371, Method of Recovery of Alkali Metal Constituents From Coal Conversion Residues
Patent Application S.N. 256,372, AC Resistance Measuring Instrument
Patent Application S.N. 257,013, Improved Method of Preparing Composite Superconducting Wire
Patent Application S.N. 257,014, Method for Producing Nuclear Fuel
Patent Application S.N. 257,030, Separator Assembly for Use in Spent Nuclear Fuel Shipping Cask
Patent Application S.N. 257,031, Neutron Detection Apparatus
Patent Application S.N. 257,032, Power Recovery System for Coal Liquefaction Process

[FR Doc. 82-16626 Filed 6-18-82; 8:45 am]
BILLING CODE 6450-01-M

Economic Regulatory Administration

Dalco Petroleum Corp. and W. Darrell Zang and Louis Porter, 6COX00240; Proposed Remedial Order

Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration of the Department of Energy hereby gives Notice of a Proposed Remedial Order which was issued to Dalco Petroleum Corporation and W. Darrell Zang and Louis Porter, all of Tulsa, Oklahoma. This Proposed Remedial Order alleges miscertification of crude oil, failure to certify crude oil, and excessive pricing of crude oil during the period March 1976 through September 1978.

A copy of the Proposed Remedial Order, with confidential information deleted, may be obtained from: U.S. Department of Energy, Economic Regulatory Administration, Attn: John W. Sturges, Director, 440 S. Houston, Room 306, Tulsa, Oklahoma 74127.

Within 15 days of publication of this Notice any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, U.S. Department of Energy, 12th and Pennsylvania Avenue, NW., Washington, D.C. 20461, in accordance with 10 CFR 205.193.

Issued in Tulsa, Oklahoma, on the 11th day of June 1982.

John W. Sturges,

Director, Tulsa Office, Economic Regulatory Administration.

[FR Doc. 82-16691 Filed 6-18-82; 8:45 am]
BILLING CODE 6450-01-M

Fasgo, Inc.; Proposed Remedial Order

Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration ("ERA") of the Department of Energy ("DOE") hereby gives notice of a Proposed Remedial Order which was issued to Fasgo, Incorporated, 11 Grandview Avenue, Brookhaven, Pennsylvania 19015. This Proposed Remedial Order charges Fasgo with pricing violations in the amount of $263,501.30 exclusive of interest connected with the sale of motor gasoline during the period June 1, 1977 through July 31, 1979.

A copy of the Proposed Remedial Order, with confidential information deleted, may be obtained from Robert J. McKee, Jr., Director, Philadelphia Field Office, ERA, (215) 597-3870. Within fifteen (15) days of publication of this notice, any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, 12th & Pa. Ave., NW., Washington, D.C. 20461, in accordance with 10 CFR 205.193.

Issued in Philadelphia, Pennsylvania, on the 2nd day of June, 1982.

Robert J. McKee, Jr.,

Director, Philadelphia Field Office, Economic Regulatory Administration.

[FR Doc. 82-16690 Filed 6-18-82; 8:45 am]
BILLING CODE 6450-01-M

William J. Scott; Proposed Remedial Order

Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration of the Department of Energy hereby gives notice of a Proposed Remedial Order which was issued to William J. Scott, 2859 Walnut Avenue, Long Beach, California 90806. This Proposed

Remedial Order charges William J. Scott with pricing violations in the amount of $114,441.23 connected with the first sale of crude oil during the period June 1974 through October 1978 in the State of California.

A copy of the Proposed Remedial Order with confidential information deleted may be obtained from Sandra K. Webb, Director, Economic Regulatory Administration, Department of Energy, 845 South Figueroa Street, Suite 410, Los Angeles, California 90017, phone (213) 688–4014. On or before [15 days of publication of this notice], any aggrieved person may file a Notice of Objection with the U.S. Department of Energy, Office of Hearings and Appeals, 12th and Pennsylvania Avenue, NW., Room 3304, Washington, D.C. 20461, in accordance with 10 CFR 205.193.

Issued in Los Angeles, California on the 4th day of June, 1982.

Sandra K. Webb,

Director, Los Angeles Office, Economic Regulatory Administration.

[FR Doc. 82–16692 Filed 6–18–82; 8:45 am]

BILLING CODE 6450–01–M

Walter J. Scott and Benjamin J. Agajanian, Oil Producers; Proposed Remedial Order

Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration of the Department of Energy hereby gives notice of a Proposed Remedial Order which was issued to Walter J. Scott and Benjamin J. Agajanian, 2859 Walnut Avenue, Long Beach, California 90806. This Proposed Remedial Order charges Messrs. Scott and Agajanian with pricing violations of $124,273.11 in connection with the first sale of crude oil during the period January 1974 through May 1977 in the State of California.

A copy of the Proposed Remedial Order with confidential information deleted may be obtained from Sandra K. Webb, Director, Economic Regulatory Administration, Department of Energy, 845 South Figueroa Street, Suite 410, Los Angeles, California 90017, phone (213) 688–4014. On or before [15 days of publication of this notice], any aggrieved person may file a Notice of Objection with the U.S. Department of Energy, Office of Hearings and Appeals, 12th and Pennsylvania, Avenue, NW., Room 3304, Washington, D.C. 20461, in accordance with 10 CFR 205.193.

Issued in Los Angeles, California, on the 4th day of June, 1982.

Sandra K. Webb,

Director, Los Angeles Office, Economic Regulatory Administration.

[FR Doc. 82–16693 Filed 6–18–82; 8:45 am]

BILLING CODE 6450–01–M

Walter J. Scott d.b.a. Scott Oil Co.; Proposed Remedial Order

Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration of the Department of Energy hereby gives notice of a Proposal Remedial Order which was issued to Walter J. Scott d.b.a. Scott Oil Company, 2859 Walnut Avenue, Long Beach, California 90806. Thie Proposed Remedial Order changes Scott Oil Company with pricing violations of $218,972.55 in connection with the first sale of crude oil during the period January 1974 through December 1977 in the State of California.

A copy of the Proposed Remedial Order with confidential information deleted may be obtained from Sandra K. Webb, Director, Economic Regulatory Administration, Department of Energy, 845 South Figueroa Street, Suite 410, Los Angeles, California 90017, phone (213) 688–4014. On or before July 6, 1982 any aggrieved person may file a Notice of Objection with the U.S. Department of Energy, Office of Hearings and Appeals, 12th and Pennsylvania, Avenue, NW., Room 3304, Washington, D.C. 20461, in accordance with 10 CFR 205.193.

Issued in Los Angeles, California on the 4th day of June, 1982.

Sandra K. Webb,

Director, Los Angeles Office, Economic Regulatory Administration.

[FR Doc. 82–16694 Filed 6–18–82; 8:45 am]

BILLING CODE 6450–01–M

Energy Information Administration

Revision of the Monthly Power Plant Report (Form EIA–759)

AGENCY: Energy Information Administration, DOE.

ACTION: Notice of the revision of the Form EIA–759 and solicitation of comments.

SUMMARY: The Energy Information Administration (EIA) of the Department of Energy (DOE) announces the revision of the Monthly Power Plant Report (Form EIA–759). The revised Form EIA–759 differs from the previous form in that unit-level data shall be submitted for all generating units with an installed nameplate capacity of greater than or equal to 50 megawatts. Plant-level prime-mover data shall be submitted for aggregate units less than 50 megawatts. The revised Form EIA–759 also includes space for comments by respondents.

DATES: Written comments must be submitted on or before July 21, 1982.

ADDRESSES: Comments must be sent to Ms. Carol L. French at the address listed immediately below.

FOR FURTHER INFORMATION CONTACT: To obtain additional information or copies of the EIA–759, contact Ms. Carol L. French, Task Manager, Electric Power Division, Energy Information Administration, Department of Energy, MS2F–021, 1000 Independence Ave. SW., Washington, D.C. 20585, (202) 252–5311.

SUPPLEMENTARY INFORMATION:

I. Current Action
II. Revised Monthly Power Plant Report Form EIA–759
III. Request for Comments

I. Current Action

The EIA announces a revision of the Monthly Power Plant Report (Form EIA–759). The form was revised to include unit-level information for all generating units with an installed nameplate capacity of 50 megawatts or greater. In addition, net generation has been replaced by requests for two data elements: gross generation and plant service load. Unit data is to be given for nameplate capacity, gross generation, unit number, unit type, and fuel consumption by type and quantity. Since plant service load and fuel stocks cannot be broken down to unit-level, plant-level data are requested. Plant-level prime-mover data shall be for aggregate units less than 50 megawatts. The revised Form EIA–759 also includes a column to indicate footnote numbers and space for the respondents to explain these footnotes. The Form EIA–759 shall be submitted by all U.S. electric utilities engaged in the production of electrical power for public use.

The average respondent burden, defined as the number of person-hours required to complete a form, remains at 4.8 hours.

For the previous data collection form, respondents had to aggregate unit-level information to plant-level totals, and calculate net generation by subtracting plant service load from gross generation. For the revised form, the time required to calculate these values is reduced, even though more information is requested. Thus, the unit-level information that is being requested does not increase respondent burden.

Data collection on the revised form is expected to begin in 1983. Because of the nature of the changes in the new form

and the need for verification of pre-printed information, copies of the previous and revised Form EIA–759 will be mailed to respondents prior to conversion to the new system. Parallel testing will assure transition and provide continuity in publications.

II. Revised Monthly Power Plant Report (Form EIA–759)

A sample of the revised Form EIA–759 and its instructions follows.

III. Request for Comments

EIA invites the public to comment on the revised form within 30 days of the publication of this notice. The following general guidelines are provided to assist in the preparation of responses.

(As a potential data provider)

A. Are the instructions and definitions clear and sufficient?

B. Can the data be submitted using the definitions included in the instructions?

C. Can the data be submitted in accordance with the response time specified in the instructions?

D. How many hours, including time for computation, preparation and administrative review, will it take your utility to complete and submit a monthly form?

E. What is the cost of completing a monthly form?

F. How can this form be improved?

(As a potential user)

A. Do you need data at the levels of detail indicated on the form?

B. For what purposes would you use these data? (Be specific)

C. How could the form be improved to better meet your specific data needs?

D. Are there alternative sources of data and do you now use them? What are their deficiencies?

Comments provided on the revised Form EIA–759 will be included in EIA's submission to the Office of Management and Budget and will become a matter of public record.

Issued in Washington, D.C., June 9, 1982.

Yvonne M. Bishop,

Director, Office of Statistical Standards Energy Information Administration.

BILLING CODE 6450-01-M

MONTHLY POWER PLANT REPORT

U. S. Department of Energy
Energy Information Administration
Form EIA-759

Form Approved
OMB No.

Signature: _____ Contact: _____
Title: _____ Phone: _____

Report For:
Instructions: See back of form for detailed instructions. Please submit by the 10th of the month. Verify all preprinted information and correct if required. Submit two copies of each page. For more information call: at:

Plant Name and (Identification No.)	Unit Data						Plant Data			
					Fuel Consumption			Fuel Stock		
	No.	Prime Mover	Maximum Nameplate Installed Capacity (kW)	Gross Generation (kWh)	Code	Quantity	Plant Service Load (kWh)	Code	Quantity	Footnote No.

Footnote No.	Comments

This report is mandatory under Public Law 93-275. Failure to respond may result in criminal fines, civil penalties, and other sanctions as provided by law. Data reported on EIA-759 are not considered to be confidential.

INSTRUCTIONS FOR THE MONTHLY POWER PLANT REPORT

A. Purpose

Form EIA-759 is designed to collect information from all U.S. electric utilities on electric generation and fuel consumption by unit, and end-of-month fuel stock by plant. This report is required by the Energy Information Administration (EIA) to carry out its responsibilities in accordance with Section 13 of the Federal Energy Administration Act of 1974 (Public Law 93-275).

B. Who Shall Submit

The Form EIA-759 shall be submitted by all U.S. electric utilites engaged in the production of electric power for public use. U.S electric utilities include all investor-owned companies, cooperatives, and government-owned facilities operated in the 50 states. For all these utilities, unit-level data shall be submitted for all units with maximum installed nameplate capacity (i.e., the maximum installed nameplate rating of the generator or generators associated with a unit) greater than or equal to 50 megawatts. Plant-level prime-mover data shall be submitted for aggregate units less than 50 megawatts. This unit threshold is voluntary. Those respondents desiring to provide unit information for all units are permitted to do so.

C. Where to Submit

Two copies of the Form EIA-759 must be returned no later than ten (10) days after the end of each month in the business reply envelope provided with the form or mailed to:

U.S. Department of Energy
Energy Information Administration
Mail Station: BG-086 (Form EIA-759)
Washington, D.C. 20585

Requests for further information, additional forms, or business reply envelopes may be directed to the above address; alternatively you may call the telephone number printed on the form under "Instructions."

D. Instructions

All information provided in this form, including all preprinted information, must be true and accurate. If preprinted information at the top of the form (including utility name and address, contact, title, and phone number) is incorrect, draw a line through the incorrect entry, and provide the correct information. If preprinted information on the data lines (including plant name and identification number, unit number, prime mover, maximum nameplate installed capacity, consumption fuel code, and stock fuel code) is incorrect, draw a line through the incorrect entry, footnote the entry, and enter the correct number(s) in the Footnote Section, with an explanation, if required. If additional space is required, please provide the information on a blank sheet of paper and attach it to the form. An explanation of the codes used to indicate prime mover and fuel type is given in the section titled Definitions.

Gross electrical generation and fuel consumption must be reported separately for every unit with maximum installed nameplate capacity of at least 50 megawatts. For units under 50 megawatts, gross generation and fuel consumption may be reported separately or may be aggregated by prime mover and reported accordingly.

For a combined cycle unit, gross generation and fuel consumption must be reported separately for the two or more unit types that comprise the unit (for example, gas turbine and steam). When waste heat is used as an energy source by a combined cycle unit, the fuel consumption column for that portion of the unit should contain the designation "waste heat" in place of fuel quantity.

The reported fuel consumption figure for a cogeneration unit should be only that portion of total fuel consumption which is attributed to the gross electrical generation shown for that unit.

Plant service load and fuel stock must be reported for every U.S. electric utility power plant. When plant-level data are submitted, the unit number field contains PM for prime mover and the unit type field contains the plant prime mover code. For plants with pumped storage units, plant service load should include the electric power consumed while pumping.

Plant fuel stock quantity is reported for coal, oil, gas, and petroleum coke, and should include all fuel stock at the end of the month. If fuel stock quantities cannot be assigned to plants because stock is held in central storage, a central storage site should be indicated using the footnote method. In subsequent months, the central storage site will be preprinted.

E. Definitions

For reporting purposes, the following definitions should be used:

Cogeneration Unit: Any unit that produces electric power and any other form of useful energy (such as steam, exhaust gas or heat) which is used for industrial, commercial, or space heating purposes.

Combined Cycle Unit: An electric generating unit that consists of one or more combustion turbines whose exhaust gas flows to a fired or unfired heat exchanger (waste heat boiler).

Contact: Person in charge of completing the form.

Footnotes: Explanatory information, additions, deletions, or corrections.

Fuel Code: A combination of three characters and two numbers indicating the type of fuel used by the unit.

LOL02	—	Light Oil	SUB06	—	Subbituminous Coal	WOD10	—	Wood
HOL03	—	Heavy Oil	LIG07	—	Lignite Coal	WAS11	—	Waste
ANT04	—	Anthracite Coal	GAS08	—	Natural Gas	OTH99	—	Other
BIT05	—	Bituminous Coal	COK09	—	Petroleum Coke	NAPOO	—	Not Applicable (i.e., used for nuclear, hydroelectric, geothermal, etc.)

Fuel Consumption: Amount of fuel used, including fuel consumed for providing standby service, and oil or gas used for start-up and/or flame stabilization of steam-electric plants. The consumption for units joined by a common fuel feeder should be estimated. For cases where multiple fuels are used, a separate line on the data collection form must be used for each type of fuel.

Gross Generation: The total amount of electric energy expressed in kilowatthours produced by a generating unit measured at the generator terminals.

Maximum Installed Nameplate Capacity: The maximum installed nameplate rating expressed in kilowatts of the generator or generators associated with a unit. The kilowatt capacity of each unit should represent the manufacturer's maximum generator nameplate ratings total at the end of the reporting month, exclusive of auxiliary or house generators. When a generator nameplate shows two or more kilowatt ratings, use the maximum kilowatt rating. Do not use the maximum achieved capacity of the generator.

Note Number: A whole number indicating the label applied to a note in the comment area of the form.

Phone: The telephone number of the contact person to whom questions about the data may be addressed.

Plant Fuel Stock: A supply of fuel accumulated for future use, including coal and fuel oil stocks at the plant site, in coal cars or barges at the plant site, and stocks held in central storage yards.

Plant Identification Number: The number assigned to the plant by the DOE person responsible for the form.

Plant Name: The name assigned to the plant by the utility.

Plant Service Load: The electric energy expressed in kilowatthours used in the operation of a plant; included in this definition is the energy required for pumping at pumped-storage plants.

Prime Mover: The engine, turbine, water wheel, or similar machine which drives an electric generator. A two-character code designates the method used to drive the generator or generators. The allowable prime mover codes are as follows:

FC	—	Fuel Cell	IC	—	Intenal Combustion Engine	SG	—	Steam Geothermal
GT	—	Gas Turbine	SO	—	Solar	SN	—	Steam Nuclear
GY	—	Gas Turbine Combined Cycle	ST	—	Steam	WI	—	Wind
HY	—	Hydro	SC	—	Steam Cogeneration	OT	—	Other
HP	—	Hydro Pumped Storage	SY	—	Steam Combined Cycle			

Signature: Signature of person designated by the utility to certify the accuracy of the reported data.

Title: Title of the person signing this form (e.g., President, etc.).

Unit: Any combination of physically connected reactors, combustors, turbines, or generators designed to operate together to produce electric power. Those joined by a common fuel feeder are considered to be separate units.

Unit Number: The identification of a unit at said plant.

[FR Doc. 82-16695 Filed 6-18-82; 8:45 am]

BILLING CODE 6450-01-C

Federal Energy Regulatory Commission

[Docket No. ER82-573-000]

Bangor Hydro-Electric Co.; Filing

June 16, 1982.

The filing Company submits the following:

Take notice that on June 4, 1982, Bangor Hydro-Electric Company (Bangor) tendered for filing a Sales Agreement (Agreement) made as of May 1, 1982 between Bangor and Massachusetts Municipal Wholesale Electric Company (MMWEC) for the sale of unit power by Bangor to MMWEC.

Bangor states that the Agreement provides for a unit sale of 18,930 kilowatts from Bangor's entitlement in the Mystic Unit No. 7, owned and operated by the Boston Edison Company (Boston), to MMWEC. Bangor has such entitlement under contract for the proposed term of the Agreement from Boston. Such contract has been accepted for filing as Boston's Rate Schedule FPC No. 106. The Agreement provides that MMWEC pay for the capacity at the rate of $50 per kilowatt per year and for their pro-rata share of the actual energy costs.

Bangor requests an effective date of May 1, 1982, and therefore requests waiver of the Commission's notice requirements.

Bangor states that a copy of this filing was mailed to Massachusetts Municipal Wholesale Electric Company.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before June 30, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-16670 Filed 6-18-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6352-000]

The City of Glendale; Exemption From Licensing

June 17, 1982.

A notice of exemption from licensing of a small hydroelectric project known as Verdugo Metropolitan Pump Station, Project No. 6352, was filed on May 20, 1982, by The City of Glendale. The proposed hydroelectric project would have an installed capacity of 400 kW and would be located on The Metropolitan Water District's Transmission Pipeline, Los Angeles County, California.

Pursuant to Sections 4.109(c) and 375.308(ss) of the Commission's regulations, and subject to the terms and conditions set forth in Section 4.111 of the Commission's regulations, the Director, Office of Electric Power Regulation, issues this notification that the above project is exempted from licensing as of June 19, 1982.

Robert E. Cackowski,

Acting Director, Office of Electric Power Regulation.

[FR Doc. 82-16671 Filed 6-18-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-577-000]

Consolidated Edison Co. of New York, Inc.; Filing

June 16, 1982.

The filing Company submits the following:

Take notice that on June 7, 1982, Consolidated Edison Company of New York, Inc. ("Con Edison") tendered for filing proposed changes in its Electric Rate Schedule FERC No. 42, for transmission, distribution and delivery service to the Power Authority of the State of New york ("PASNY"). The proposed Supplement No. 10 would increase revenues from jurisdictional service to PASNY by $29,092,000 annually based on the 12-month period ending March 31, 1984 and would condense the twelve existing PASNY service classes into a single delivery-service class.

The proposed increase is part of, and represents PASNY's proportionate share of, a Company-wide general electric rate increase application by Con Edison which is pending before the New York Public Service Commission (NYPSC). Although Supplement No. 10 bears a nominal effective date of October 2, 1982, Con Edison will not seek permission to make the rate effective until the effective date, estimated to be on or about March 12, 1983, of the rate changes authorized by NYPSC.

Copies of the filing have been served upon PASNY and the New York Public Service Commission.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's rules of Practice and Procedure (18 CFR 1.8, 1.10).

All such petitions or protests should be filed on or before June 30, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-16672 Filed 6-18-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6253-001]

Adrian B. and Janice L. Haemmig; Exemption From Licensing

June 17, 1982.

A notice of exemption from licensing of a small hydroelectric project known as Wolf Creek Power Plant, Project No. 6253, was filed on May 24, 1982, by Adrian B. and Janice L. Haemmig. The proposed hydroelectric project would have an installed capacity of 14 kW and would be located on North Fork of Wolf Creek, Nevada County, California.

Pursuant to Sections 4.109(c) and 375.308(ss) of the Commission's regulations, and subject to the terms and conditions set forth in Section 4.111 of the Commission's regulations, the Director, Office of Electric Power Regulation, issues this notification that the above project is exempted from licensing as of June 23, 1982.

Robert E. Cackowski,

Acting Director, Office of Electric Power Regulation.

[FR Doc. 82-16673 Filed 6-18-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-589-000]

Idaho Power Co.; Filing

June 16, 1982.

The filing Company submits the following:

Take notice that on June 8, 1982, Idaho Power Company (Idaho) tendered for filing in compliance with the Federal

Energy Regulatory Commission's Order of October 7, 1978, a summary of sales made under the Company's 1st Revised FERC Electric Tariff, Volume No. 1 (Supersedes Original Volume No. 1) during April 1982 along with cost justification for the rate charged.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before June 30, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-16674 Filed 6-18-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-574-000]

Montaup Electric Co.; Filing

June 16, 1982.

The filing Company submits the following:

Take notice that on June 4, 1982, Montaup Electric Company (Montaup) tendered for filing copies of amended Exhibit A to Supplement No. 8 of Montaup's Rate Schedule FPC No. 36, which provides for the charge paid by Middleboro for its use of a radial line (M-1) connecting the two systems. Montaup states that the charge is updated annually as of January 1. Montaup further states that this year's update results in a $1,980 increase in monthly charges, from $34,068 to $36,048.

Montaup requests an effective date of January 1, 1982, and therefore requests waiver of the Commission's notice requirements.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before June 30, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-16675 Filed 6-18-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RO79-7-001; Docket No. RO80-7-001; Docket No. RO80-10-001; Docket No. RO81-61-001]

Propane Gas and Appliance Co., et al.; Scheduling Filings

June 15, 1982.

On November 20, 1981 the Commission remanded *Twin Montana, Inc.* to the Secretary of Energy (DOE) for responses to several questions concerning a motion filed with the Commission by DOE to increase the interest rates on refunds of overcharges by Twin Montana, Inc. (Twin Montana).[1] In *Propane Gas and Appliance Company, L. E. Jones Production Company,* and *Dalton J. Woods,* motions were also filed, to increase interest rates. In *Propane* and *Jones,* a ruling on whether to increase interest rates, beginning the filing date of each motion, was stayed pending DOE's issuance of an order on remand in *Twin Montana.* The motions were denied to the extent they requested increased interest rates prior to each motion's filing date.[2] In *Woods,* the entire interest question was stayed, including possible increase of rates beginning February 1, 1980.[3] On June 7, 1982 DOE issued an order on remand in *Twin Montana.*[4]

By June 30, 1982 each petitioner in the above captioned cases shall file a statement explaining in detail its objections, if any, to the requested increase in interest rates.[5] Each statement shall include all factual and legal arguments and legal authority supporting the firm's position. The statements shall specifically address DOE's responses in the June 7, 1982 order to the remanded issues, to the extent the petitioners raise these issues in objection to the interest increase. By July 14, 1982 DOE shall file a complete response to each filing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-16676 Filed 6-18-82; 8:45 am]

BILLING CODE 6717-01-M

---

[1] *Twin Montana, Inc.,* 17 FERC ¶61,166 (November 20, 1981).

[2] *Propane Gas and Appliance Company,* 18 FERC ¶61,084 (January 22, 1982); *L. E. Jones Production Company,* 17 FERC ¶62,103 (October 8, 1981).

[3] *Dalton J. Woods,* 19 FERC ¶62,098 (April 8, 1982).

[4] *Twin Montana, Inc.,* Case No. HCX-0004 (June 4, 1982).

[5] In all cases but *Woods* the increase would begin the date the motion was filed with the Commission. In *Woods* the increase would begin February 1, 1980.

[Docket No. ER82-572-000]

Southern California Edison Co.; Filing

June 16, 1982.

The filing company submits the following:

Take notice that, on June 4, 1982, Southern California Edison Company ("Edison") tendered for filing an agreement entitled "Edison-AEPCO Economy Energy Agreement" which has been executed by Edison and Arizona Electric Power Cooperative, Inc. ("AEPCO").

Under the terms and conditions of the agreement, the Parties will make available to each other economy energy at various mutually agreeable points of interconnection.

The Agreement is proposed to become effective when executed by the Parties, and, as to Edison, when accepted for filing by the Commission.

Copies of this filing were served upon the Public Utilities Commission of the State of California and Arizona Electric Power Cooperative, Inc.

Any person desiring to be heard or to protest this application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Section 1.8 and Section 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before June 30, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-16677 Filed 6-18-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-579-000]

Southern Co. Services, Inc.; Filing

June 16, 1982.

The filing company submits the following:

Take notice that, on June 4, 1982, Southern Company Services, Inc. on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company and Mississippi Power Company (Southern Companies) tendered for filing an initial Interchange Contract and a Unit Power Sales Agreement executed between Gulf States Utilities Company and Southern Companies and a Transmission Facilities Agreement executed by Mississippi Power Company and Gulf States Utilities (GSU). The Unit Power Sales Agreement between Southern Companies to GSU during the period June, 1984 through May, 1992.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Section 1.8 and Section 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before June 30, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-16678 Filed 6-18-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP82-103-000 & TA82-2-7-000]

Southern Natural Gas Co.; Proposed Changes In FERC Gas Tariff

June 15, 1982.

Take notice that Southern Natural Gas Company (Southern), on June 1, 1982, tendered for filing alternative proposed changes in its FPC Gas Tariff, Sixth Revised Volume No. 1, to become effective July 1, 1982.

Southern had filed proposed changes to Section 17 (Purchased Gas Adjustment) of The General Terms and Conditions of its tariff to change the semi-annual filing dates from each January 1 and July 1 to each October 1 and April 1. As part of this proposed change in PGA adjustment dates Southern has proposed not to implement its PGA rate change effective July 1, 1982.

If Southern's proposal to amend its PGA adjustment dates is denied, Southern has filed revised tariff sheets to implement rate changes effective July 1, 1982 pursuant to its Purchase Gas Adjustment Clause. Southern states that the proposed rate change proposed to be effective July 1, 1982 would be an increase in the Current Adjustment pursuant to Section 17.3 of The General Terms and Conditions of its Tariff of approximately 21, per Mcf and a reduction in the Surcharge Adjustment rate pursuant to Section 17.4 of The General Terms and Conditions of its Tariff of approximately 3¢ per Mcf (from 7.989¢ per Mcf to 5.096¢ per Mcf).

Copies of the filing are being served upon the company's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before *June 23, 1982.* Protests will be considerd by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-16679 Filed 6-18-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-575-000]

Tucson Electric Power Co.; Filing

June 16, 1982.

The filing Company submits the following:

Take notice that Tucson Electric Power Company (Tucson) on June 4, 1982, tendered for filing a supplement to the Interconnection Agreement between Tuscon and Public Service Company of New Mexico (PNM). The primary purpose of this supplement is to state a specific load and term of wheeling service to be performed by Tucson for PNM under the terms and conditions set forth in Schedule D of said Interconnection Agreement.

Tucson requests an effective date of May 1, 1982.

Copies of this filing were sent to PNM.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before June 30, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-16680 Filed 6-18-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER80-603, et al.]

Union Electric Co.; Compliance Filing

June 16, 1982.

The filing Company submits the following:

Take notice that on June 1, 1982, Union Electric Company filed a compliance report pursuant to the Commission's letter order of Apri 9, 1982.

Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before June 28, 1982. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-16681 Filed 6-18-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER81-144-001]

Upper Peninsula Power Co.; Compliance Filing

June 16, 1982.

The filing Company submits the following:

Take notice that on May 26, 1982, Upper Peninsula Power Company filed a refund compliance report pursuant to the Commission's letter order dated April 5, 1982.

Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before June 28, 1982. Comments will be considered by the Commission in

determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-16682 Filed 6-18-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP82-95-001 and TA82-2-57-001]

Western Transmission Corp.; Proposed Changes

June 16, 1982.

Take notice that Western Transmission Corporation (Western), on June 7, 1982, tendered for filing in Docket No. RP82-95-001 the following sheet:

Substitute Seventeenth Revised Sheet No. 3-A.

The proposed effective date is May 1, 1982. The sole purpose of the filing is to restate its Base Tariff Rate in compliance with Section 154.38(d)(4)(vi)(*a*) of the Commission's Regulations.

Further, take notice that on June 7, 1982, Western also tendered for filing in Docket No. TA82-2-57-001 the following sheet:

Eighteenth Revised Sheet No. 3-A

The proposed effective date is June 1, 1982. The sole purpose of the filing is to replace its Seventeenth Revised Sheet No. 3-A as filed in Docket No. TA82-2-57-000.

Western agrees that collections under Substitute Seventeenth Revised Sheet No. 3-A will be subject to refund until such time as the Commission agrees thereto or another determination is ordered.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before June 29, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-16683 Filed 6-18-82; 8:45 am]

BILLING CODE 6717-01-M

Office of Special Counsel

Crown Central Petroleum Corp.; Proposed Remedial Order

AGENCY: Department of Energy.

ACTION: Proposed remedial order to Crown Central Petroleum Corporation.

I. Introduction

Pursuant to 10 CFR 205.192, the Office of Special Counsel (OSC) of the Economic Regulatory Administration (ERA), Department of Energy (DOE) hereby gives Notice that a Proposed Remedial Order was issued on May 27, 1982 to Crown Central Petroleum Corporation (Crown), One North Charles Street, Baltimore, Maryland. In accordance with that section, a copy of the Proposed Remedial Order with confidential information, if any, deleted, may be obtained from the DOE.

Crown is a refiner engaged in the production of crude oil, and the refining and marketing of petroleum products. Crown was therefore subject to the Mandatory Petroleum Price and Allocation Regulations which were in effect until January 28, 1981.

II. Proposed Remedial Order NO. RCW00000

The Office of Special Counsel of the DOE has audited Crown's reported increased product and non-product costs, cost recoveries and class of purchaser determinations from August 19, 1973 through December 31, 1978, and has conducted further examinations of certain issues previously raised in a Notice of Probable Violation issued to Crown. OSC's findings are set forth in this Proposed Remedial Order.

OSC determined that Crown failed to establish and maintain appropriate classes of purchaser and May 15, 1973 weighted average selling prices for many of its customers. OSC found, in addition, that Crown failed to compute its cost recoveries in accordance with the equal application rule. OSC also found that Crown improperly inflated the amount of increased costs available for recovery in sales of gasoline by retroactively reallocating increased costs from other categories of petroleum products to gasoline in almost every month of measurement in the audit period, beginning with March 1974. In addition, OSC's review disclosed that Crown improperly inflated the amount of increased costs available for recovery in sales of gasoline by allocating to gasoline (through the V and R factors) increased costs which should have been allocated to exempt or decontrolled products, for every month of measurement in the audit period beginning with August 1976. OSC also found that Crown understated the recoveries and sales of gasoline and No. 2 oils during the audit period.

As a remedy for these violations, OSC proposed that Crown refund $23,348,000 plus interest to its gasoline customers, and $10,677,000 plus interest to its No. 2 oils customers, to compensate for the effects of Crown's overstatements of available costs, understatements of costs recoveries, and class of purchaser and May 15, 1973 selling price violations from August 19, 1973 through December 31, 1978. OSC also proposed certain adjustments to Crown's banks of unrecouped costs.

III. Notice of Objection

In accordance with 10 CFR 205.193, any aggrieved person may file a Notice of Objection to the above described Proposed Remedial Order with the Office of Hearings and Appeals on or before July 6, 1982. A person who fails to file a Notice of Objection shall be deemed to have admitted the findings of fact and conclusions of law as stated in the Proposed Remedial Order. If a Notice of Objection is not filed as provided by § 205.193, the Proposed Remedial Order may be issued as a final order.

All Notices, Statements, Motions, Responses, and other documents required to be filed with the National Office of Hearings and Appeals should be sent to: Office of Hearings and Appeals, Department of Energy, Room 3304, 12th & Pennsylvania Avenue NW., Washington, D.C. 20461.

No confidential information shall be included in a Notice of Objection.

Requests for copies of the Proposed Remedial Order with confidential information deleted should be directed to: Freedom of Information Reading Room, Forrestal Building, 1000 Independence Avenue, SW., Room 1E-190, Washington, D.C. 20585.

Issued in Washington, D.C., June 9, 1982.

Milton C. Lorenz,

Special Counsel, Economic Regulatory Administration.

[FR Doc. 82-16627 Filed 6-18-82; 8:45 am]

BILLING CODE 6450-01-M

Union Oil Company of California; Proposed Consent Order

AGENCY: Department of Energy (DOE).

ACTION: Notice of Proposed Consent Order and Opportunity for Public Comment.

SUMMARY: The Office of Special Counsel (OSC) hereby gives the notice required by 10 CFR 205.199J that it has entered into a Consent Order with Union Oil Company of California (Union). The Consent Order resolves all issues of compliance with the DOE Petroleum Price and Allocation Regulations, with the exceptions noted in the Consent Order, for the period March 6, 1973 through January 27, 1981 when crude oil and petroleum products were decontrolled by Executive Order 12287, 46 FR 9909 (January 30, 1981). To remedy any violations that may have occurred during the period, Union has agreed to make refunds to customers and a payment to the U.S. Treasury totalling $25 million.

As required by the regulation cited above, OSC will receive comments on the Consent Order for a period of not less than 30 days following publication of this notice. OSC will consider any comments received before determining whether to make the Consent Order final. Although the Consent Order has been signed and accepted by the parties, the OSC may, after the expiration of the comment period, withdraw its acceptance of the Consent Order and attempt to obtain a modification of the Consent Order or issue the Consent Order as proposed.

COMMENTS: To be considered, comments must be received by 5:00 p.m. on the thirtieth day following publication of this notice. Address comments to: Union Consent Order Comments, Office of Special Counsel, Department of Energy, 1200 Pennsylvania Avenue NW., Room 5109, Washington, D.C. 20461

FOR FURTHER INFORMATION CONTACT: Leslie Wm. Adams, Deputy Solicitor, Economic Regulatory Administration, Department of Energy, 1200 Pennsylvania Avenue NW., Washington, D.C. 20461, (202) 633–9165.

Copies of the Consent Order may be received free of charge by written request to: Union Consent Order Request, Office of Special Counsel, Department of Energy, 1200 Pennsylvania Avenue NW., Room 5109 Washington, D.C. 20461 Copies may also be obtained in person at the same address or at the Freedom of Information Reading Room, Forrestal Building, 1000 Independence Avenue SW., Room 1E–190.

SUPPLEMENTARY INFORMATION: Union is one of the 35 major refiners subject to the audit jurisdiction of OSC to determine compliance with the DOE Petroleum Price and Allocation Regulations (Regulations). Union engages in, among other things, the production, refining, and sale of crude oil and refined petroleum products. An audit conducted by OSC included a review of Union's records relating to its compliance with the Regulations during the period March 6, 1973 through January 27, 1981 (the audit period). During the audit, questions and issues were raised and enforcement documents were issued. Except for the matters excluded from the settlement in the Consent Order, this Consent Order resolves all civil issues not previously resolved concerning the allocation and sale of covered products during the audit period, whether or not raised in a previous enforcement action.

Conclusion of OSC Audit

The Consent Order addresses all aspects of Union's compliance with the applicable Regulations; however, union's compliance with the regulations concerning marginal and newly discovered crude oil properties and two matters in litigation concerning the stripper well exemption and the tertiary production incentive program are not resolved by the Consent Order. OSC's audit reviewed Union's pricing and allocation policies and procedures and the manner in which Union applied the Regulations with respect to, among other things, its production, refining, and sale of crude oil and refined petroleum products during the audit period. At the conclusion of the audit, OSC raised certain issues with respect to Union's application of the Regulations; however, Union and DOE have agreed to resolve all matters whether or not raised by the audit or heretofore asserted by either party.

Neither OSC nor Union has retreated from the position taken previously on the issues addressed by this Consent Order, and each believes that its position on these issues is meritorious. Notwithstanding DOE's position to the contrary, Union maintains that it has correctly construed and applied the Regulations. The parties desire, however, to resolve the issues raise without resort to complex, lengthy and expensive compliance actions. OSC believes that the terms and conditions of this Consent Order provide a satisfactory resolution of disputed issues and an appropriate conclusion of its audit of Union and that the Consent Order is in the public interest.

Terms and Conditions of the Consent Order

To resolve the issues raised by OSC's audit of Union and to remedy any violations that may have occurred during the audit period, Union has agreed to make refunds to customers and a payment to the U.S. Treasury totalling $25 million. Union has previously made more than $15,700,000 in refunds to customers with respect to matters arising out of the Federal petroleum price regulations.

The $25 million in remedies consists of the following elements. First, within 60 days after the effective date of the Consent Order, Union will refund $16,950,000 by issuing checks or credit memoranda to the current and former members of its "commercial" class of customers, which includes transportation firms, utilities, State and local government entities and other end users. Second, also within 60 days after the effective date of the Consent Order, Union will refund $8 million by issuing checks or credit memoranda to the current and former members of its "retail dealer", nonrefiner "wholesale" and "jobber" classes of customer. Finally, within 30 days of the effective date of the Consent Order, Union will remit $50,000 to the U.S. Treasury as a compromise in lieu of civil penalties.

The Consent Order also provides details concerning the conclusion of the audit, the dismissal of pending litigation, confidentiality of audit data, recordkeeping and procedures concerning enforcement of the provisions of the Consent Order. Upon becoming final after consideration of public comments, the Order will be a final order of DOE to which Union has waived its right to an administrative or judicial appeal. The Consent Order does not constitute an admission by Union nor a finding by OSC of a violation of any Federal petroleum price and allocation statutes or regulations.

Submission of Written Comments

Interested persons are invited to submit written comments concerning this Consent Order to the address noted above. All comments received by 5 p.m. on July 21, 1982, will be considered by OSC before determining whether to adopt the Consent Order as a final order. Modifications of the Consent Order that, in the opinion of OSC, signifcantly change the terms or impact of the Consent Order will be published for comment. If, after considering the comments it has received, DOE determines to issue the Consent Order as a final order, the Consent Order will

be made final and effective by actual notice to that effect to Union. Pursuant to 10 CFR 205.199J(c), DOE will thereafter promptly publish in the Federal Register notice of the action taken on this Consent Order and an appropriate explanation of that action.

Any information or data considered confidential by the person submitting it must be identified as such in accordance with the procedures of 10 CFR 205.9(f)

Issued in Washington, D.C., June 14, 1982.

Milton C. Lorenz,

Special Counsel, Economic Regulatory Administration.

[FR Doc. 82-16628 Filed 6-18-82; 8:45 am]

BILLING CODE 6450-01-M

Energy Information Administration

Publication of Alternative Fuel Price Ceilings and Incremental Price Threshold for High Cost Natural Gas

The Natural Gas Policy Act of 1978 (NGPA) (Pub. L. 95-621) signed into law on November 9, 1978, mandated a new framework for the regulation of most facets of the natural gas industry. In general, under Title II of the NGPA, interstate natural gas pipeline companies are required to pass through certain portions of their acquisition costs for natural gas to industrial users in the form of a surcharge. The statute requires that the ultimate cost of gas to the industrial facility should not exceed the cost of the fuel oil which the facility could use as an alternative.

Pursuant to Title II of the NGPA, section 204(e), the Energy Information Administration (EIA) herewith publishes for the Federal Energy Regulatory Commission (FERC) computed natural gas ceiling prices and the high cost gas incremental pricing threshold which are to be effective July 1, 1982. These prices are based on the prices of alternative fuels.

FOR FURTHER INFORMATION CONTACT: Leroy Brown, Jr., Energy Information Administration, Federal Building, Room 4121, Washington, D.C. 20461, Telephone: (202) 633-9710

Section I

As required by FERC Order No. 50, computed prices are shown for the 48 contiguous States. The District of Columbia's ceiling is included with the ceiling for the State of Maryland. FERC, by an Interim Rule issued on March 2, 1981, in Docket No. RM79-21, revised the methodology for calculating the monthly alternative fuel price ceilings for State regions. Under the revised methodology, the applicable alternative fuel price ceiling published for each of the contiguous States shall be the lower of the alternative fuel price ceiling for the State or the alternative fuel price ceiling for the multistate region in which the State is located.

The price ceiling is expressed in dollars per million British Thermal Units (BTU's). The method used to determine the price ceilings is described in Section III.

State	Dollars per million BTU's
Alabama	3.80
Arizona [1]	3.71
Arkansas [1]	3.34
California	3.62
Colorado [1]	4.05
Connecticut [1]	3.76
Delaware [1]	3.75
Florida	3.74
Georgia [1]	3.84
Idaho [1]	4.05
Illinois [1]	3.64
Indiana [1]	3.64
Iowa [1]	3.59
Kansas [1]	3.59
Kentucky [1]	3.64
Louisiana [2]	3.34
Maine	3.71
Maryland [1]	3.75
Massachusetts	3.69
Michigan [1]	3.64
Minnesota	3.46
Mississippi [1]	3.84
Missouri [1]	3.59
Montana [1]	4.05
Nebraska [1]	3.59
Nevada [1]	3.71
New Hampshire [1]	3.76
New Jersey	3.57
New Mexico	3.10
New York [1]	3.75
North Carolina [1]	3.84
North Dakota [1]	3.59
Ohio	3.55
Oklahoma [1]	3.34
Oregon [1]	3.71
Pennsylvania [1]	3.75
Rhode Island [1]	3.76
South Carolina [1]	3.84
South Dakota [1]	3.59
Tennessee [1]	3.84
Texas	3.33
Utah [2]	4.05
Vermont [1]	3.76
Virginia [1]	3.84
Washington [1]	3.71
West Virginia	3.52
Wisconsin [1]	3.64
Wyoming [1]	4.05

[1] Region based price as required by FERC Interim Rule, issued on March 2, 1981, in Docket No. RM79-21.
[2] Region based price and State based price are the same.

Section II. Incremental Pricing Threshold for High Cost Natural Gas

The EIA has determined that the volume-weighted average price for No. 2 distillate fuel oil landed in the greater New York City Metropolitan area during April 1982 was $36.46 per barrel. In order to establish the incremental pricing threshold for high cost natural gas, as identified in the NGPA, Title II, section 203(a)(7), this price was multiplied by 1.3 and converted to its equivalent in millions of BTU's by dividing by 5.8. Therefore, the incremental pricing threshold for high cost natural gas, effective July 1, 1982, is $8.17 per million BTU's

Section III. Method Used to Compute Price Ceilings

The FERC, by Order No. 50, issued on September 29, 1979, in Docket No. RM79-21, established the basis for determining the price ceilings required by the NGPA. FERC also, by Order No. 167, issued in Docket No. RM81-27 on July 24, 1981, made permanent the rule that established that only the price paid for No. 6 high sulfur content residual fuel oil would be used to determine the price ceilings. In addition, the FERC, by Order No. 181, issued on October 6, 1981, in Docket No. RM81-28, established that price ceilings should be published for only the 48 contiguous States on a permanent basis.

A. Data Collected

The following data were required from all companies identified by the EIA as sellers of No. 6 high sulfur content (greater than 1 percent sulfur content by weight) residual fuel oil: for each selling price, the number of gallons sold to large industrial users in the months of February 1982, March 1982, and April 1982[3] All reports of volume sold and price were identified by the State into which the oil was sold.

B. Method Used To Determine Alternative Price Ceilings

(1) *Calculation of Volume-Weighted Average Price.* The prices which will become effective July 1, 1982, (shown in Section I) are based on the reported price of No. 6 high sulfur content residual fuel oil, for each of the 48 contiguous States, for each of the 3 months, February 1982, March 1982, April 1982. Reported prices for sales in February 1982 were adjusted by the percent change in the nationwide volume-weighted average price from February 1982 to April 1982. Prices for March 1982 were similarly adjusted by the percent change in the nationwide volume-weighted average price from March 1982 to April 1982. The volume-weighted 3-month average of the adjusted February 1982 and March 1982, and the reported April 1982 prices were than computed for each State.

(2) *Adjustment for Price Variation.* States were grouped into the regions identified by the FERC (see Section III.C.). Using the adjusted prices and

[3] Large Industrial User—A person/firm which purchases No. 6 fuel oil in quantities of 4,000 gallons or greater for consumption in a business, including the space heating of the business premises. Electric utilities, governmental bodies (Federal, State, or Local), and the military are excluded.

associated volumes reported in a region during the 3-month period, the volume-weighted standard deviation of prices were calculated for each region. The volume-weighted 3-month average price (as calculated in Section II.B.(1) above) for each State was ajusted downward by two times this standard deviation for the region to form the adjusted weighted average price for the State.

(3) *Calculation of Ceiling Price.* The lowest selling price within the State was determined for each month of the 3-month period (after ajusting up or down by the percent change in oil prices at the national level as discussed in Section III.B(1) above). The products of the adjusted low price for each month times the State's total reported sales volume for each month were summed over the 3-month period for each State and divided by the State's total sales volume during the 3 months to determine the State's average low price. The adjusted weighted average price (as calculated in Section III.B.(2)) was compared to this average low price, and the higher of the values was selected as the base for determining the alternative fuel price ceiling for each State. For those States which had no reported sales during one or more months of the 3-month period, the appropriate regional volume-weighted alternative fuel price was computed and used in combination with the available State data to calculate the State's alternative fuel price ceiling base. The State's alternative fuel price ceiling base was compared to the alternative fuel price ceiling base for the multistate region in which the State is located and the lower of these two prices was selected as the final alternative fuel price ceiling base for the State. The appropriate lag adjustment factor (as discussed in Section III.B.4) was then applied to the alternative fuel price ceiling base. The alternative fuel price (expressed in dollars per gallon) was multiplied by 42 and divided by 6.3 to estimate the alternative fuel price ceiling for the State (expressed in dollars per million BTU's).

(4) *Lag Adjustment.* The EIA has implemented a procedure to partially compensate for the two-month lag between the end of the month for which data are collected and the beginning of the month for which ceiling prices become effective. It was determined that *Platt's Oilgram Price Report* publication provides timely information relative to the subject. The prices found in *Platt's Oilgram Price Report* publication are given for each trading day in the form of high and low prices for No. 6 residual oil in 21 cities throughout the United States. The low posted prices for No. 6 residual oil in these cities were used to calculate a national and a regional lag adjustment factor. The national lag adjustment factor was obtained by calculating a weighted average price for No. 6 sulfur residual fuel oil for the ten trading days ending June 14, 1982, and dividing that price by the corresponding weighted average price computed from prices published by Platt's for the month of April 1982. A regional lag adjustment factor was similarly calculated for four regions. These are: one for FERC Regions A and B combined; one for FERC Region C; one for FERC Regions D, E, and G combined; and one for FERC Regions F and H combined. The lower of the national or regional lag factor was then applied to the alternative fuel price ceiling for each State in a given region as calculated in Section III. B.(3).

Listing of States by Region

States were grouped by the FERC to form eight distinct regions as follows:

Region A

Connecticut
Maine
Massachusetts
New Hampshire
Rhode Island
Vermont

Region B

Delaware
Maryland
New Jersey
New York
Pennsylvania

Region C

Alabama
Florida
Georgia
Mississippi
North Carolina
South Carolina
Tennessee
Virginia

Region D

Illinois
Indiana
Kentucky
Michigan
Ohio
West Virginia
Wisconsin

Region E

Iowa
Kansas
Missouri
Minnesota
Nebraska
North Dakota
South Dakota

Region F

Arkansas
Louisiana
New Mexico
Oklahoma
Texas

Region G

Colorado
Idaho
Montana
Utah
Wyoming

Region H

Arizona
California
Nevada
Oregon
Washington

Issued in Washington, D.C. June 18, 1982.

Albert H. Linden, Jr.,

Deputy Administrator, Energy Information Administration.

[FR Doc. 82-16860 Filed 6-18-82; 10:40 am]
BILLING CODE 6450-01-M

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 82-317, File No. 21874-CD-P-(1)-82; File No. 22518-CD-P-(1)-82]

Airsignal International, Inc. and Associated Telephone Answering Services System, Inc.

Order Designating Applications for Hearing

Adopted: June 7, 1982.

Released: June 11, 1982.

By the Common Carrier Bureau:

In re Applications of Airsignal International, Inc., For a construction permit to establish a new one-way station on frequency 43.58 MHz in the Domestic Public Land Mobile Radio Service at Sandia Mountain, New Mexico, CC DOCKET No. 82-317, File No. 21874-CD-P-(1)-82; Associated Telephone Answering Services System, Inc., For a construction permit to add an additional frequency 43.58 MHz for Station KQZ775 in the Domestic Public Land Mobile Radio Service near Albuquerque, New Mexico; CC Docket No. 82-318, File No. 22518-CD-P-(1)-82; Designating Applications For Consolidated Hearing On Stated Issues.

1. Presently before the Chief, Mobile Services Division, pursuant to delegated authority, is the application of Airsignal International, Inc. (Airsignal), File No. 21874-CD-P-(1)-82, for a new one-way station to operate on frequency 43.58 MHz in the Domestic Public Land

Mobile Radio Service (DPLMRS) at Sandia Mountain, New Mexico, and the application of Associated Telephone Answering Services System, Inc. (Associated), File No. 22518–CD–P–(1)–82, for an additional facility for Station KQZ775 to operate on frequency 43.58 MHz near Albuquerque, New Mexico. A Petition to Dismiss or Deny was filed against the Associated application by Airsignal.

2. These two applications are electrically mutually exclusive because they both request use of the same frequency in the same geographic area. Accordingly, a comparative hearing will be held to determine which applicant would better serve the public interest.

3. We have examined Associated's application and Airsignal's allegations concerning Associated, and we find those allegations to be without merit. We find that Associated's application demonstrates sufficient public need. On May 14, 1982, the Commission released its First Report and Order in Docket 80–183. In that order the Commission eliminated § 22.501(d)(2) of the Rules and said that in such a case a § 22.516 was not required. In addition, the Commission said that this policy was applicable to all pending one-way applicants.[1] Accordingly, Associated does not have to demonstrate need for this initial paging channel, nor must it show that it cannot accommodate paging customers on its existing two-way channel.

4. Airsignal also urged that Associated's application be dismissed or denied because it is a strike application. The elements to be considered in determining whether an application is a strike application were set forth by the Commission in *Grenco, Inc.*, 28 FCC 2d 166 (1971). The elements include: (1) The timing of the application; (2) the economic and competitive benefit occurring from the application; (3) the good faith of the applicant; and (4) questions concerning frequency allocation. A review of the Airsignal strike allegations relative to the *Grenco* criteria shows that the allegations raise no material and substantial questions on this issue. The fact that counsel for Associated served a copy of Associated's later filed application on Airsignal together with a letter explaining why it filed for frequency 43.58 MHz rather than another frequency does not demonstrate that Associated filed a strike application. The letter from Associated's counsel clearly explains why it filed for the specific frequency it selected. In addition, the time of filing an application does not alone demonstrate that a strike application was filed. thus we will not designate a strike issue against Associated.

5. Accordingly, it is ordered, that the Petition to Dismiss or Deny filed by Airsignal International, Inc. in File No. 22518–CD–P–(1)–82, is denied.

6. It is further ordered, that pursuant to section 309(e) of the Communications Act of 1934, as amended,[2] the applications of Associated Telephone Answering Services System, Inc., File No. 22518–CD–P–(1)–82 and Airsignal International, Inc., File No. 21874–CD–P–1–82, are designated for hearing in a consolidated proceeding upon the following issues:

(a) To determine on a comparative basis, the nature and extent of service proposed by each applicant, including the rates, charges, maintenance, personnel, practices, classifications, regulations, and facilities pertaining thereto;

(b) To determine on a comparative basis, the areas and populations that each applicant will serve within the prospective interference-free area within the 43 dBu contours,[3] based upon the standards set forth in § 22.504(a) of the Commission's Rules,[4] and to determine and compare the relative demand for the proposed services in said areas; and

(c) To determine, in light of the evidence adduced pursuant to the foregoing issues, what disposition of the above-referenced applications would best serve the public interest, convenience and necessity.

7. It is further ordered, that the hearing shall be held at a time and place and before an Administrative Law Judge to be specified in a subsequent Order.

8. It is further ordered, that the Chief, Common Carrier Bureau, is made a party to the proceeding.

9. It is further ordered, that pursuant to § 22.401(a) of the Commission's Rules,[5] any grant of one-way facilities in this proceeding must be on a developmental basis for one year. Section 22.404(d) of our rules [6] is waived to permit the grantee to offer its service for hire. We find that the public interest, convenience, and necessity will best be served by subjecting any one-way grant in this proceeding to the conditions set out in paragraph 10.

10. *Conditions of Grant on Frequency 43.58 MHz*

(a) Pursuant to Rules § 22.406,[7] quarterly surveys of possible interference with television reception in the geographic area within a two-mile radius of the base station(s) authorized herein shall be made during the first year of operation. The local representative of the Field Operations Bureau, Federal Communications Commission, shall receive prior notice of the commencement date of service to the public, on which date the first survey will start.

(b) Each quarter, a different sample of at least 25 television viewers distributed approximately evenly throughout the geographic area described above shall be contacted to determine whether they have experienced TV interference. If interference complaints are received either as a result of the interviews or in the normal course of business, the grantee shall determine the source and extent of such interference.

(c) The grantee shall promptly report all interference complaints to the Mobile Services Division (MSD) and act to correct any problems. In any event, the grantee shall submit to the MSD a written report, soon after the completion of each quarter, fully evaluating the continued existence of interference. A copy of any report submitted to the Mobile Services Division must be submitted at the same time to the local field office. Quarterly reports shall include but shall not be limited to, the following information:

(1) Survey date(s).

(2) Method (telephone/on-site/other).

(3) Names, addresses and telephone numbers of persons contacted.

(4) Time of day survey conducted (morning/afternoon/night).

(5) Technical solutions tested and results.

(6) Names and telephone numbers of technical representatives consulted and/or employed.

(d) The grantee must follow all instructions received from the local representative of the Field Operations Bureau if it is notified that its station is causing interference.

[1] General Docket 80–183, FCC 80–183, FCC 82–202, Mimeo 31355, pages 18 & 19.

[2] 47 U.S.C. 309(e).

[3] For the purpose of this proceeding, the interference-free area is defined as the area within the 43 dBu contour as calculated from §22.504 in which the ratio of desired-to-undesired signal is equal to or greater than R in FCC Report No. 6406, equation 8.

[4] Section 22.504(a) of the Commission's Rules and Regulations describes a field strength contour of 43 decibels above one microvolt per meter as the limits of the reliable service area for base stations engaged in one-way signaling service. Propagation data set forth in §22.504(b) are the proper bases for establishing the location of service contours (F50,50) for the facilities involved in this proceeding. (The applicants should consult with Bureau counsel with the goal of reaching joint technical exhibits.)

[5] 47 CFR 22.401(a).

[6] 47 CFR 22.404(d).

[7] 47 CFR 22.406.

(e) Any grant is subject to the provisions of Rules § 22.404(c) [8] that no interference may be caused to the regular services of stations operating in accordance with the Commission's Table of Allocations. If interference from the operation of the authorized base stations is brought to our attention, we have the authority to order the station to cease operations immediately.

Pursuant to § 22.404(a) of the Rules,[9] any developmental authority granted is subject to cancellation without a hearing by the Commission at any time upon notice to the licensee. Although § 22.404(d) of the Rules is waived to permit the grantee to offer the service for hire, the grantee is directed to inform its customers that service on these channels is developmental and therefore subject to cancellation at any time. Prior to the expiration of any developmental authorization resulting from this proceeding, the grantee must submit an application (FCC Form 403) for permanent authorization under Subpart G of Part 22 of the Commission's Rules, otherwise the developmental authorization will automatically expire.

11. It is further ordered, that the applicants shall file written notices of appearances under § 1.221 of the Commission's Rules within 20 days of the release date of this order.

12. The Secretary shall cause a copy of this Order to be published in the **Federal Register.**

William F. Adler,

Chief, Mobile Services Division, Common Carrier Bureau.

[FR Doc. 82-16704 Filed 6-18-82; 8:45 am]

BILLING CODE 6712-01-M

[Report No. 1358]

Petitions for Reconsideration of Actions in Rulemaking Proceedings

June 15, 1982.

The following listings of petitions for reconsideration filed in Commission rulemaking proceedings is published pursuant to CFR 1.429(e). Oppositions to such petitions for reconsideration must be filed on or before July 6, 1982. Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of Parts 2 and 74 of the Commission's Rules and Regulations to allocate the 38.6–40 GHz band to TV Auxiliary Broadcast Pickup stations on a secondary basis (81–415).

Filed by: John G. Puente, Executive Vice President, Leonard S. Golding, Staff Vice President, Jeffrey A. Krauss, Director, Regulatory Policy for M/A–COM Incorporated on May 13, 1982.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 82-16703 Filed 6-18-82; 8:45 am]

BILLING CODE 6712-01-M

---

[8] 47 CFR 22.404(c).

[9] 47 CFR 22.404(a).

[BC Docket No. 82-312, File No. BPH-801231AC, etc.]

WRLJ, Inc.; Designating Applications For Consolidated Hearing on Stated Issues

In re applications of WRLJ, Inc., Cape May Court House, New Jersey, Req: 105.5 MHz, Channel No. 288A, 2.455 kW, (H&V), 333 feet, BC Docket No. 82–312, File No. BPH–801231AC; CANRUSS, INC., Cape May Court House, New Jersey, Req: 105.5 MHz, Channel No. 288A, 3.0 kW (H&V), 294 feet, BC Docket No. 82–313, File No. BPH–810326AE; SIDNEY DICTHER, N. AL SERGI & AL MILLER d/b/a WSDY RADIO, Cape May Court House, New Jersey, Req: 105.5 MHz, Channel No. 288A, 2.455 kW, (H&V), 333 feet, BC Docket No. 82–314, File No. BPH–810609AE; MARY B. McCUSKER & DOROTHY L. SIMPKINS d/b/a BAY BROADCASTING COMPANY, Cape May Court House, New Jersey, Req: 105.5 MHz, Channel No. 288A, 3.0 kW (H&V), 300 feet, BC Docket No. 82–315, File No. BPH–810629AD; GILBERT BROADCASTING COMPANY, Cape May Court House, New Jersey, BC Docket No. 82–316, File No. BPH–810701AD; Req: 105.5 MHz, Channel No. 288A, 3.0 kW (H&V), 300 feet, For Construction Permit for a New FM Station.

Hearing Designation Order

Adopted: June 4, 1982.

Released: June 11, 1982.

By the Chief, Broadcast Bureau:

1. The Commission, by the Chief, Broadcast Bureau, acting pursuant to delegated authority, has under consideration the above-captioned mutually exclusive applications filed by WRLJ, Inc. (WRLJ); Canruss, Inc. (Canruss); Sidney Dicther, N. Al Sergi & Al Miller d/b/a WSDY Radio (WSDY); Mary B. McCusker & Dorothy L. Simpkins d/b/a Bay Broadcasting Company (BBC); and Gilbert Broadcasting Company (GBC).

2. *WRLJ.* Analysis of the financial data submitted by WRLJ reveals that at least $36,335 will be required to construct the proposed station and operate for three months, itemized as follows:

Equipment down payment	$8,207
Equipment payments with interest	[1] 3,348
Land	[2]
Building	2,000
Miscellaneous	7,000
Operating Costs (3 months)	15,780
Total	36,335

[1] This figure represents four monthly payments, based on interest figured at 1.8% per month.

[2] WRLJ has indicated it plans to lease the land for its studio location. However, no figure has been given. Accordingly, the amount required to construct the proposed station, and operate for three months will be higher than the total estimated above by the amount of the lease.

WRLJ plans to finance construction and operation with the following funds: $54,713 from an installment sales contract from the equipment supplier, and $35,810 in cash deposited in the corporate checking account. The application provides a letter from the equipment supplier providing the specific terms of the financing, and the corporate balance sheet shows net liquid assets of $35,810. However, the applicant's proposed financing is still short $525, in addition to the leasing costs for land. Accordingly, a financial issue will be specified.

3. WRLJ proposes to mount its antenna on an existing tower, 310 feet in height above the ground. An applicant's use of an existing tower is normally considered a minor environmental action under § 1.1305(b). However, since the tower will be substantially modified by a 90 foot height increase, the proposal constitutes a major environmental action under § 1.1305(a). The WRLJ application is lacking the environmental narrative statement required by § 1.1311 for all major environmental actions. WRLJ states the owner of the tower will file an environmental narrative when it applies to increase the tower height. However, an applicant may incorporate by reference only information currently on file with the Commission, not future filings. Accordingly, WRLJ will be required to file an environmental narrative statement with the presiding Administrative Law Judge.

4. Section 73.3514 of the Rules requires each application to include all information requested by the particular form, unless such information is inapplicable. WRLJ, in filing its application, has failed to complete Section V–G of the application which requests antenna and site information for its proposed station. The data from this section is necessary to determine whether the proposed tower and location will be hazardous to air navigation. Accordingly, an air hazard issue will be specified.

5. *Canruss.* Analysis of the financial data submitted by Canruss reveals that $90,146 will be required to construct the

proposed station and operate for three months, itemized as follows:

Equipment down payment	$28,150
Equipment payments with interest	[1] 7,812
Building	5,000
Miscellaneous	33,000
Interest on bank loan (5 months)	3,000
Operating costs (3 months)	14,375
Total	91,337

[1] This figure represents three payments based on an annual interest rate of 12%.

Canruss plans to finance construction and operation with the following funds: $40,000 bank loan; 60,000 from the personal funds of two of the principals, Russell W. and Candida Diaz de McBride; and $112,600 from an installment sales contract from the equipment supplier. Canruss provides a bank letter and an offer of credit from the equipment supplier, both of which contain enough specificity to qualify as bona fide offers of credit. However, the balance sheet of the McBrides shows net liquid assets of only $9,540,[3] an amount insufficient to meet the proposed commitment of $60,000. A financial issue will therefore be specified.

6. *WSDY.* Applicants for new broadcast stations are required by § 73.3580(f) of the Commission's rules to give local notice of the filing of their applications. We have no evidence that WSDY published the required notice. To remedy this dificiency, WSDY must publish local notice of its application, if it has not already done so, and so inform the presiding Administrative Law Judge.

7. WSDY also proposes to mount its transmitter on a currently existing tower, 310 feet in height above the ground. However, its proposal constitutes a major environmental action under § 1.1305, since the tower will be substantially modified by a 90 foot height increase. The WSDY application lacks a narrative statement as required by Section 1.1311. As noted before, in paragraph 3, the intent of the owner of the tower to file an environmental narrative sometime in the future can not be taken into account. Accordingly, ESDY will be required to file an environmental narrative statement with the presiding Administrative Law Judge.

8. Section 73.2080 of the rules requires that an applicant for a new facility proposing to employ five or more full-time employees, must file an equal employment opportunities (EEO) program with its application. Instructions to Section VI of the application require the applicant to provide an exhibit of its proposed EEO program relative to the first five elements of the model program included with the application. WSDY proposes to employ five full-time employees but provides information relative only to the first three elements of the model program. To remedy this deficiency, the applicant will be required to complete the remaining two elements of the model EEO program and file the completed program with the presiding Administrative Law Judge.

9. *BBC.* Analysis of the financial data submitted by BBC reveals that at least $42,612 will be required to construct the proposed station and operate for three months, itemized as follows:

Equipment down payment	$4,785
Equipment payments with interest	[1] 7,177
Building	[2]
Miscellaneous	11,000
Operating costs (3 months)	19,650
Total	42,612

[1] This figure represents three payments based on an annual interest rate of 13%.
[2] BBC indicates the building will be leased without specifying an amount, see footnote 2 regarding the effect of such.

BBC plans to finance construction and operation with the following funds: $80,000 from partner Dorothy Simpkins and her husband Robert W.; $12,500 from partner Mary B. McCusker and her husband Edward A.; and $87,000 from an installment sales contract from the equipment supplier. BBC provides a letter from the equipment supplier satisfactorily specifying the terms of the installment contract. However, the balance sheet of the Simpkins shows net liquid assets of only $10,708. The McCusker balance sheet shows no net liquid assets. Accordingly, a financial issue will be specified.

10. Applicants for new broadcast stations are required by § 73.3580(f) of the Rules to give local notice of the filing of its application. Section 73.3580(f)(9) requires notice filed by an applicant to include a statement that a copy of the application and amendments are on file, and available for public inspection at an address in the community in which the proposed main studio is to be located. BBC proposes to locate its main studio and its transmitter about 5 miles outside of Cape May Court House in, or near Clermont, New Jersey in Middle Township. However, a copy of its application is available for public inspection outside of Middle Township, in Sea Isle City, New Jersey, which is located in Dennis Township. BBC will be required to republish.

11. Section 73.1125 of the Commission's Rules requires that the main studio of a FM station be located within the city of license, but upon a showing of good cause the main studio may be located outside that community. As previously noted, BBC proposes to locate its main studio in Middle Township, in or near Clermont, New Jersey. The applicant has not provided good cause as to why the main studio should be located outside its proposed community of license. Accordingly, an issue will be specified.

12. *GBC.* We also have no evidence that GBC gave local notice of the filing of its application, as required by § 73.3580(f) of the Rules. To remedy this deficiency, GBC must publish local notice of its application, if it has not already done so, and so inform the presiding Administrative Law Judge.

13. Analysis of the financial data submitted by GBC reveals that $112,696 will be required to construct the proposed station and operate for three months, itemized as follows:

Equipment down payment	$29,173
Equipment payments with interest	[1] 11,523
Land	1,000
Building	1,000
Miscellaneous	40,000
Operating costs (three months)	30,000
Total	112,696

[1] This figure represents four payments at an annual interest rate of 14.5%.

GBC plans to finance construction and operation with the following funds: $200,000 bank loan; and $116,691 from an installment sales contract from the equipment supplier. The applicant has provided a letter of credit from the equipment supplier constituting a bona fide offer to finance the purchase of the equipment, but a similar letter from a bank is lacking. Accordingly, a financial issue will be designated.

14. *Other Matters.* WRLJ petitions for leave to amend its application, updating the employment record of one of its principals. WRLJ's amendment was filed April 30, 1982; the last day for filing amendments as a matter of right was December 11, 1981. We find that good cause has been shown for the filing of the amendment under § 1.65 of the Commission's Rules and accordingly, the amendment will be accepted for filing. It is our general policy, however, that amendments filed after the last date for filing amendments as a matter of right cannot be used to improve an applicant's comparative position. *Cypress Communications, Inc.* 47 RR 2d 132 (1980). Therefore, any comparative advantage resulting from WRLJ's amendment will be disallowed.

15. Data submitted by the applicants indicate that there would be a significant difference in the size of the areas and populations which would receive service from the proposals.

[3] The McBrides' balance sheet fails to segregate current liabilities (i.e., amounts payable within one year) from long-term liabilities. Accordingly, we assume that all liabilities shown are current.

Consequently, the areas and populations which would receive FM service of 1 mV/m or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue, for the purpose of determining whether a comparative preference should accrue to any of the applicants.

16. The proposals are mutually exclusive, and must be designated for a hearing in a consolidated proceeding. The applicants are qualified to construct and operate as proposed, except for the issues specified below.

17. Accordingly, it is ordered, that, pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine with respect to WRLJ:

(a) The source and availability of additional funds over and above the $35,810 indicated; and

(b) Whether, in light of the evidence adduced pursuant to (a) above, the applicant is financially qualified.

2. To determine whether there is a reasonable possibility that the tower height and location proposed by WRLJ would constitute a hazard to air navigation.

3. To determine with respect to Canruss:

(a) The source and availability of additional funds over and above the $49,540 indicated; and

(b) Whether, in light of the evidence adduced pursuant to (a) above, the applicant is financially qualified.

4. To determine with respect to BBC:

(a) The source and availability of additional funds over and above the $10,708 indicated; and

(b) Whether, in light of the evidence adduced pursuant to (a) above, the applicant is financially qualified.

5. To determine pursuant to § 73.1125, whether good cause exists for BBC's proposed location of its main studio outside the proposed community of license.

6. To determine with respect to GBC:

(a) The source and availability of funds to meet estimated costs; and

(b) Whether, in light of the evidence adduced pursuant to (a) above, the applicant is financially qualified.

7. To determine which of the proposals would, on a comparative basis, best serve the public interest.

8. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

18. It is further ordered, that WRLJ shall file an environmental narrative statement with the presiding Administrative Law Judge showing compliance with the environmental requirements of § 1.1301 *et seq.* of the Commission's Rules.

19. It is further ordered, that WRLJ's petition for leave to amend is granted, but that no improvement in WRLJ's comparative standing will be allowed.

20. It is further ordered, that WSDY shall inform the presiding Administrative Law Judge as to whether it has complied with the public notice requirements of § 73.3580(f) of the Commission's Rules.

21. It is further ordered, that WSDY shall file an environmental narrative statement with the presiding Administrative Law Judge showing compliance with the requirements of § 1.1301 *et seq.* of the Commission's Rules.

22. It is further ordered, that WSDY shall file an EEO program with the presiding Administrative Law Judge, relative to the last two elements of the model EEO program, pursuant to § 73.2080 of the Commission's Rules.

23. It is further ordered, that BBC shall be required to republish local notice of the filing of its application, and file a statement with the presiding Administrative Law Judge in compliance with § 73.3580(f), showing that a copy of its application will be available for public inspection at an address within the community of its proposed main studio location.

24. It is further ordered, that GBC shall inform the the presiding Administrative Law Judge as to whether it has complied with the public notice requirements of § 73.3580(f) of the Commission's Rules.

25. It is further ordered, that the Federal Aviation Administration is made a party to the proceeding.

26. It is further ordered, that to avail themselves of the opportunity to be heard, the applicants herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission in triplicate a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order.

27. It is further ordered, that the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing (either individually or, if feasible and consistent with the Rules, jointly) within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594 of the Rules.

Federal Communications Commission.

Larry D. Eads,

Chief, Broadcast Facilities Division.

[FR Doc. 82-16705 Filed 6-18-82; 8:45 am]

BILLING CODE 6712-01-M

[FCC 82-263]

Motion of the Southern New England Telephone Company for the Declaratory Ruling To Remove Uncertainty of its Status on the Commission's Decision in the Second Computer Inquiry (Docket No. 20828)

AGENCY: Federal Communications Commission.

ACTION: Order granting request for stay of memorandum opinion and order.

SUMMARY: Due to uncertainty created by proposed AT&T—Department of Justice consent decree, Commission grants Southern New England Telephone Company (SNET) request for stay of the Commission's Memorandum Opinion and Order, published October 28, 1981 at 46 FR 53211, requiring the establishment of a fully separate subsidiary by the company for offering customer-premises equipment and enhanced services after January 1, 1983. Commission also stays any decision on SNET's pending petition for reconsideration in this proceeding. The order directs SNET to file (1) a supplement to its petition within 45 days of the U.S. District Court ruling on acceptance of the proposed decree and (2) a general description of a subsidiary capitalization plan and certain reports within 30 days of the release of the stay order. Commission on its own motion grants same stay relief to similarly situated Cincinnati Bell Inc.

DATES: See paragraphs 17 and 18.

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

FOR FURTHER INFORMATION CONTACT: James W. McConnaughey, Policy and Program Planning Division, Common Carrier Bureau, Federal Communications Commission, Washington, D.C. 20554, Telephone No. (202) 632-9342.

SUPPLEMENTARY INFORMATION:

By the Commission.

Introduction

In the matter of Motion of the Southern New England Telephone Company for the Declaratory Ruling to Remove Uncertainty of its Status on the Commission's Decision in the *Second*

Computer Inquiry (Docket No. 20828); memorandum opinion and order.

Adopted: June 10, 1982.

Released: June 16, 1982.

1. We here consider a request for stay filed by the Southern New England Telephone Company (SNET) on March 18, 1982 regarding the effectiveness of certain of our actions in the *Second Computer Inquiry*.[1] SNET urges the Commission to stay (1) the Commission's *Memorandum Opinion and Order* released October 20, 1981, 88 FCC 2d 33, requiring SNET to establish a fully separate subsidiary to provide customer premises equipment (CPE) and enhanced services after January 1, 1983; (2) a Commission ruling on SNET's petition for reconsideration filed November 18, 1981, until any restructuring of the Bell System is approved pursuant to a court-sanctioned Modification of Final Judgment in the case of *U.S.A.* v. *Western Electric Company, et al.*, C.V. 17–29 (D.C. N.J.); and (3) the filing of an administrative services sharing report, an installation and maintenance plan, and a capitalization plan until after the Commission issues a decision on SNET's petition for reconsideration.

2. SNET argues that the grant of a stay by the Commission is justified for four reasons. First, it avers that it will likely prevail on the merits of its petition for reconsideration. SNET asserts that the reorganization of the Bell System that is jointly proposed by AT&T and the Department of Justice (DOJ) as a means of ending the aforementioned case will eliminate most if not all elements of AT&T's de facto control of SNET as determined by the Commission. 88 FCC 2d at 39–40.

3. Second, SNET states that a denial of its stay request will cause the company irreparable injury at this time because it would experience vast customer confusion, loss of good will, the destruction of a business form, and unrecoverable costs attributable to the possible need for several corporate reorganizations. SNET warns that it would suffer a double expense in entering the CPE and enhanced services markets under this scenario. Initially SNET would be permitted to participate solely through a fully separate subsidiary pursuant to the Commission's Order in the *Second Computer Inquiry*. *Id.* This would necessitate significant personnel, planning, and financial expenditures by SNET. Subsequently, upon further Commission order, SNET may have to undo this activity and redirect its focus to meet the Commission's requirements applicable to the independent telephone companies. This process, the company stresses, would be disruptive to the company, its customers, and employees and would be wasteful of company resources.

4. Third, SNET insists that the issuance of a stay would not harm other parties since the delay would be of a few months duration and would not foreclose the Commission from deregulating the CPE market. Fourth, the company believes a stay is in the public interest since, first, the short-term adverse effects of a stay of limited duration are not significant and, second, it affords the Commission time to review the restructured Bell System and its relationship to SNET. In addition, SNET states that the severe irreparable economic injury sustained by SNET in the event the stay request is denied clearly outweighs the minimal harm endured by others if the stay is granted.

5. Oppostions to the stay request were filed on April 22, 1982 by Associated Telephone Answering Exchanges, Inc. (ATAE) and Computer and Business Equipment Manufacturers Association (CBEMA). Both parties posit that SNET has failed to meet the requisite burden of justifying the need for a stay. ATAE argues that SNET has not advanced any new facts or legal arguments to demonstrate that the company is likely to prevail on reconsideration. CBEMA asserts that SNET has made virtually no showing that its relationship to AT&T will be different during the several-year transition period evisioned under the proposed Modification, or that the relationship will be significantly changed in the event the proposed Modification is accepted in its entirety. Concerning the irreparable harm issue, ATAE maintains that SNET's claims are conjectural and unfounded, that any injury sustained by the company would stem from its own business judgments, and that no affidavit supportive of SNET's position was submitted. CBEMA similarly argues that there has been little showing that SNET would suffer injury if no stay were granted at this time and believes any customer confusion would be minimal.

6. ATAE points to the detrimental effects of postponing implementation of the *Second Computer Inquiry* decisions, *viz.*, the potential for cross-subsidies and abuse. ATAE also submits that the proposed Modification is not properly before the Commission in connection with the SNET petition for declaratory ruling, and the public interest would be best served by disposing of the petition in timely fashion based upon existing facts. CBEMA stresses that the Commission is bound by the public interest standards of the Communications Act and not the proposed AT&T Settlement. CBEMA, too, believes that a timely resolution of the reconsideration proceeding should be made based on the present record.

7. On April 29, 1982, SNET filed a consolidated reply to the oppositions of ATAE and CBEMA. SNET contends that its showing that it is likely to prevail on the merits remains unrebutted. The company asserts that as a result of the Modification, the concerns and interests of a full-service telephone company such as SNET, on the one hand, and limited-offering companies such as AT&T or the BOCs, on the other hand, will not be the same. Hence, SNET believes, the issue of AT&T's control of SNET during the transition period is not relevant. SNET also argues that the possibility of future arrangements or agreements between SNET and AT&T or Western Electric Company cannot by itself be viewed as a test for control. The Company points out that many non-affiliated companies will likely have agreements with AT&T and Western in the future. SNET posits that any new contractual arrangements between SNET and AT&T or its subsidiaries would be additional factors for the Commission to consider in ruling on SNET's petition for reconsideration. The company reiterates that as a result of the proposed Modification's acceptance, significant changes will occur in traditional Bell System relationships which will eliminate AT&T's de facto control of SNET as found by the Commission in its earlier Order. *Id.*

8. Concerning irreparable injury, SNET acknowledges that like virtually every other company in the telecommunications industry, it will have to adjust to the proposed Modification. The company emphasizes, however, that it is seeking to avoid the imposition of regulatory mandated expenses which are unnecessary at this time due to the expected changes in the industry. SNET perceives no serious economic impact on others because of the shortness of the requested stay and the absence of SNET market power on a national scale. Finally, the company avers that the stay is in the public interest, both short term and long term, since the impact of the Modification once it is accepted will be enormous. The irreparable injury to SNET without a stay grant is seen to greatly outweigh

[1] See Amendment of Section 64.702 of the Commission's Rules and Regulations (*the Second Computer Inquiry*), 77 FCC 2d 384 (*Final Decision*), *modified on reconsideration*, 84 FCC 2d 50, *modified on further reconsideration*, 88 FCC 2d 512.

any economic loss to others resulting from such a stay.

Discussion

9. Given the substantial uncertainty introduced into this proceeding in recent months, we find that the public interest is best served by granting SNET's request for stay of the structural requirements developed in the *Second Computer Inquiry*.[2] This, we believe, is demonstrably the wrong time to resolve the issues pending in this proceeding. No Modification of Final Judgment has, in fact, occurred. Rather than proceed on a basis which is little more than supposition, we prefer to adopt an approach which plainly minimizes harm to ratepayers and the involved parties, both in the short run and the long run. In our opinion, a selective stay would achieve this goal.

10. In essence, the uniqueness of the prevailing situation which is attributable to the existence of the proposed Modification dictates that a stay of short duration be issued, for both SNET and Cincinnati Bell Inc. (CBI).[3] We believe that the expected briefness of the stay granted herein will tend to discourage any possible marketplace abuses which might arise during a lengthy extension. In addition, we believe that the temporary delay will lessen the possibility of irreparable harm to SNET and CBI. Given the uncertain nature of the apparently significant structural changes which confront the industry, we are reluctant to render a decision which could negatively impact ratepayers, the two companies and their stockholders. Without at least an initial resolution of the issues raised by the recent AT&T-DOJ agreement, we are of the opinion that immediate action on these matters by the Commission would be premature and imprudent.

11. In this order we are imposing a stay of the above actions which may be related to disposition of the proposed Modification. While we make no prejudgment of the merits on reconsideration, we note that some of the decisional bases for our prior decision will be substantially affected by the consent decree. Significant changes in existing Bell relationships would likely occur, thereby modifying the record on which our earlier order was based. Whether the United States District Court for the District of Columbia approves, rejects, or modifies the proposed settlement, however, we believe that the resulting uncertainty warrants the adoption today of a brief stay.

12. The trigger for resumption of this Commission proceeding would be the date on which the United States District Court rules on acceptance of the proposed Modification. In the event no such acceptance is forthcoming or unanticipated events occur which significantly impact our proceeding (*e.g.*, AT&T sells all of its shares of common stock in one or more of its remaining telco affiliates, or Congressional legislation establishes a new telecommunications industry structure), we may extend the stay or otherwise revisit our decision here today. Once the trigger date occurs, we would direct SNET and CBI to each file within forty-five days of that date a detailed supplementation of their respective petitions for reconsideration which are currently pending before this Commission.[4]

13. While we are staying the affirmative obligation imposed on CBI and SNET by our Computer II Decision, *Id.*, we will continue to bar these two companies from offering any new enhanced services except via a fully separate subsidiary. This would be a short-term safeguard designed to preserve the *status quo ante*. We believe it would be extremely burdensome to attempt to retroactively disentangle basic and enhanced service costs and revenues if we continue the separate subsidiary requirement. We note that we have received no indication of interest by CBI or SNET in offering new enhanced services prior to January 1, 1983. Moreover, CBI and SNET are free to apply for a waiver of the separate subsidiary condition regarding a particular service pursuant to the criteria we have established in the *Second Computer Inquiry*. 84 FCC 2d at 57–58.

14. A portion of the stay period may extend beyond the January 1, 1983 deadline for SNET and CBI to establish a separate subsidiary for the provision of CPE and enhanced services. 88 FCC 2d at 45. During this portion we expect SNET and CBI to comply with our *Second Computer Inquiry* conditions applicable to nonseparated telephone companies. For example, both companies would be required to keep separate books of account for their respective unregulated activities. 77 FCC 2d at 476.

15. SNET has also requested a stay of the filing requirement for an administrative services sharing report, an installation and maintenance (I&M) plan, and a capitalization plan. We believe that some *general* planning should be conducted in these areas to prevent absolute unpreparedness by SNET in the event the separate subsidiary requirement is affirmed. Thus, while we do not expect the filing of detailed reports and plans, at least at this juncture, we direct SNET to submit to the Commission within thirty days of the release of this stay order a general description of the company's contingency plans in these areas. We would emphasize that this in no way prejudges the overall question of the applicability of structural separation requirements to SNET; since SNET undoubtedly has already planned at least in a broad sense its separate subsidiary framework, this requirement should not prove unduly burdensome. We note that CBI has filed such a general administrative services sharing report and I&M plan in the past, so CBI's compliance with the requirements of this paragraph would be even less difficult.

16. Accordingly, it is ordered, That this Commission's Memorandum Opinion and Order, released October 20, 1981, 88 FCC 2d 33, is stayed pending disposition of the AT&T–DOJ proposed Modification of Final Judgment as described herein.

17. It is further ordered, That SNET and CBI file with this Commission within forty-five (45) days of the above disposition date a detailed supplement to their respective petitions for reconsideration in this proceeding.

18. It is further ordered, That SNET and CBI file with this Commission within thirty (30) days of the release date of this order certain general plans and reports as described herein.

19. It is further ordered, That SNET's request for stay is granted as is consistent herewith.

[2] For the reasons discussed below, we also do not plan to rule at this time on SNET's petition for reconsideration. See para. 13, *infra*.

[3] We grant today *sua sponte* a stay of a similar nature and type for CBI, a Bell subsidiary whose situation closely parallels that of SNET. Both have AT&T as a minority stockholder, have traditionally enjoyed the same benefits that have accrued to majority-owned and wholly-owned Bell operating companies, and have been found in the past to be controlled by AT&T. We note that both SNET and CBI have recently signed memoranda of understanding with AT&T for agreements to replace their current license contracts. Under the proposed AT&T-DOJ settlement, both would remain with AT&T, but substantial uncertainty as to the nature of the actual Bell System restructuring will continue until the court rules on the acceptance of the proposed Modification. *See infra*.

[4] On December 17, 1981, CBI appealed the Commission's *Memorandum Opinion and Order* released October 20, 1981, 88 FCC 2d 33, before the Sixth Circuit Court of Appeals. The Court subsequently dismissed the case. *CBI v. FCC*, 6th Cir., No. 81–3723, dismissed March 1, 1982.

Federal Communications Commission.

William Tricarico,

Secretary.

[FR Doc. 82-16702 Filed 6-18-82; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

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, Pub. L. 89-777 (80 Stat. 1357, 1358) and Federal Maritime Commission General Order 20, as amended (46 CFR Part 540): Canadian Cruise Lines (1982) Ltd., Suite 401, 1208 Wharf Street, Victoria, British Columbia V8W 3B9, Canada.

This Certificate expires July 31, 1982.

Dated: June 15, 1982.

Francis C. Hurney,

Secretary.

[FR Doc. 82-16652 Filed 6-18-82; 8:45 am]

BILLING CODE 6730-01-M

Security for the Protection of the Public; Financial Responsibility To Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Issuance of Certificate (Casualty)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury To Passengers or Other Persons on Voyages pursuant to the provisions of Section 2, Pub. L. 89-777 (80 Stat. 1356, 1357) and Federal Maritime Commission General Order 20, as amended (46 CFR 540): Canadian Cruise Lines (1982) Ltd. and Canadian Cruise Holdings Ltd., Suite 401, 1208 Wharf Street, Victoria, British Columbia V8W 3B9, Canada.

Dated: June 15, 1982.

Francis C. Hurney,

Secretary.

[FR Doc. 82-16653 Filed 6-18-82; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Formation of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become bank holding companies by acquiring voting shares and/or assets of a bank. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank indicated for that application. With respect to each application, interested persons may express their views in writing to the address indicated for that application. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

A. **Federal Reserve Bank of St. Louis** (Delmar P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. **Benton Bancorp, Inc.**, Benton, Kentucky; to become a bank holding company by acquiring 100 percent of the voting shares (less directors qualifying shares) of the successor by merger to Bank of Benton, Benton, Kentucky. Comments on this application must be received not later than July 15, 1982.

Board of Governors of the Federal Reserve System, June 15, 1982.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 82-16637 Filed 6-18-82; 8:45 am]

BILLING CODE 6210-01-M

Bank Holding Companies; proposed De Novo Nonbank Activities

The bank holding companies listed in this notice have applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and section 225.4(b)(1) of the Board's Regulation Y (12 CFR 225.4(b)(1)), for permission to engage *de novo* (or continue to engage in an activity earlier commenced *de novo*), directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to each application, interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in effeciency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any comment on an application that requests a hearing must include a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of that proposal.

Each application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated for that application. Comments and requests for hearings should identify clearly the specific application to which they relate, and should be submitted in writing and received by the appropriate Federal Reserve Bank not later than July 15, 1982.

A. **Federal Reserve Bank of New York** (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Citicorp*, New York, New York (consumer lending activities; Virginia): To engage, through its subsidiary, Citicorp Financial, Inc., in consumer lending activities including application acceptance functions, the execution of loan documents and disbursement of funds, the acceptance of payments, account adjustments, and other customer service activities incidental to Citicorp Financial, Inc.'s credit card and direct lending activities. These activities would be conducted from an office located in Springfield, Virginia, serving the entire State of Virginia. This application is for the opening of a *de novo* office of Citicorp Financial, Inc., which has received prior approval to engage in the proposed activities at other locations.

2. *Citicorp*, New York, New York (consumer finance and credit-related insurance activities; Alabama): To expand the activities of an existing office of its subsidiary, Citicorp Person-to-Person Financial Center, Inc., located in Birmingham, Alabama and to establish a *de novo* office of Citicorp Homeowners, Inc. at the same Birmingham, Alabama location. The new activities in which the existing office of Citicorp Person-to-Person Financial Center, Inc. proposes to engage *de novo* are: the making, acquiring and servicing, for is own account and for the account of others, of extensions of credit to individuals secured by liens on residential or non-residential real estate; and the sale of mortgage life and mortgage disability insurance directly related to extensions of mortgage loans. The proposed service area for the aforementioned activities shall be comprised of the entire State of Alabama. The activities in which the *de*

novo office of Citicorp Homeowners, Inc. will engage are as follows: the making or acquiring of loans and other extensions of credit, secured or unsecured, for consumer and other purposes; the making, acquiring, and servicing for its own account and for the account of others, of extensions of credit to individuals secured by liens on residential or nonresidential real estate; the sale of credit related life and accident and health or decreasing or level (in the case of single payment loans) term life insurance by licensed agents or brokers, as required; the sale of mortgage life and mortgage disability insurance directly related to extensions of mortgage loans; the sale of consumer oriented financial management courses; and the servicing, for any person, of loans and other extensions of credit. The proposed service area of Citicorp Homeowners, Inc. shall be comprised of the entire State of Alabama for all the aforementioned activities. Credit related life, accident, and health insurance may be written by Family Guardian Life Insurance Company, an affiliate of Citicorp Person-to-Person Financial Center, Inc. and Citicorp Homeowners, Inc.

3. *Citicorp,* New York, New York (consumer finance and credit-related insurance activities; Alabama): To expand the activities and service area of an existing office of its subsidiary, Citicorp Person-to-Person Financial Center, Inc., located in Birmingham, Alabama and to establish a *de novo* office of Citicorp Homeowners, Inc. at the same Birmingham, Alabama location. The new activities in which the office of Citicorp Person-to-Person Financial Center, Inc. proposes to engage *de novo* are: The making, acquiring and servicing, for its own account and for the account of others, of extensions of credit to individuals secured by liens on residential or non-residential real estate; and the sale of mortgage life and mortgage disability insurance directly related to extensions of mortgage loans. The proposed service area for the aforementioned proposed activities shall be comprised of the entire State of Alabama. The proposed expanded service area of Citicorp Person-to-Person Financial Center, Inc. shall be comprised of the entire State of Alabama for a portion of its previously approved activities, specifically, the making or acquiring of loans and other extensions of credit, secured or unsecured, for consumer and other purposes; the extension of loans to dealers for the financing of inventory (floor planning) and working capital purposes; the purchasing and servicing for its own account of sales finance contracts; the sale of credit related life and accident and health or decreasing or level (in the case of single payment loans) term life insurance by licensed agents or brokers, as required; the sale of consumer oriented financial management courses; and the servicing, for any person, of loans and other extensions of credit. The activities in which the proposed *de novo* office of Citicorp Homeowners, Inc. will engage are: the making or acquring of loans and other extensions of credit, secured or unsecured, for consumer and other purposes; the sale of credit related life and accident and health or decreasing or level (in the case of single payment loans) term life insurance by licensed agents or brokers, as required; the sale of consumer oriented financial management courses; the servicing, for any person, of loans and other extensions of credit; the making, acquiring and servicing, for its own account and for the account of others, of extensions of credit to individuals secured by liens on residential or non/residential real estate; and the sale of mortgage life and mortgage disability insurance directly related to extensions of mortgage loans. The proposed service area of Citicorp Homeowners, Inc. shall be comprised of the entire State of Alabama for all the aforementioned activities. Credit related life, accident, and health insurance may be written by Family Guardian Life Insurance Company, an affiliate of Citicorp Person-to-Person Financial Center, Inc. and Citicorp Homeowners, Inc.

Board of Governors of the Federal Reserve System, June 15, 1982.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 82-16636 Filed 6-18-82; 8:45 am]

BILLING CODE 6210-01-M

Acquisition of Bank Shares by Bank Holding Co.

The company listed in this notice has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire voting shares or assets of a bank. The factors that are considered in acting on the application are set forth in 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank indicated. Interested persons may express their views in writing to the address indicated for the application. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

A. Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551:

1. *Transworld Corp.,* Lake Forest, Illinois; to acquire 100 percent of the voting shares or assets of Dempster Plaza State Bank, Niles, Illinois. This application may be inspected at the Federal Reserve Bank of Chicago. Comments on this application must be received not later than July 15, 1982.

Board of Governors of the Federal Reserve System, June 15, 1982.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 82-16651 Filed 6-18-82; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; SONAT Exploration Co.

AGENCY: Minerals Management Service, Department of the Interior.

ACTION: Notice of the receipt of a proposed development and production plan.

SUMMARY: Notice is hereby given that SONAT Exploration Company has submitted a Development and Production Plan describing the activities it proposes to conduct on Lease OCS-G 1525, Block 222, Ship Shoal Area, offshore Louisiana.

The purpose of this notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the Plan and that it is available for public review at the Office of the Minerals Manager, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Public Records, Room 147, open weekdays 9 a.m. to 3:30 p.m. 3301 North Causeway Blvd., Metairie, Louisiana 70002, Phone (504) 837-4720, Ext. 226.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in development and Production Plans available to affected States, executives of affected local

governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in a revised § 250.34 of Title 30 of the Code of Federal Regulations.

Dated: June 14, 1982.

John L. Rankin,

Acting Minerals Manager, Gulf of Mexico OCS Region.

[FR Doc. 82-16660 Filed 6-18-82; 8:45 am]

BILLING CODE 4310-31-M

Office of Surface Mining Reclamation and Enforcement

Information Collection Submitted to OMB for Review

The Office of Surface Mining has submitted to the Office of Management and Budget a proposal for the collection of information, listed below, for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Obtain copies of the proposed information collection requirement and explanatory material by contacting Darlene Grose at (202) 343-5447. Direct comments and suggestions, about the requirement, to the Bureau clearance officer and the Office of Management and Budget reviewing official, Mr. William T. Adams, at 202-395-7340.

Title: 30 CFR 840 State Regulatory Authority, Inspection and Enforcement.
Bureau Form No.: None.
Frequency: Recordkeeping.
Description of Respondents: State Regulatory Authorities.
Annual Responses: 24.
Annual Burden Hours: 960.
Bureau Clearance Officer: Darlene Grose (202) 343-5447.

John Prior, Jr.,

Acting Assistant Director, Management and Budget.

June 15, 1982.

[FR Doc. 82-16639 Filed 6-18-82; 8:45 am]

BILLING CODE 4310-05-M

INTERSTATE COMMERCE COMMISSION

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-1-2TA), filed June 9, 1982. Applicant: AMBASSADOR TOWNCAR SERVICE, INC., 2324 Post Road, Fairfield, CT 06430. Representative: L. C. Major, Jr., Esquire, Suite 304, Overlook Building, 6121 Lincolnia Road, P.O. Box 11278, Alexandria, VA 22312. *Passengers and their baggage, in the same vehicle with passengers, in door-to-door limousine charter service* between points in Fairfield and New Haven Counties, CT and points in the States of NY, NJ and DE, limited to the transportation of not more than six (6) passengers in any one vehicle, including the driver. Supporting shipper(s): There are eleven (11) statements in support of this application which may be examined at the Regional Office of the ICC in Boston, MA.

MC 148529 (Sub-1-1TA), filed June 10, 1982. Applicant: F. ANDREW ANASTASIO, 169 South End Road, East Haven, CT 06512. Representative: John E. Fay, 63 Maple Avenue, Hartford, CT 06114. *Building materials and lumber* between points in CT, MA, ME, NH, RI, VT, DE, MD, NJ, NY, and PA. Supporting shipper(s): Sanford & Hawley, Inc., 1790 Farmington Avenue, Unionville, CT 06085; Builders' Lumber & Supply Co., P.O. Box 269, Brook Street, Shelton, CT 06484; Futter Lumber Corporation, P.O. Box 347, Rockville Centre, NY 11571; and Seaboard International Lumber & Plywood, Inc., 3003 New Hyde Park Road, New Hyde Park, NY 11042.

MC 152291 (Sub-1-5TA), filed June 11, 1982. Applicant: ASSEMBLY SQUARE TRANSPORTATION, INC., 20 Sturtevant Street, Somerville, MA 02145. Representative: Frank M. Cushman, 5 Carbrey Avenue, Sharon, MA 02067. *Contract Carrier:* Irregular routes: *General commodities (except Classes A and B explosives, hazardous waste, household goods as defined by the Commission, commodities in bulk and those requiring special equipment)* between all points in the U.S. (except AK and HI). Supporting shipper: AAA Cargo Brokers, Inc., 36 South Main Street, Sharon, MA 02067.

MC 134806 (Sub-1-32TA), filed June 8, 1982. Applicant: B-D-R TRANSPORT, INC., P.O. Box 1277, Vernon Drive, Brattleboro, VT 05301. Representative: Edward T. Love, 4401 East West Highway, Suite 404, Bethesda, MD 20814. *Contract carrier:* Irregular routes: *Wire and cable,* from Shrewsbury, Westboro and Fall River, MA, and Manchester, NH to points in AZ, CA, CO, ID, NV, OR, UT and WA under continuing contract(s) with Phalo Wire & Cable Corp., Shrewsbury, MA. Supporting shipper: Phalo Wire & Cable Corp., 530 Boston Turnpike (Rt. 9), Shrewsbury, MA 01545.

MC 151893 (Sub-1-2TA), filed June 8, 1982. Applicant: B&Q DISTRIBUTION SERVICE, INC., R.D. #4, Baldwinsville, NY 13027. Representative: Jack L. Schiller, 123-60 83rd Avenue, Kew Gardens, NY 11415. *Frozen ices* from the facilities of Mia Products Co. located at Moosic, PA, to points in DE, MD, NJ, NY and VA. Supporting shipper: Mia Products Co., P.O. Box 3777, Scranton, PA 18507.

MC 145914 (Sub-1-13TA), filed June 10, 1982. Applicant: COASTAL TRUCK LINE, INC., P.O. Box 600, How Lane, New Brunswick, NJ 08903. Representative: Zoe Ann Pace, Esquire, Zelby & Burstein, One World Trade Center, Suite 2373, New York, NY 10048. *General commodities (except Class A and B explosives, household goods and commodities in bulk)* between all points and places in and east of the States of WI, IL, KY, TN and MI. Supporting shipper(s): There are six (6) statements in support of this application which may

be examined at the regional office of the ICC in Boston, MA.

MC 162248 (Sub-1–1TA), filed June 8, 1982. Applicant: D.D.F. TRANSPORTATION, INC., 6495 Transit Road, Bowmansville, NY 14026. Representative: William J. Hirsch, P.C., 64–68 Niagara Street, Buffalo, NY 14202. *Contract carrier:* Irregular routes: *Office furniture and materials, supplies and equipment used in the manufacture thereof,* between all points in the US, (except AK and HI) under continuing contract(s) with The Gunlocke Company, Inc., Wayland, NY. Supporting shipper: The Gunlocke Company, Inc., 7 Lackawanna Street, Wayland, NY 14572.

MC 159689 (Sub-1–1TA), filed June 11, 1982. Applicant: G. DiCOSTANZO, INC., 145 Longmeadow Avenue, Warwick, RI 02889. Representative: James M. Burns, 1383 Main Street, Suite 413, Springfield, MA 01103. *Passengers and their baggage in special and charter operations,* beginning and ending at points in Providence and Kent Counties, RI and extending to points in the U.S. (except AK and HI). Supporting shipper: There are six (6) statements in support of this application which may be examined at the Regional Office of the ICC, Boston, MA.

MC 148849 (Sub-1–3TA), filed June 7, 1982. Applicant: EQUITABLE BAG CO., INC., 45–50 Van Dam Street, Long Island City, NY 11101. Representative: George A. Olsen, P.O. Box 357, Gladstone, NY 07934. *Contract carrier:* Irregular routes: *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 Nationwide Shippers Cooperative Association, Inc., Cincinnati, OH. Supporting shipper(s): Nationwide Shippers Cooperative Association, Inc., 2735 Spring Grove Avenue, Cincinnati, OH 45225.

MC 162417 (Sub-1–1TA), filed June 10, 1982. Applicant: NAAMAN GERSHOWITZ INC., Aden Road, Liberty, NY 12754. Representative: George Gershowitz (same as applicant). *Passengers and their baggage in charter operations* from Sullivan County, NY to points in NJ, CT, MA and PA. Supporting shipper(s): There are six (6) statements in support of this application which may be examined at the Regional Office of the ICC in Boston, MA.

MC 148560 (Sub-1–9TA), filed June 8, 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: *General commodities (except household goods and Class A and B explosives),* between points in the U.S. (except AK and HI) under continuing contract(s) with United Forwarding, Inc. of Omaha, NE. Supporting shipper: United Forwarding, Inc., 7000 Building, Suite 445, Omaha, NE 68106.

MC 59806 (Sub-1–3TA), filed June 8, 1982. Applicant: GROSS & HECHT TRUCKING, INC., Box 514, 35 Brunswick Avenue, Edison, NJ 08817. Representative: A. David Millner, 7 Becker Farm Road, P.O. Box Y, Roseland, NJ 07068. *Contract carrier:* Irregular routes: *General commodities (except household goods and Class A and B explosives),* between points in the U.S. (except AK and HI) under continuing contract(s) with United Forwarding, Inc. of Omaha, NE. Supporting shipper: United Forwarding, Inc., 7000 Building, Suite 445, Omaha, NE 68106.

MC 146596 (Sub-1–5TA), filed June 9, 1982. Applicant: FRED McCALL TRUCKING, INC., 2079 Railroad Street, Ontario, NY 14519. Representative: James E. Brown, 36 Brunswick Road, Depew, NY 14043. *Building materials, and, contractors equipment and supplies* between points in the U.S. east of the Mississippi River (restricted to traffic originating at, or destined to the facilities and/or customers of Keystone Builders Supply Company, Inc. and affiliated companies. Supporting shipper: Keystone Builders Supply Company, Inc., 85 Palm Street, Rochester, NY 14615.

MC 157745 (Sub-1–2TA), filed June 11, 1982. Applicant: MIDWAY MACHINERY MOVERS, INC., P.O. Box 83, 92 Berczy Street, Aurora, Ontario, CD L4G 3H1. Representative: William J. Hirsch, P.C., 64 Niagara Street, Buffalo, NY 14202. *Contract Carrier:* Irregular routes: *Bakery waste products and animal food ingredients,* between ports of entry on the International Boundary Line between the U.S. and CD, located in NY, on the one hand, and, on the other, points in Erie County, NY, under continuing contract(s) with Bakery Salvage Corporation, Buffalo, NY. Supporting shipper: Bakery Salvage Corporation, 138 Chandler Street, Buffalo, NY 14207.

MC 162240 (Sub-1–1TA), filed June 9, 1982. Applicant: HENRY LEASING CO., INC., d.b.a. NEW YORK PITTSBURG EXPRESS, 46 Ely Place, East Orange, NJ 07017. Representative: Henry Lascellas (same as applicant). *Such commodities as are dealt in and used by chain stores and feed business houses* between points East of the Mississippi River. There are 6 statements in support of this application which may be examined at the Regional Office of the ICC in Boston, MA. Applicant proposes to interline at Pittsburgh, PA and at New Castle, PA.

MC 43724 (Sub-1–2TA), filed June 10, 1982. Applicant: PHILLIP'S EXPRESS, INC., 61 Merrimac Street, Lawrence, MA 01842. Representative: Hughan R.H. Smith, 26 Kenwood Place, Lawrence, MA 01841. *Contract carrier:* Irregular routes: *Polyester fill,* between points in RI and CT, under continuing contract(s) with Fairfield Processing, Danbury, CT. Supporting shipper: Fairfield Processing, 88 Rose Hill Avenue, Danbury, CT 06810.

MC 155236 (Sub-1–5TA), filed June 10, 1982. Applicant: POTTLE'S TRANSPORTATION, INC., Odlin Road, Bangor, ME 04401. Representative: Clifton E. Pottle, P.O. Box 164, Carmel, ME 04419. *Contract carrier:* Irregular routes: *Malt beverages, wine and liquors,* between points in the U.S. (excluding AK and HI) under continuing contract(s) with The A. Gallo Company, Goshen, CT, Calmont Beverage Company, Inc., Barre, VT, and G & G Beverage, North Haven, CT. Supporting shipper: The A. Gallo Company of Litchfield, P.O. Box 2182, Rte 4 West, Goshen, CT 06756; Calmont Beverage Co., Inc., 21 S. Main Street, Barre, VT 05641; G & G Beverage, 10 Dodge Avenue, North Haven, CT 06473.

MC 99733 (Sub-1–1TA), filed June 10, 1982. Applicant: EUGENE SPEAR, d.b.a. E. SPEAR & CO., 38 Bisson Street, P.O. Box 218, Beverly, MA 01915. Representative: Hughan R.H. Smith, 26 Kenwood Place, Lawrence, MA 01841. *Machinery and heavy equipment which because of their size, require special handling and equipment* from points in MA and NH, on the one hand, and, on the other, points in RI, ME, CT, NH, VT, NY, NJ, PA, OH, IL, IN, WI, MO, KS, TX, FL and MI. Supporting shipper(s): Post Machinery Company, Post Road, Portsmouth, NH 03801, Weber Technical Products, 360 Merrimac Street, Lawrence, MA 01841.

MC 162418 (Sub-1–1TA), filed June 10, 1982. Applicant: TRINITY TRUCKINC CORPPORATION, P.O. Box 5065, Route 104, Smithfield, RI 02917. Representative: Gerald A. Joseloff, 410 Asylum Street, Hartford, CT 06103. *General commodities (except Classes A & B explosives, household goods and commodities in bulk)* between Norfolk and Bristol Counties, MA; Providence, Kent and Washington Counties, RI and New Haven and New London Counties, CT, on the one hand, and, on the other, CT, MA and RI. Supporting shipper(s): Kenyon Piece Dyeworks, Inc., Kenyon,

RI 02836; Data Documents, 80 Defco Park Road, North Haven, CT; Bostitch Division of Textron, Briggs Drive, East Greenwich, RI; Pfizer, Inc., 235 E. 42nd Street, New York, NY 10017; Nissan Motor Corporation in U.S.A. P.O. Box 198, 777 West Street, Mansfield, MA 02048.

MC 146478 (Sub-1–2TA), filed June 7, 1982. Applicant: ULTIMATE DISTRIBUTION, INC., 50 Executive Avenue, Edison, NJ 08817. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. *Wool,* from Boston and Norwood, MA, to points in the New York, NY Commerical Zone. Supporting shipper(s): Warshaw Woolen Associates, Inc., 111 W. 40th Street, New York, NY 10018.

MC 158898 (Sub-1–1TA) republication, filed May 5, 1982. Applicant: R. WALSH TRANSPORTATION LIMITED, P.O. Box 368, Haileybury, Ontario, CD P0J 1K0. Representative: Robert D. Gunderman, Can-Am Building, 101 Niagara Street, Buffalo, NY 14202. *Passengers and their baggage, in the same vehicle with passengers, in round-trip charter and special operations, in sightseeing and pleasure tours,* beginning and ending at ports of entry on the International Boundary line between US and CD in MI, and extending to points in AK, CA, CT, DC, MA, NC, NH, NV, NY, PA, RI, SC, TN VT, VA, and WV and return. Supporting shipper: Tri-Trans Services, Ltd., Main & Whitney Streets, Hailebury, Ontario, CD. Sole purpose of this republication is to add the states of AK, CA and NV to the territorial scope.

MC 162399 (Sub-1–1TA), filed June 8, 1982. Applicant: WATERTOWN TRUCKING, INC., 640 Arsenal Street, Watertown, MA 02172. Representative: Wesley S. Chused, 15 Court Square, Boston, MA 02108. *Contract Carrier:* Irregular routes: *Petroleum products, in bulk,* (1) from revere, MA to points in NH, and (2) from Providence, RI to points in MA and NH, under continuing contract(s) with BP Oil, Inc., of Cleveland, OH. Supporting shipper: BP Oil, Inc., 1510 Rockefeller Building, 614 Superior Avenue, Cleveland, OH 44113.

The following applications were filed in Region 2. Send protests to: ICC, Fed. Res. Bank Bldg., 101 North 7th St., Rm. 620, Philadelphia, PA 19106.

MC 3419 (Sub-II–2TA), filed June 8, 1982. Applicant: THE CLEVELAND, COLUMBUS & CINCINNATI HIGHWAY, INC., 1375 Euclid Avenue, One Playhouse Square, Cleveland, OH 44115. Representative: Elliott Bounce, Suite 1301, 1600 Wilson Boulevard, Arlington, VA 22209. *General commodities* (except Classes A and B explosives, household goods, and commodities in bulk), between points in the United States, under continuing contract(s) with the Kmart Corporation of Troy, MI for 270 days. Supporting shipper(s): Kmart Corporation, 3100 W. Big Veaver, Troy, MI 48084.

MC 162397 (Sub-II–1TA), filed June 8, 1982. Applicant: DAYTON TRUCKING, INC., 521 Brown Street, Dayton OH 45402. Representative: Michael Spurlock, Esquire, 275 East State Street, Columbus OH 43215. *Auto parts and materials and supplies used in the manufacture and distribution thereof (except commodities in bulk),* between Dayton, Ohio and its commercial zone, on the one hand, and, on the other, points in Fredericksburg, Virginia, and its commercial zone for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Miami Precision Chrome, Inc., 2300 East First St., Dayton, OH 45403.

MC 158859 (Sub-II–5TA), filed June 7, 1982. Applicant: O. DEAN TRANSPORTATION, INC., 405 W. Williamsburg Rd., Sandston, VA 23150. Representative: P. Owen Dean (same address as applicant). Contract, irregular: *General commodities (except classes A & B explosives; household goods as defined by the commission)* between the facilities of Noland Co. located in AL, AR, FL, GA, KY, MD, MS, NC, SC, TN, VA, on the one hand, and, on the other, points in the U.S. (except AK and HI), under continuing contract(s) with Noland Co. of Newport News, VA. An underlying ETA seeks 120 days authority. Supporting shipper(s): Reynolds Metals Co., 7900 Reycan Rd., Richmond, VA 22237–2292.

MC 158859 (Sub-II–6TA), filed June 7, 1982. Applicant: O. DEAN TRANSPORTATION, INC., 406 W. Williamsburg Rd., Sandston, VA 23150. Representative: P. Owen Dean (same address as applicant). Contract, irregular: *Furniture, parts and materials used in the manufacture and distribution of the above commodities,* between Chicago Heights, IL; Richmond, VA; Dallas, TX; and Santa Fe Springs, CA, on the one hand, and, on the other, points in the U.S., Under continuing contract(s) with Crawford Manufacturing Co. An underlying ETA seeks 120 days authority. Supporting shipper(s): Crawford Manufactuirng Co., 3rd and Decatur St., Richmond, VA 23261.

MC 155694 (Sub-II–2TA), filed June 8, 1982. Applicant: DYNASTY CORP., P.O. Box 1097, Nescopeck, PA 18635. Representative: Peter Wolff, 722 Pittston Ave., Scranton, PA 18505. Contract, irregular, *Furniture and plastic articles* between Susquehanna, PA on the one hand, and, on the other, points in MD, NJ and NY under continuing contract with Matis Lingerie Co., Susquehanna, PA for 270 days. An underlying ETA seeks 120 days. Supporting shipper(s): Matis Lingerie Co., Susquehanna, PA 18847.

MC 150263 (Sub-II–1TA), filed June 8, 1982. Applicant: HOPKINS AIRPORT LIMOUSINE SERVICE, INC., 2903 Wellington Ave., Parma, OH 44134. Representative: E. H. van Deusen, 220 W. Bridge St., P.O. Box 97, Dublin, OH 43017. *Passengers and their baggage, in charter service,* between Los Angeles and San Francisco, CA, Denver, CO, and New York, NY, on the one hand, and, on the other, points in the U.S., for 180 days. An underlying ETA seeks 120 days authority. Supporting shipper: Trails West, Inc., 92 Middle Neck Rd., Great Neck, NY 11021.

MC 159857 (Sub-II–4TA), filed June 8, 1982. Applicant: J&L TRUCK LEASING, INC., 3621 State Route 14, Edinburgh, OH 44272. Representative: Jack L. Schiller, 123–60 83rd Ave., Kew Gardens, NY 11415. *Lamps and lamp parts* between the facilities of Geringer & Sons Co., located at or near Peekskill, NY and the facilities of Deena, located at or near Arlington, KY, on the one hand, and, on the other, points in FL, GA, KY, MS, NC, NJ, OH, PA and TN, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Parker Lamp & Fixture Supply, Inc., 230 Fifth Avenue, Suite 1108, New York, NY 10001.

MC 159283 (Sub-II–2TA), filed June 8, 1982. Applicant: W. L. LOGAN TRUCKING COMPANY, 3224 Navarre Rd., S.W., Canton, OH 44706. Representative: Stephen L. Oliver, 275 E. State St., Columbus, OH 43215. *Building materials,* between GA, NC, and SC, on the one hand, and, on the other, points in OH, PA, and WV, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Empire Warehouse Lumber Company, P.O. Box 249, Akron, OH 44309.

MC 161938 (Sub-II–2TA), filed June 8, 1982. Applicant: BONNIE A. MEHRING, 414 Poole Rd., Apt. T–1, Westminster, MD 21157. Representative: Edward N. Button, 635 Oak Hill Ave., Hagerstown, MD 21740. *Tires,* between Frederick, MD, on the one hand, and, on the other, points in and East of OH, KY, TN, GA, & FL (restricted to traffic originating at or destined to facilities of Donald B. Rice Tire Company, Inc.). An underlying ETA seeks 120 days authority. Supporting shipper(s): Donald B. Rice Tire Company, Inc., 909 East St., Frederick, MD 21701.

MC 162398 (Sub-II–1TA), filed June 8, 1982. Applicant: MINERAL TRUCKING, INC., Route 3, Mineral, VA 23117. Representative: Peter Wolff, 722 Pittston Ave., Scranton, PA 18505. Contract, irregular: (1) *lumber and pallets* from Newark, NJ to points in DC, DE, MD, NY, PA and VA, under continuing contract(s) with Delisa Pallet Corp.; (2) *lamp posts* from Newark, NJ to points in DC, DE, MD, NY, PA and VA, under continuing contract(s) with Pfaff & Kendall, Newark, NJ (3) *lumber and pallets* from Mineral, VA to points in DE, MD, NJ, NY and PA, under continuing contract(s) with Pyramid Pallet Co., Mineral, VA. Supporting shipper(s): Pyramid Pallet Corp., Rt 3, Mineral, VA 23117, Delisa Pallet Corp., 91–97 Blanchard St., Newark, NJ 07105, Pfaff & Kendall, 84 Foundry St., Newark, NJ 07105.

MC 107012 (Sub-II–222TA), filed June 7, 1982. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Hwy 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: Bruce W. Boyarko (same as applicant). Contract, irregular: *General commodities (except classes A & B explosives and household goods as defined by the Commission)* between points in the U.S., under continuing contract(s) with Mobil Corporation, Fairfax, VA, for 270 days. Supporting shipper: Mobil Corporation, 3225 Gallows Rd., Fairfax, VA 20037.

MC 107012 (Sub-II–223TA), filed June 8, 1982. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Hwy 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: Bruce W. Boyarko (same as applicant). Contract, irregular: *General commodities (except classes A & B explosives and household goods as defined by the Commission)* between points in the U.S., under continuing contract(s) with Chittenden and Eastman Company, Burlington, IA, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Chittenden and Eastman Company, 123 South 3rd St., Burlington, IA 52601.

MC 157114 (Sub-II–2TA), filed May 6, 1982. Orginally published in the **Federal Register** on May 17, 1982.[1] Applicant: R. H. A. TRUCKING, INC., R.R. #2, Napoleon, OH 43545. Representative: Robert Arps (same as applicant). *Contract; irregular: Machinery, material and supplies used in the manufacturing and sale of machinery,* between Napoleon, OH, on the one hand, and, on the other, pts. in the U.S., under continuing contract(s) with Automatic Feed Co., Napoleon, OH, for 270 days. An underyling ETA seeks 120 days authority. Applicant intends to tack authority sought herein with authority held under MC–157114. Supporting shipper(s): Automatic Feed Co., R.R. #4, Napoleon, OH 43545.

MC 2202 (Sub-II–30TA), filed June 7, 1982. Applicant: ROADWAY EXPRESS, INC., 1077 Gorge Boulevard, Post Office Box 471, Akron, OH 44309. Representative: William O. Turney, 7101 Wisconsin Avenue, Suite 1010, Washington, D.C. 20014. *General commodities* (except household goods as defined by the Commission, classes A and B explosives, and commodities in bulk) between points in the U.S., except AK and HI, under contract or contracts with California Cartage Company, Inc., Compton, CA 90221, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper(s): California Cartage Company, Inc., 20021 Susana Road, Compton, CA 90221.

MC 2202 (Sub-II–30TA), filed June 8, 1982. Applicant: ROADWAY EXPRESS, INC., 1077 Gorge Boulevard, Post Office Box 471, Akron, OH 44309. Representative: William O. Turney, 7101 Wisconsin Avenue, Suite 1010, Washington, D.C. 20014. Contract, irregular: *General commodities (except household goods as defined by the Commission, classes A and B explosives, and commodities in bulk)* between points in the U.S., except AK and HI, under contract or contracts with The Boeing Company, Seattle, WA, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: The Boeing Co., P.O. Box 3707, Seattle, WA 98124.

MC 162406 (Sub-II–1TA) filed June 9, 1982. Applicant: SFZ TRANSPORTATION, INC., P.O. Box 2675, 14600 Detroit Ave., Lakewood, OH 44107. Representative: John T. Malaney (same as applicant). Contract, irregular: *General commodities (except class A & B explosives, commodities in bulk, and household goods)* between pts. in the U.S., under continuing contracts with The Scott & Fetzer Co. and Melben Products Co., Inc., for 270 days. Supporting shippers: The Scott & Fetzer Co., 14600 Detroit Ave., Lakewood, OH 44107; Melben Products Co., Inc., 14600 Detroit Ave., Lakewood, OH 44107.

MC 150724 (Sub-II–7TA), filed June 8, 1982. Applicant: DONALD SANTISI TRUCKING COMPANY, 340 Victoria Rd., Youngstown OH 44515. Representative: Paul F. Beery, 275 E. State St., Columbus OH 43215. *Machinery, and materials and supplies used in the manufacture thereof,* between Alameda County, CA, on the one hand, and, on the other, points in the U.S. (except AK and HI) for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Williams & Lane, Inc., 150 Doolittle Dr., San Leandro, CA 94577–1083.

MC 144724 (Sub-II–1TA) filed June 9, 1982. Applicant: WALTER J. SHEETS & SON, INC., 100 Bittles St., Lewisburg, WV 24901.Representative: Walter J. Sheets (same address as applicant). Contact, irreguar: *Plastic articles* between Ronceverte, WV, on the one hand, and, on the other, points in ME, NH, VT, MA, CT, NY, PA, DE, OH, VA, MI, IN, WI, IL, KY, TN, MS, AL, GA, FL, SC, NC and RI. Supporting shipper(s) Jiffy Foam, Inc., P.O.B. 446, River Rd., Ronceverte, WV 24970.

MC 145869, (Sub-II–1TA), filed June 7, 1982. Applicant: WILLIS TRUCKING CO., INC., Route 2, Willis, VA 24380. Representative: Terrell C. Clark, P.O. Box 25, Stanelytown, VA 24168. *Cloth,* from points in Floyd County, VA, to Concord, CA for 270 days. Supporting shipper: Hollingsworth & Vose Co., P.O. Box 427, Floyd, VA 24091.

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 106074 (Sub-3–28TA), filed June 11, 1982. Applicant: B AND P MOTOR LINES, INC., Shiloh Rd. & U.S. Hwy 221 S., Forest City, NC 28043. Representative: Clyde W. Carver, P.O. Box 724034, Atlanta, GA 30328. *Petroleum and petroleum products (except in bulk),* between Denever, CO, Casper, Wy, Hammond, IN, Whiting, IN, Doraville, GA, Tulsa, OK, and Guntersville, AL, on the one hand, and, on the other, points in the U.S. (except AK and HI). Supporting shipper: Phillips Petroleum Company, 834 Adams Bldg., Bartlesville, OK 74004.

MC 159117 (Sub-3–1TA), filed June 11, 1982. Applicant: KEN HUDSON ENTERPRISES, INC., 714 Cedar Lane, Thomasville, N.C. 27360. Representative: Kenneth Hudson (same address as applicant). *Contract:* Irregular: *Particleboard and Fiberboard,* between Thomasville, NC on the one hand, and, on the other Waverly, VA, Ruston, LA, Hanson, MA, Williamsport, MD, Columbus, OH, Miami, FL, Sanford, FL, Franklin, VA, Adel, GA under continuing contract with CanterBoard, Inc. Supporting shipper: CanterBoard, Inc., P.O. Box 518, Old Highway, 109 Thomasville, NC 27360.

MC 134064 (Sub-3–15TA), filed June 9, 1982. Applicant: INTERSTATE TRANSPORT, INC., 1600 Highway 129

[1] The purpose of this republication is to include the statement on tacking which was left out of the first publication.

South, Gainesville, GA 30505. Representative: Charles M. Williams, 1600 Sherman St., #665, Denver, CO 80203. *Such commodities as are used or dealt in by manufacturers or distributors of expanded polystyrene (except in bulk) and (2) materials, equipment and supplies used in the manufacture and distribution of the commodities named in item (1) above (except in bulk)* from Beaver County, PA and Middlesex County, NJ to Hall County, GA and Spotsylvania County, VA. Supporting shipper: Georgia Foam, Inc., P.O. Box 303, Gainesville, GA.

MC 134781 (Sub-3–2TA), filed June 14, 1982. Applicant: FAST FREIGHT TRANSFER, INC., P.O. Box 2163, Hialeah, FL 33012. Representative: Clayton R. Byrd, 2870 Briarglen Drive, Doraville, GA 30340. Contract: Irregular: (1) *General commodities (except classes A and B explosives, household goods, and commodities in bulk),* from Greenville, SC to points in FL, under continuing contract with F. W. Woolworth Co. of New York, NY, and (2) *building materials,* from Athens and Winder, GA to points in AL, FL, KY, and TN, under continuing contract with Interstate Insulation, Inc. of Atlanta, GA. Supporting shippers: F. W. Woolworth Co., 233 Broadway, New York, NY 10279 and Interstate Insulation, Inc., P.O. Box 45197, Atlanta, GA 30320.

MC 153677 (Sub-3–2TA), filed June 14, 1982. Applicant: BILLY HARRIS TRUCKING CO., Route 4, Box 139A, Henderson, NC 27536. Representative: Henry E. Seaton, 1024 Pennsylvania Bldg., 425 13th St., N.W., Washington, DC 2004. *Contract* carrier: irregular: *Filters and materials, supplies and equipment used in the manufacture, sale and distribution of filters,* between Henderson, NC, on the one hand, and, on the other, points in the U.S. (except AK & HI), under continuing contract(s) with Facet Enterprises, Inc. of Henderson, NC. Supporting shipper(s): Facet Enterprises, Inc., P.O. Box 1637, Henderson, NC 27536.

MC 136123 (Sub-3–27TA), filed June 14, 1982. Applicant: MD TRANSPORT SYSTEMS, INC., P.O. Box 1058, Palmetto, FL 33561. Representative: David M. Kuehl (same as above). *Contract:* Irregular: *General Commodities* between the facilities of Jenn-Air Corp. and points in the U.S. Supporting shipper: Jenn-Air Corporation, 3035 N. Shadeland Ave., Indianapolis, IN 46226.

MC 162426 (Sub-3–1TA), filed June 14, 1982. Applicant: W. W. TRUCKING COMPANY, Highway 574, P.O. Box 800, Dover, FL 33527. Representative: Roger A. Kirschenbaum, Suite 520, 3390 Peachtree Road, N.E., Atlanta, GA 30326. *Frozen vegetables* between points in Hillsboro County, FL., on the one hand, and, on the other, points in the U.S. in and east of ND, SD, NE, CO, OK, and TX. Supporting shipper: Treasure Isle, Inc., P.O. Box 1121, Tampa, FL 33601.

The following applications were filed in Region 4: Send protests to: ICC, Complaint and Authority Branch, P.O. Box 2980, Chicago, IL 60604.

MC 19311 (Sub-4–9TA), filed June 7, 1982. Applicant: CENTRAL TRANSPORT, INC., 34200 Mound Road, Sterling Heights, MI 48077. Representative: Elmer J. Maue, (same address as applicant) 313–939–7000. *Contract,* Irregular *General Commodities* (except classes A and B explosives), under continuing contract(s) with International Harvester Company between points in IL, IN, MI, OH, WI, Boone, Campbell, Jefferson and Kenton Counties, KY, those points in NY on, west and north of U.S. Hwy 11 and those points in PA on and west of U.S. Hwy 219. Supporting shipper: International Harvester Co., 401 N. Michigan Ave., Chicago, IL 60611.

MC 113751 (Sub-4–16TA), filed June 7, 1982. Applicant: HAROLD F. DUSHEK, INC., 10th and Columbia St., Waupaca, Wisconsin 54981. Representative: James A. Spiegel, Attorney, Olde Towne Office Park, 6333 Odana Road, Madison, Wisconsin 53719. *Fertilizer and fertilizer ingredients* between points in WI, on the one hand, and, on the other, points in IA, IL, IN and MN. Supporting shipper: Pavelski Enterprises, Inc., Box 56, Amherst Junction, WI 54407.

MC 129410 (Sub-4–9TA), filed June 8, 1982. Applicant: BONCOSKY TRANSPORTATION, INC., 1301 Industrial Drive, Algonquin, IL 60102. Representative: Carl L. Steiner, 29 South LaSalle St., Chicago, IL 60603. *Corn Sweetners, in bulk, in tank vehicles* From Argo, IL, to North East, PA. Supporting shipper: Welch Foods, Inc., Two South Portage Street, Westfield, NY 14787.

MC 134970 (Sub-4–4TA), filed June 7, 1982. Applicant: UNZICKER TRUCKING, INC., P.O. Box 35, El Paso, IL 61738. Representative: Michael J. Ogborn, P.O. Box 82028, Lincoln, NE 68501. *Meat, meat products* and *meat by-products* and *articles* distributed by meat packinghouses, as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates,* 61 MCC 209 and 766 (except hides and commodities in bulk), between points in McLean County, IL and Fayette and Montgomery Counties, OH, on the one hand, and, on the other, points in the U.S. (except AK and HI). Supporting shipper: Sugar Creek Packing Company, 2101 Kenskill Avenue, Industrial Park, Washington Court House, OH 43160.

MC 135154 (Sub-4–5TA), filed June 7, 1982. Applicant: BADGER LINES, INC., 2460 South 5th Street, Milwaukee, WI 53207. Representative: William P. Dineen, 710 North Plankinton Avenue, Milwaukee, WI 53203 (414) 273–7410. *Business forms—computing machine paper* from the facilities of Willamette Industries, Inc. at Indianapolis, IN to Cincinnati, Columbus, Cleveland, and Toledo, OH, Detroit, MI, Pittsburgh, PA, St. Louis, MO, and Chicago, IL. Supporting shipper: Willamette Industries, Inc., 6461 Saguaro Court, Indianapolis, IN 46268.

MC 139420 (Sub-4–4TA), filed June 7, 1982. Applicant: GLACIER TRANSPORT, INC., P.O. Box 428, Grand Forks, ND 58201. Representative: William J. Gambucci, 525 Lumber Exchange Bldg., Minneapolis, MN 55402. *Food products,* from Decatur, IN to Denver, CO and the Commercial Zones of San Francisco, Los Angeles, Fresno and Sacramento, CA. Supporting shipper: Roman Meal Company, 2101 S. Tacoma Way, Tacoma, WA 98409.

MC 140615 (Sub-4–8TA), filed June 7, 1982. Applicant: DAIRYLAND TRANSPORT, INC., P.O. Box 1116, Wisconsin Rapids, WI 54494. Representative: Dennis C. Brown, P.O. Box 1116, Wisconsin Rapids, WI 54494. *Such merchandise as is dealt in by wholesale, retail, chain grocery, food business houses and general merchandise stores* between Brown, Jefferson, Outagamie, Portage, Rock, Shawano, Walworth, Waushara, Winnebago, Wood counties, WI and points in U.S. Supporting shipper: The Copps Corporation 2828 Wayne St. Stevens Point, WI 54481.

MC 150716 (Sub-4–2TA), filed June 7, 1982. Applicant: J.R.S. LEASING CHARTER, INC., 9445 South 51st Ave., Oak Lawn, IL 60453. Representative: Joseph Winter, 29 South LaSalle St., Chicago, IL 60603. *Contract; irregular: Recycled boardmill stock,* from the facilities of Diamond International Corporation at or near Middletown and Lockland, OH, to the facilities of Diamond International Corporation at or near Morris, IL, under continuing contract(s) with Diamond International Corporation, of New York, NY. Supporting shipper: Diamond International Corporation, 1000 East Armstrong Street, Morris, IL 60450.

MC 155118 (Sub-4–8TA), filed June 8, 1982. Applicant: T.D.S. TRANSPORTATION, INC., 1700 South Wolf Road, Des Plaines, IL 60018. Representative: Julie L. Roper, 1700 South Wolf Road, Des Plaines, IL 60018. *Contract; irregular, General commodities, including paper and paper products* (excluding Classes A & B explosives, household goods and commodities in bulk) between the following areas: WI, MN, IL, IA, ND, SD, TX, KS, MO, NE. Supporting shipper: Leslie Paper Co., 600 South County Road 18, Minneapolis, Minnesota 55440.

MC 155118 (Sub-4–9TA), filed June 8, 1982. Applicant: T.D.S. TRANSPORTATION, INC., 1700 South Wolf Road, Des Plaines, IL 60018. Representative: Julie L. Roper, 1700 South Wolf Road, Des Plaines, IL 60018. *Contract; irregular, General commodities, including paper and paper products* (excluding classes A & B explosives, household goods and commodities in bulk) between MS, MA, CA and IL, on the one hand, and on the other, points in the U.S. (except AK and HI). Supporting shipper: Dennison National, 1 Water Street, Holyoke, MA 01040.

MC 158914 (Sub-4–2TA), filed June 7, 1982. Applicant: J.T.D. ENTERPRISES, INC., 2223–81st St., Kenosha, WI 53140. Representative: Clyde W. Harger (same address as applicant). *Food and kindred products* between points in Chicago, IL, WI, and MN, on the one hand, and, on the other, points in MN, WI, IA, SD & ND. Supporting shipper: Ellison Meat Co., 2540 24th Ave. So., Minneapolis, MN 55406.

MC 159008 (Sub-4–3TA), filed June 8, 1982. Applicant: NORTHERN CARRIERS, INC., 3814 11th St., Rockford, Illinois 61110; (815) 398–9455. Representative: William D. Brejcha, 180 North Michigan Ave., Suite 1700, Chicago, Illinois 60601; (312) 263–1600. *Contract,* Irregular: *Such commodities as are dealt in, manufactured, or distributed by manufacturers of wheels, brake drums, and hubs,* from Rockford, IL to Memphis, TN; Omaha, NE; Ft. Worth, TX; and Ft. Wayne, IN, and points in their Commercial Zones. Restricted to traffic moving under continuing contract(s) with The Gunite Division of Kelsey Hayes Company of Rockford, IL. Supporting shipper: The Gunite Division, Kelsey Hayes Company, 302 Peoples Avenue, Rockford, IL, 61108.

MC 162373 (Sub-4–1TA), filed June 7, 1982. Applicant: CANADA DRY/ GRAF'S TRANSPORT CORPORATION, 4040 West Greenfield Avenue, Milwaukee, WI 53215. Representative: Richard Armstrong, 925 Hyland Drive, Stoughton, WI 53589. *Malt beverages, distilled, rectified or blended liquors; wine; brandy or brandy spirits; carbonated or non-carbonated soft drinks; and equipment, materials and supplies used in the production, manufacture and distribution of such commodities* between WI on the one hand and, on the other, points in CN, CO, IA, IN, IL, KY, MD, MI, MN, MO, NJ, NY, OH, PA, TN, VA and WV. There are seven (7) supporting shippers.

MC 162377 (Sub-4–1TA), filed June 7, 1982. Applicant: LARRY McCOY d.b.a L & M LEASING, 11635 W. Beecher Road, Clayton, MI 49235. Representative: James R. Neal, 1200 Bank of Lansing Building, Lansing, MI 48933. *Contract;* irregular; *Metal, rubber and plastic products* between points in Lenawee County, MI, Gibson County, TN, and Mississippi and Prairie Counties, AR under continuing contract(s) with ACCO Industries, Inc. An underlying ETA seek 120 days authority. Supporting shipper: ACCO Industries, Inc., 1022 E. Michigan St., Adrian, MI 49221.

MC 162400 (Sub-4–1TA), filed June 8, 1982. Applicant: TRI-FRIDGE CORP., 3300 West 93rd St., Evergreen Park, IL 60642. Representative: Anthony E. Young, 29 South LaSalle St., Suite 350, Chicago, IL 60603; 312/782–8880. *Chemicals in bags and drums* between the facilities of American Metal Chemical Corp. at or near Chicago, IL, on the one hand, and, on the other, points in the U.S. in and east of ND, SD, NE, KS, OK, and TX. Supporting shipper: American Metal Chemical Corp., 3604 South Morgan Street, Chicago, IL 60609.

MC 4483 (Sub-4–5TA), filed June 10, 1982. Applicant: MONSON TRUCKING, INC., R. R. #1, Red Wing, MN 55066. Representative: James E. Ballenthin, 630 Osborn Building, St. Paul, MN 55102. *Newsprint paper,* from ports of entry on the international boundary line between the U.S. and CN, on the one hand, and, on the other, points in OK and TX. Supporting shipper, Lakehead Newsprint, Ltd., P.O. Box 430, Thunder Bay, Ontario, Can. P7C 4W3.

MC 121395 (Sub-4–1TA), filed June 11, 1982. Applicant: PMS TRANSPORTATION CO., 110 East Chicago Ave., Westmont, IL 60559. Representative: Anthony E. Young, 29 South LaSalle St., Suite 350, Chicago, IL 60603; 312/782–8880. *Corrugated containers* from the facilities of International Paper Company located at or near Fond du Lac, WI to points in IL and IN. An underlying ETA seeks 120 days authority. Supporting shipper: International Paper Company—Container Division, 625 Northwest Ave, Northlake, IL 60164.

MC 126706 (Sub-4–3TA), filed June 10, 1982. Applicant: KLEYSEN TRANSPORT, LTD., 1495 Pembina Highway, Winnipeg, Manitoba, Canada R3T 2C6. Representative: Grant J. Merritt, 4444 IDS Center, 80 South Eighth St., Minneapolis, MN 55402. *Roofing materials and related products* between the ports of entry on the international boundary line between the U.S. and CN in and west of MN, on the one hand, and, on the other points in WA. An underlying ETA seek 120 days authority is pending. Supporting shipper is Building Products of Canada, Ltd., 10500 Cote de Liesse, Suite 200, Lachine, Quebec, Canada H8T 3E3.

MC 144621 (Sub-4–12TA), filed June 10, 1982. Applicant: COLUMBINE CARRIERS, INC., P.O.B. 66, South Bend, IN 46624. Representative: Charles M. Williams, 1600 Sherman St., #665, Denver, CO 80203. *Such commodities as are used or dealt in by manufacturers and distributors of store fixtures, counters, showcases, and shelving,* between the facilities of MII Lincoln, Inc., a Division of MII Industries, Inc., at or near Lincoln, IL, on the one hand, and, on the other, points in the U.S. Supporting shipper: MII Lincoln, Inc., a Division of MII Industries, Inc., 2150 West 5th Street Road, Lincoln, IL 62656.

MC 146758 (Sub-4–10TA), filed June 10, 1982. Applicant: LADLIE TRANSPORTATION, INC., 1701 Margaretha St., Albert Lea, MN 56007. Representative: Phillip H. Ladlie (Address same as applicant). *Cheese and cheese products* between points in WI, Stephenson County, IL, Clark & St. Louis County, MO, Fredericksburg, IA and Wapakonata, OH on the one hand, and, on the other, points in CA and TX. Supporting shippers: Milkhouse Cheese Corporation, 9119 S. Gessner, #200, Houston, Texas 77074; Marathon Cheese Corp., Marathon, WI 54448.

MC 151556 (Sub-4–10TA), filed June 11, 1982. Applicant: ALLSTATE TRANSPORTATION COMPANY, 2000 West 96th St., Bloomington, MN 55431. Representative: Marvin M. Mueller, 2000 West 96th St., Bloomington, MN 55431. *Contract* irregular: Auto-pak compactors and related material, equipment and supplies used in the manufacture, sale, installation and distribution thereof, between points in the U.S., under continuing contracts with Ramsey, Inc. Supporting shipper: Ramsey, Inc., 4936 North County Road 18, New Hope, MN 55428.

MC 151664 (Sub-4–2TA), filed June 9, 1982. Applicant: SPRINT

INCORPORATED, 3108 Gilead Ave., Zion, IL 60099. Representative: Alan J. Wolf, Robbins, Coe, Rubinstein & Shafran, Ltd., 69 W. Washington St., Chicago, IL 60602. *General Commodities,* (except commodities in bulk, and commodities in tank vehicles), between Lake County, IL and points in Kenosha, Racine, Milwaukee, Waukesha, and Dane Counties of WI. Supporting shippers: Abbott Laboratories, 1400 Sheridan Road, North Chicago, IL 60064; Jacob Blumberg Memorial Blood Bank, 1350 North Sheridan Road, Waukegan, IL 60085; Charles Munder Company, 2771 Galilee Avenue, Zion, IL 60099.

MC 156707 (Sub-4–2TA), filed June 9, 1982. Applicant: MWK TRANSPORT CO., INC., 5401 West Donges Bay Road, Mequon, WI 53902. Representative: Michael J. Wyngaard, 150 East Gilman St. Madison, WI 53703. *Contract;* irregular. *Textile mill products and materials, equipment and supplies used or useful in the manufacture, sale or distribution of textile mill products,* between Milwaukee, WI, on the one hand, and, on the other hand, points in the U.S. (except AK and HI), under a continuing contract(s) with Junior House, Inc. Supporting shipper: Junior House, Inc., 710 South Third Street, Milwaukee, WI 53204.

MC 162408 (Sub-4–1TA), filed June 9, 1982. Applicant: HARLAN AND DAVID CHRISTIANSEN d.b.a. CHRISTIANSEN TRUCKING, Route 1, Ringle, WI 54471. Representative: James A. Spiegel, Attorney, Olde Towne Office Park, 6333 Odana Road, Madison, WI 53719. *Limestone, in bulk, in dump vehicles* between Schoolcraft County, MI and points in Marathon County, WI. An underlying ETA seeks 120 days authority. Supporting shipper: Inland Lime & Stone Co., Div. of Inland Steel Co., Guliver, Michigan 49840.

MC 162409 (Sub-4–1TA), filed June 9, 1982. Applicant: DURAND TRUCKING, 412 Jones Ave., Oconto, WI 54153. Representative: Hughan R. H. Smith, 26 Kenwood Place, Lawrence, MA. 01841. *Contract,* Irregular: *Boats, all materials, equipment and supplies used in the manufacture, sale and distribution of same,* between points in the U.S. (except AK and HI), under continuing contract(s) with Northport Inc., 39 North Harding Ave., Gillette, WI 54124. Supporting shipper: Northport Inc, 39 North Harding Ave., Gillette, WI 54124.

MC 162433 (Sub-4–1TA), filed June 10, 1982. Applicant: J.E.T., INC., 600 Savoy Place, Valparaiso, IN 46383. Representative: Stephen H. Loeb, Suite 4, 2777 Finley Road, Downers Grove, IL 60515. *Contract, Irregular: Metals and metal products,* between the facilities of Nachman Corporation at Kouts, IN and Chicago, IL, on the one hand, and, on the other, points in IL, IN, KY, MI, OH, and WI under Contract with Nachman Corporation. Supporting shipper: Nachman Corporation, P.O. Box 1084, Norcross, GA 30091.

The following applications were filed in Region 5. Send protests to : Consumer Assistance Center, Interstate Commerce Commission, P.O. Box 17150, Fort Worth, TX 76102.

MC 16334 (Sub-5–7TA), filed June 7, 1982. Applicant: DEBRICK TRUCK LINE COMPANY, P.O. Box 421, Paola, KS 66071. Representative: John T. Pruitt, 9832 Connell, Overland Park, KS 66212. *Metal products,* between points in Miami County, KS, on the one hand, and, on the other, points in the U.S. Supporting shipper: Kansas Iron Works, Inc., P.O. Box 146, Paola, KS 66071.

MC 146554 (Sub-5–1TA), filed June 7, 1982. Applicant: GEORGE BRINCKS, Templeton, IA 51463. Representative: Richard D. Howe, 600 Hubbell Building, Des Moines, IA 50309. *Iron and steel articles,* (1) from Sterling and Chicago, IL, to Salt Lake City, UT; Grand Junction and Denver CO; and Casper, WY; and (2) from Salt Lake City, UT to Denver, CO. Supporting shipper: Brown-Strauss, Division of Azcon Corporation, 1290 Chambers Road, Aurora, CO 80011.

MC 146788 (Sub-5–3TA), filed June 8, 1982. Applicant: NORMAN JOHNSON d.b.a. JOHNSON TRUCKING, 913 South 13th Place, Norfolk, NE 68701. Representative: Norman Johnson (same as applicant). Contract, irregular: *oilwell drilling mud chemicals including clay, barite, lignite, lignin pitch, soda ash and sodium bicarbonite* between all pts in the U.S. (except AK and HI) under continuing contract with Baker Chemicals, Inc., 2801 Post Oak Blvd, Ste 258, Houston, TX.

MC 150029 (Sub-5–3TA), filed June 7, 1982. Applicant: CHARLES HARRINGTON, d.b.a. TRANS TEXAS COACHES, 3901 Cessna, Odessa, TX 79762. Representative: G. Timothy Armstrong, P.O. Box 1124, El Reno, OK 73036. Common regular *Passengers and their baggage and express items in bus service,* over routes as follows: (1) Between Oklahoma City, OK and Texarkana, TX: from Oklahoma City over U.S. Hwy 77 to junction OK Hwy 9, then over OK Hwy 9 to junction U.S. Hwy 177, then over U.S. Hwy 177 to junction OK Hwy 3E, then over OK Hwy 3E to junction OK Hwy 99, then over OK Hwy 99, to junction U.S. Hwy 70, then over U.S. Hwy 70 to junction U.S. Hwy 71, then over U.S. Hwy 71 to Texarkana, and return over the same route, serving all intermediate points; (2) Between Oklahoma City, OK and Paris, TX: from Oklahoma City, over U.S. Hwy 77 to junction OK Hwy 9, then over OK Hwy 9 to junction U.S. Hwy 177, then over U.S. Hwy 177 to Shawnee, OK, then return back over U.S. Hwy 177 to junction OK Hwy 39, then over OK Hwy 39 to junction OK Hwy 99, then over OK Hwy 99 to junction OK Hwy 3, then over OK Hwy 3 to junction U.S. Hwy 271, then over U.S. Hwy 271 to Paris, and return over the same route, serving all intermediate points; (3) Between Ada, OK and Durant, OK: from Ada over OK Hwy 1, to junction OK Hwy 7, then over OK Hwy 7 to Sulphur, OK, then return back over OK Hwy 7 to junction OK Hwy 12, then over OK Hwy 12 to Tishomingo, OK, then over OK Hwy 99 to junction U.S. Hwy 70, then over U.S. Hwy 70 to Durant, and return over the same route, serving all intermediate points. Applicant proposes to tack the authority sought with its authority in MC 150029 and subs thereto, and proposes to interline with other motor carriers. Supporting shippers: Ada, OK Chamber of Commerce, Ada, OK 74820 and Trailways, Inc., 427 W. Sheridan, Oklahoma City, OK 73102.

MC 151915 (Sub-5–1TA), filed June 7, 1982. Applicant: KELWORTH TRUCKING COMPANY, INC., Hwy. 59 South, Box 8, Hodgen, OK 74939. Representative: Don A. Smith, P.O. Box 43, Fort Smith, AR 72902. *Clay, concrete, glass and stone products,* between points in AR, KS, LA, MS, MO, OK and TX. Supporting shipper: The Bassichis Company, 2323 West Third Street, Cleveland, OH 44113.

MC 156965 (Sub-5–2TA), filed June 7, 1982. Applicant: HARVARD & SONS FREIGHT, INC., R.R. #3, Fairfield, IA 52556. Representative: Richard D. Howe, 600 Hubbell Building, Des Moines, IA 50309. *Metal products,* from Jefferson County, IA, to pts in Crosby and Lubbock Counties, TX. Supporting shipper: The Dexter Company, 501 N. 8th Street, Fairfield, IA 52556.

MC 158069 (Sub-5–1TA), filed June 8, 1982. Applicant: DUPRE TRANSPORT, INC., 166 W. Bellevue Street, Opelousas, LA 70580. Representative: David J. Halpern, 3636 North Causeway Boulevard, Suite 100, Metairie, LA 70002. *Petroleum products,* in tank vehicles between pts in LA on the one hand, and, on the other, pts in TX and MS. Applicant intends to tack. Supporting shippers: (1) Commercial Helicopters, 4939 Jamestown Ave., Suite 201, Baton Rouge, LA, 70808. (2) Delta Marketing, P.O. Box 22298, Nashville, TN. 37202. (3)

Hydrocarbon Trading Company, 811 Rusk, Suite 73, Houston, TX, 77002. (4) Orleans Oil Company, P.O. Box 51817, Lafayette, LA, 70505.

MC 160732 (Sub-5–1TA), filed June 7, 1982. Applicant: RGM TRANSPORTATION, INC., 203 S. Oak Park, Colfax, IA 50054. Representative: Richard D. Howe, 600 Hubbell Building, Des Moines, IA 50309. Contract, irregular; *(1) Hides and (2) packinghouses products,* (1) from Tama, Denison, Des Moines, Maquoketa, and Cedar Rapids, IA, Mason City, IL; and Green Bay and Milwaukee, WI, to pts in AL, FL, GA, MS, NY, OH, PA, TX, VA, and WV; and (2) from Cherokee, Denison, Des Moines, Waterloo, and Cedar Rapids, IA; E. Peoria, IL; Nashville, TN; and Albert Lea, MN, to pts in AL, FL, GA, MS, NY, OH, PA, TX, VA, and WV, under continuing contract(s) with Transworld Meat Corp. and Transworld Hide Corp. Supporting shipper: Transworld Meat Corp. and Transworld Hide Corp., P.O. Box 576, Cedar Rapids, IA 52406.

MC 162253 (Sub-5–1TA), filed June 7, 1982. Applicant: SUPREME CARRIERS, INC., P.O. Box 916, So. Sioux City, NE 68776. Representative: James F. Crosby & Associates, 7363 Pacific Street, Suite 210B, Omaha, NE 68114. (1) *Wood shavings,* between points in CO, MN, NE, SD, WI, and WY, on the one hand, and, on the other, pts in IL, WI, MO, IA, MN, TX, OK, KS, SD, ND, CO, and WY. Restricted to Supreme Wood Products Inc. (2) *Such commodities as are used or dealt in by manufacturers and distributors of building and construction materials,* between Sioux City, IA (and pts in its commercial zone) on the one hand, and, on the other, pts in the U.S. (except AK and HI). Supporting shippers: (1). Supreme Wood Products, Inc., P.O. Box 916, So. Sioux City, NE 68776. (2). Concrete Products, Inc., 2222 E. 3rd St., Sioux City, IA 51101.

MC 162253 (Sub-5–2TA), filed June 7, 1982. Applicant: SUPREME CARRIERS, INC., P.O. Box 916, So. Sioux City, NE 68776. Representative: James F. Crosby & Associates, 7363 Pacific Street, Suite 210B, Omaha, NE 68114. *Petroleum products, antifreeze, and batteries,* from Whiting, IN; St. Paul, MN; Omaha and Lincoln, NE; and Salina, KS (and pts in their commerical zones) to Sioux City, IA. Supporting shipper: Sherman Oil Products, Inc., 1601 Grand Avenue Sioux City, IA 51104.

MC 162253 (Sub-5–3TA), filed June 7, 1982. Applicant: SUPREME CARRIERS, INC., P.O. Box 916, So. Sioux City, NE 68776. Representative: James F. Crosby & Associates, 7363 Pacific Street, Suite 210B, Omaha, NE 68114. *Such commodities as are used or dealt in by manufacturers and distributors of railroad products,* between Dodge County, NE on the one hand, and, on the other, pts in the U.S. (except AK and HI). Supporting shipper: NL Magnus-Division of NL Industries, Inc., P.O. Box 1029, Fremont, NE 68025.

MC 162253 (Sub-5–4TA), filed June 7, 1982. Applicant: SUPREME CARRIERS, INC., P.O. Box 916, So. Sioux City, NE 68776. Representative: James F. Crosby & Associates, 7363 Pacific Street, Suite 210B, Omaha, NE 68114. (1) *Plastic products, machinery, and metal products,* between Sioux City, IA and pts in the U.S. (except AK and HI). (2) *Blasting sand,* from Jackson, NE (Dakota County) to pts in IL, WI, MN, IA, MO, KS, SD, and CO. Supporting shipper: (1) Silopress, 2601 Ogden, Sioux City, IA 51110. (2) C & T Blasting Sand Company, Jackson, NE 68174.

MC 162357 (Sub-5–1TA), filed June 7, 1982. Applicant: DIVERSIFIED COMMERCIAL SERVICES, INC., 5636 Lisette, St. Louis, MO 63109. Representative: B. W. LaTourette, Jr., 11 South Meramec, Suite 1400, St. Louis, MO 63105. *General Commodities (except Classes A and B explosives, household goods and commodities in bulk),* between St. Louis, MO on the one hand, and, on the other, points in MO, IL, IN, OH, AR, IA, TN, MS and KY. Restricted to traffic having prior or subsequent movement by rail piggyback. Supporting shipper(s): Associated Shippers Inc., 1021 South 39th Street, St. Louis, MO 63110.

MC 162361 (Sub-5–1TA), filed June 7, 1982. Applicant: G. P. EXPRESS, INC., 1175 Woodman Tower Building, Omaha, NE 68102. Representative: Donald L. Stern, Suite 610, 7171 Mercy Road, Omaha, NE 68106. *General Commodities (except household goods, commodities in bulk, and Classes A and B explosives),* between pts in IL, MO, IA, KS, MI, MN, and WI, on the one hand, and, on the other, Omaha, NE. Supporting shipper: Pamida, Inc., 8800 "F" Street, Omaha, NE 68127.

MC 162364 (Sub-5–1TA), filed June 7, 1982. Applicant: RICHARD E. BERRY TRUCKING, Route 5, Box 508, Springdale, AR 72764. Representative: James H. Berry, P.O. Box 32, Wesely, AR 72773. *Cement products* between points in AR, KS, MO, and OK. Supporting shipper: Springdale Ready Mix, Inc., Springdale, AR.

MC 2228 (Sub-5–1TA), filed June 10, 1982. Applicant: MERCHANTS FAST MOTOR LINES, INC., P.O. Drawer 591, Abilene, TX 79604. Representative: Mike Cotten, P.O. Box 1148, Austin, TX 78767. Common, regular; *general commodities (except household goods as defined by the Commission, commodities in bulk, and Classes A and B Explosives);* (1) between Albuquerque, NM and Aztec, NM, serving the intermediate pt of Bloomfield from Albuquerque over U.S. Hwy. 85 and Interstate Hwy. 25 to Junction State Hwy. 44, thence over State Hwy. 44 to Aztec, NM, and return over the same route; (2) between Aztec, NM and Shiprock, NM, serving all intermediate pts and serving the New Mexico Public Service Company San Juan Station near Waterflow, NM, as an off-route pt from Aztec over U.S. Hwy. 550 to Shiprock and return over the same route; (3) between Bloomfield, NM and Farmington, NM, serving no intermediate pts from Bloomfield over State Hwy. 17 to Farmington and return over the same route. Supporting shippers: 24.

Note.—Applicant intends to tack with existing authority.

MC 61396 (Sub-5–24TA), filed June 9, 1982. Applicant: HERMAN BROS., INC., P.O. Box 189, Omaha, NE 68101. Representative: Jack L. Shultz, P.O. Box 82028, Lincoln, NE 68501. *Fly ash,* from Kingsport, TN to points in VA. Supporting shipper: Southeastern Fly Ash Co., Inc., P.O. Box 461, Snellville, GA 30278.

MC 96878 (Sub-5–7TA), filed June 11, 1982. Applicant: CONSOLIDATED TRANSFER AND WAREHOUSE CO., INC., 1251 Taney, North Kansas City, MO 64116. Representative: Alfred L. King, (same as applicant). *Hazardous wastes for disposal (except in bulk)* between points in KS, MO, AR, OK, TX, LA, MT, MS, GA, AL, KY, TN, IL, IN, OH, MI, CO, WI, MN, UT, AZ, IA, NE, ND, and SD. Supporting shipper: Browning Ferris Industries of Kansas, Missouri City, MO.

MC 103967 (Sub-5–1TA), filed June 10, 1982. Applicant: CARRIER VAN SERVICE, INC., 3041 Paseo, Kansas City, MO 64109. Representative: Dixie C. Newhouse, P.O. Box 1417, Hagerstown, MD 21740. *Household goods,* (1) Between pts in Jackson, Clay and Cole Counties, MO, and Johnson and Wyandotte Counties, KS, on the one hand, and, on the other, Kansas City and Cole County, MO, Wyandotte County, KS, and Lucas County, OH. (2) Between pts in Jackson, Clay and Cole Counties, MO and Johnson and Wyandotte Counties, KS, on the one hand, and, on the other, pts in MD, DE, CT, RI and OK; and (3) Between pts in Jackson, Clay and Cole Counties, MO, Johnson and Wyandotte Counties, KS and Lucas County, OH, on the one hand, and, on

the other, pts in AZ, CA, NM, OK, TX, MD, NC and SC. Applicant intends to tack and interline. *Supporting shippers:* Movers International, Inc., P.O. Box 1294, Lynwood, WA 98036 and Northwest Consolidators, Inc., P.O. Box 25588, Seattle, WA 98125.

MC 110567 (Sub-5–8TA), filed June 9, 1982. Applicant: SOONER TRANSPORT CORPORATION, 666 Grand Avenue, Des Moines, IA 50309. Representative: Kenneth L. Kessler, P.O. Box 855, Des Moines, IA 50304. Contract irregular *general commodities distributed by retail grocery stores,* between Greene, County, OH on the one hand, and, on the other, pts in Harrison County, WV. Supporting shipper: Garden Fresh Markets, Inc., Nutterfort, WV.

MC 138104 (Sub-5–12TA), filed June 11, 1982. Applicant: MOORE TRANSPORTATION CO., INC., 3509 N. Grove Street, Fort Worth, TX 76106. Representative: Bernard H. English, 6270 Firth Road, Fort Worth, TX 76116. *Lumber or wood products,* between pts in AR, AL, AZ, FL, GA, LA, MS, NM, OK, and TX. Supporting shipper: Brand Forest Products, P.O. Box 270, Mansfield, TX 76063.

MC 147079 (Sub-5–1TA), filed June 11, 1982. Applicant: NATIONWIDE MAGAZINE AND BOOK DISTRIBUTORS, INC., 3000 E. Grauwyler Road, Irving, TX 75061. Representative: Ben Madill, (same as above). Contract, irregular; *Rubber and related products* from pts in AL, MS, LA, AR, and GA, to pts in TX and SC under a continuing contract with Long Mile Rubber Company, Dallas, TX.

MC 148152 (Sub-5–16TA), filed June 11, 1982. Applicant: K & H TRUCKING, INC., 3301 South Lamar St., Dallas, TX 75215. Representative: Edmond E. Payne, same as applicant. Contract: Irregular, *General Commodities (except classes A and B explosives or hazardous materials)* between pts in the U.S. (except AK and HI) Under continuous contract(s) with Blue Cross Laboratories, The Charlie O Company and Monsey Products. Supporting shipper: Blue Cross Laboratories, 26411 No. Golden Valley Rd., Saugus, CA 91350; The Charlie O Company, 1520 West 10th St., Little Rock, AR 72117; Monsey Products Co., 3802 Miller Park Dr., Dallas, TX 75042.

MC 148987 (Sub-5–3TA), filed June 11, 1982. Applicant: W. C. CARRIERS, INC., 5229 N.W. 5th St., Bethany, OK 73008. Representative: Kenneth L. Peacher, 3925 N. Ann Arbor, Oklahoma City, OK 73122. *Water Well Pumps, Tanks, Filters, Motors, Purifiers, and other related items necessary for pumping water (except commodities in bulk, in tank vehicles)* between OK on the one hand, and TX, LA, AR, MO, KS, NM, CO, WY, NE, SD, ND, AZ, CA, and UT, on the other. Supporting shipper: Sta-Rite Ind., Water Equipment Division, Oklahoma City, OK.

MC 150229 (Sub-5–2TA), filed June 11, 1982. Applicant: CENTRAL PETROLEUM TRANSPORT, INC., 6115 Mitchell St. Sioux City, IA. 51110. Representative: Edward A. O'Donnell, 1004 29th St., Sioux City, IA 51104. *Liquid Asphalt* between facilities of Jebro, Inc, Sioux City, IA. on the one hand, and, on the other pts in IA, NE, SD, KS & MN. Supporting shipper: Jebro, Inc., 2303 Bridgeport, Sioux City, IA 51117.

MC 153334 (Sub-5–2TA), filed June 10, 1982. Applicant: JOHN NEWTON STONE d.b.a. SOUTHWESTERN, EXPRESS, 9335 Ronda Lane, Houston, TX 77074. Representative: Timothy J. Herman, 522 First Federal Plaza, Austin, TX 78701. *Machinery and Supplies* (when moving in one ton trucks or less): From pts in Harris, Montgomery, Brazoria, Galvestion and Fort Bend Counties, TX to pts in LA, OK and NM. Supporting shippers: 10.

MC 155256 (Sub-5–5TA), filed June 11, 1982. Applicant: KASSEL TRANSFER, INC., Route 1, Letts, IA 52754. Representative: William L. Fairbank, 2400 Financial Center, Des Moines, IA 50309. *Food and related products,* from Burlington, IA to pts in CO, IN, KS, KY, MI, MN, MO, NE, ND, OK, SD and WI. Supporting shipper: Midwest Biscuit Company, Inc., 3000 Mount Pleasant Street, Burlington, IA 52601.

MC 156387 (Sub-5–4TA), filed June 11, 1982. Applicant: JIM L. LANGENFELD d.b.a. D & J ENTERPRISES, Rural Route #2, Dow City, IA 51528. Representative: James F. Crosby & Associates, 7363 Pacific Street, Suite 210B, Omaha, NE 68114. Contract, Irregular; *General commodities (except in bulk and the usual exceptions)* between pts in the U.S. (except AK and HI). Supporting shipper: Futuristics, LTD, P.O. Box 516, Denison, IA 51442.

MC 161121 (Sub-5–1TA), filed June 9, 1982. Applicant: LIQUID CARRIERS, INCORPORATED, 151 Second Street, Akron, IA 51001. Representative: D. Douglas Titus, 340 Insurance Exchange Building, Sioux City, IA 51101. *Agricultural Chemicals,* between pts in IL, IA, MN, MO, NE, and SD, Supporting shippers: Terminal Grain Corporation, 600 Benson Building, Sioux City, IA 51101; Nutra-Flo Chemical Co., 1919 Grand Ave., Sioux City, IA 51107; and Terra Chemicals International, Inc., 4th and Nebraska Sts., Sioux City, IA 51101.

MC 162007 (Sub-5–1TA), filed June 9, 1982. Applicant: JACK COOK FARMS, INC., Rural Route 1, Sergeant Bluff, IA 51054. Representative: D. Douglas Titus, 340 Insurance Exchange Building, Sioux City, IA 51101. *Aricultural Chemicals,* between pts in IA, MN, NE, and SD. Supporting shippers: 6.

MC 162204 (Sub-5–1TA), filed June 11, 1982. Applicant: SOUTHWEST SLEEPER COACHES, INC., 5155 Wichita Street, Fort Worth, TX 76119. Representative; Bob Bowland, same as applicant. *Passengers and their baggage in special and charter operations in round trip sight-seeing or pleasure tours* beginning and ending at pts in Tarrant and/or Dallas Counties, TX, and extending to pts in the U.S. Supporting shippers: 6.

MC 162365 (Sub-5–1TA), filed June 11, 1982. Applicant: JAMES H. EDWARDS, d.b.a. TEJANO LINES, P.O. Box 172, Grapevine, TX 76051. Representative: James H. Edwards (same as applicant). contract: Irregular. *Alcoholic beverages, in containers,* from Port Houston, Barbours Cut and Port Galveston, TX to Dallas, Fort Worth, Odessa, Amarillo, Odessa and El Paso, TX. Supporting shipper: Glazer Wholesale Drug Co., Dallas, TX.

MC 162444 (Sub-5–TA), filed June 11, 1982. Applicant: B.A.D. SERVICES, INC., P.O. Box 32318, Oklahoma City, OK 73123. Representative: William P. Parker, P.O. Box 54657, Oklahoma City, OK 73154. *Oil field commodities in shipments not to exceed 14,000 pounds per shipment,* between pts in Oklahoma County, OK on the one hand, and, on the other, pts in AR, CO, KS, LA, NM, TX and WY. Supporting shippers: 7.

MC 162445 (Sub-5–1TA), filed June 11, 1982. Applicant: DONALD WOOD TRUCKING, INC., 1019 S.E. 1st, Lawton, OK 73501. Representative: William P. Parker, P.O. Box 54657, Oklahoma City, OK 73154. *Construction materials in bulk and cement except in bulk,* between pts in OK on and west of Interstate 35 and on and south of Interstate 40 on the one hand, and, on the other, pts in TX on and west of Interstate 35 and on and north of U.S. Highway 380. Supporting shippers: 6.

The following applications were filed in Region 6. Send protests to: Interstate Commerce Commission, Region 6 Motor Carrier Board, 211 Main St., Suite 501, San Francisco, CA 94105.

MC 162412 (Sub-6–1TA), filed June 8, 1982. Applicant: ALEX PAVLICA, d.b.a. ALEX'S HOT SHOT SERVICE, P.O. Box 82, Burns, WY 82053. Representative: Alex Pavlica (same as applicant). *Contract Carrier,* Irregular Routes: *Light*

oil field equipment and tools, (Under 7,500 pounds) between points in CO, ID, UT and WY for the account of Amoco Production Company for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Amoco Production Company, P.O. Box 39200, Denver, CO 80239.

MC 148614 (Sub-6–1TA), filed June 8, 1982. Applicant: CALDWELL TRUCKING, INC., P.O. Box 120, Star Route, Pendleton, OR 97801. Representative: Lawrence V. Smart, Jr., 419 N.W. 23rd Ave., Portland, OR 97210. *Contract Carrier:* Irregular Routes: *Paper and related products* between points in OR, WA, CA, NV, ID, UT, AZ, MT, WY, CO, NM, TX, WI, IA, MN, ND, SD, NE, IL and MI for 270 days. Supporting shipper: Superior Transportation Systems, Inc., 9450 S.W. Commerce Ct., Suite 400, Wilsonville, OR 97070.

MC 160161 (Sub-6–3TA), filed June 8, 1982. Applicant: COASTMASTER TRANSPORT, 4904 Lacey Blvd. SE., Lacey, WA 98503. Representative: Kenneth R. Mitchell, 2320A Milwaukee Way, Tacoma, WA 98421. *Contract Carrier,* Irregular routes: *Brake shoes and brake shoe assemblies,* from Oakland County, MI to points in CA, CO, DE, FL, GA, IL, IN, KS, MA, MN, MO, MT, NV, NJ, NY, NC, OH, OR, PA, TN, TX, UT, VT, WA, WV, and WI for 270 days. Supporting shipper: Uni-Bond, Inc., 1350 Jarvis, Ferndale, MI 48220.

MC 162139 (Sub-6–1TA), filed June 7, 1982. Applicant: COMMONWEALTH TRUCKING, INC., P.O. Box 902, Yreka, CA 96097. Representative: Donald L. Smith (same as applicant). *Plastic pipe and fittings,* between Paramount, CA on the one hand, and, on the other, points in AZ, NV, ID, UT, and MT, restricted to shipments moving from the facilities of Carlon Div., Indianhead Corp., for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Carlon Div., Indianhead Corp, #3 Commerce Park Sq., 2320 Chagrin Blvd., Cleveland, OH 44137.

MC 162202 (Sub-6–1TA), filed June 8, 1982. Applicant: CECIL M. GALLOWAY, d.b.a. D & C TRUCKING, 862 Alexander St., Livermore, CA 94550. Representative: Cecil M. Galloway (same as applicant). *Contract Carrier:* Irregular Routes: *Lumber and lumber mill products* from Butte, El Dorado and Placer Counties of CA and White City, Grants Pass of OR returning to Oakland, CA for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Michiels International, 5967 Riverside Dr., Redding, CA.

MC 153714 (Sub-6–5TA), filed June 8, 1982. Applicant: WILLIAM A. MURRAY, d.b.a. FREDDY'S TRUCKING, 2200 S.E. 45th, #49, Hillsboro, OR 97123. Representative: William A. Murray (same as applicant). (1) Alcoholic beverages between Multnomah and Hood River Counties, OR, King and Spokane Counties, WA, Denver County, CO, Ada County, ID, Laramie County, WY, Salt Lake County, UT, Pima and Maricopa Counties, AZ, Clark, Humboldt and Washoe Counties, NV, Lewis and Clark Counties, MT, and points in CA. (2) Beer and wine between King County, WA, and Marion County, OR. (3) Pulp and paper and printed material between Orange and Los Angeles Counties, CA, Lane, Marion and Multnomah Counties, OR, King and Spokane Counties, WA, Kootena and Latah Counties, ID, for 270 days. Supporting shippers: Potters Distilleries, Inc., 18700 N.E. San Rafael, Portland, OR 97230; Thomas Dist., 1768 13 St. S.E., Salem, OR 97302; Sun Mark Data, Inc., 239 S.E. Madison, Portland, OR 97214.

MC 1515 (Sub-6–20TA), filed June 10, 1982. Applicant: GREYHOUND LINES, INC., Greyhound Tower, Phoenix, AZ 85077. Representative: R. L. Wilson (same address as applicant). *Common carrier,* regular routes, *passengers and their baggage and express and newspapers,* in the same vehicle with passengers, between Fort Wayne, IN and Elkhart, IN over U.S. Hwy 33 and return over the same route, serving all intermediate points for 180 days. An underlying E.T.A. seeking 90 days authority has been filed. Supporting shipper: There are 9 supporting shippers. Their statements may be examined at the Regional Office listed.

MC 162434 (Sub-6–1TA), filed June 10, 1982. Applicant: JAMES L. HOGGATT, d.b.a. HOGGATT TRUCKING, 1525 S 400 E, #8, Springville, UT 84663. Representative: John R. Merkling, P.O. Box 772, Provo, UT 84603. *Contract Carrier,* Irregular Routes: *Mobile Homes* from Boise, ID to Springville and Spanish Fork, UT; from Springville and Spanish Fork, UT to points in UT, AZ, WY, NV, CO, and ID under continuing contract with Luxury Mobile Homes and Miller Mobile Homes for 270 days. Supporting shipper(s): Luxury Mobile Homes, 1525 N Main, Springville, UT; Miller Mobile Homes, 950 E 800 N, Spanish Fork, UT.

MC 127922 (Sub-6–5TA), filed June 8, 1982. Applicant: NELLO PISTORESSI & SON, INC., P.O. Box 432, Toppenish, WA 98948. Representative: George R. LaBissoniere, 15 S. Grady Way, Suite 233, Renton, WA 98055. *Contract carrier,* Irregular routes: *Food and related products* from Portland, OR, to Yakima, WA, for the account of Kwikool Ice and Cold Storage, Inc. for 270 days. Supporting shipper: Kwikool Ice and Cold Storage, Inc., 955 N. Columbia Blvd., Bldg. C, Portland, OR 97217.

MC 161710 (Sub-6–1TA), filed June 10, 1982. Applicant: NOSS BROTHERS TRUCKING, INC., Route 1, P.O. Box 57, Clarksburg, CA 95612. Representative: Arden Riess, P.O. Box 7965, Stockton, CA 95207. *Contract Carrier;* Irregular Routes: *Sugar and materials, equipment and supplies used in the manufacture of sugar; flour, donut mixes and fruit fillings and jellies* between points in CA, OR, NV and WA for 270 days. Supporting shipper(s): American Crystal Sugar Co., 101 N. Third St., Moorhead, MN 56560; Saroni Sugar & Rice, P.O. Box 96, Oakland, CA 94604.

MC 162213 (Sub-6–1TA), filed June 10, 1982. Applicant: PACIFIC SHIPPERS SERVICE, 1217 So. 7th St., Modesto, CA 95353. Representative: Truett Yarbrough (same as applicant). *Canned or preserved foodstuffs, coffee and glace,* from points in CA to points in AL, AR, AZ, CT, CO, DC, FL, GA, IA, IL, IN, KS, KY, LA, MA, MD, MI, MN, MO, MS, ND, NE, NJ, NM, NY, OH, OK, OR, PA, SD, TN, TX, UT, WA, and WI for 270 days. An underlying ETA seeks 120 days authority. Supporting shippers: S & W Fine Foods, Inc., 1730 S. El Camino Real, San Mateo, CA 94402; Tri-Valley Growers, 100 California St., San Francisco, CA 94106; California Canners & Growers, 3100 Ferry Bldg., San Francisco, CA 94406.

MC 162413 (Sub-6–1TA), filed June 8, 1982. Applicant: PRIMO CORPORATION, 4817 Alcoa Ave., Vernon, CA 90058. Representative: Curtis Lorenz (address same as applicant). *Contract Carrier;* Irregular Routes: *Plastic Material, packaged and in bulk,* between Vernon, CA and points in AZ, NV, NM, OR, WA and TX for 270 days. Supporting shipper: H. Muehlstein & Co., Inc., 591 W. Putnam Ave., Greenwich, CT 06830.

MC 54567 (Sub-6–3TA), filed June 11, 1982. Applicant: RELIANCE TRUCK CO., 2500 N. 24th Ave., Phoenix, AZ 85009. Representative: A. Michael Bernstein, 1441 E. Thomas Rd., Phoenix, AZ 85014. *General commodities,* from the facilities of Rogers Terminal in Rogers County, OK to points in OK, AR, KS and MO, for 270 days. Supporting shipper: Rogers Terminal, Inc., Route 8, Box 310, Claremore, OK 74017.

MC 147083 (Sub-6–4TA), filed June 10, 1982. Applicant: TANKS, INC., P.O. Drawer 1179, Gillette, WY 82716. Representative: Leon L. Brady (same as applicant). *Machinery, equipment, materials, and supplies, used in, or in*

connection with the discovery, development, production, refining, manufacture, processing, storage, transmission, and distribution of natural gas and petroleum, and their by-products and complete drilling rigs. Between points in WY, CO, NE, MT, SD, ND, ID, OR, WA, NV, UT for 270 days. Supporting shippers: Transcontinental Drilling Company, 555 17 Street, Suite 2700, Denver, CO 80202; Shelby Drilling, Inc., 254 N. Center, Suite 108C, Casper, WY 82601; Milchem, Inc., P.O. Box 693, Casper, WY 82602.

MC 162411 (Sub-6–1TA), filed June 9, 1982. Applicant: TETON TRANSPORTATION, INC., P.O. Box 1929, Cheyenne, WY 82001. Representative: John T. Wirth, 717 17th St., Ste. 2600, Denver, CO 80202–3357. *Contract carrier,* irregular routes: *Lumber, wood products and forest products,* from Laramie and Cheyenne, WY to points in CO, IA, IL, KS, MO, NE, OK, SD, and TX, under continuing contract(s) with Teton West Lumber, Inc. of Cheyenne, WY and its affiliates and subsidiaries, for 270 days. Supporting shipper: Teton West Lumber, Inc., P.O. Box 1929, Cheyenne, WY 82001.

MC 162435 (Sub-6–1TA), filed June 10, 1982. Applicant: VANDERMEER FOREST PRODUCTS, INC., P.O. Box 247, Lynnwood, WA 98036. Representative: Jim Pitzer, 15 S. Grady Way, Suite 321, Renton, WA 98055–3273. *Contract carrier,* irregular routes: *Lumber and wood products,* between points in WA and OR, under continuing contract(s) with Nepa Pallet & Container Co., Inc. of Snohomish, WA and Whittier Manufacturing of Eugene, OR, for 270 days. Supporting shippers: Nepa Pallet & Container Co., Inc., P.O. Box 349, Snohomish, WA 98290; Whittier Manufacturing, P.O. Box 2827, Eugene, OR 97402.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82–16662 Filed 6–18–82; 8:45 am]

BILLING CODE 7035–01–M

[Volume No. OP4, Vol. 215]

Motor Carriers; Permanent Authority Decision; Decision-Notice

Decided: June 15, 1982.

The following applications, filed on or after July 3, 1980, seek approval to consolidate, purchase, merge, lease operating rights and properties, or acquire control of motor carriers pursuant to 49 U.S.C. 11343 or 11344. Also, applications directly related to these motor finance applications (such as conversions, gateway eliminations, and securities issuances) may be involved.

The applications are governed by Special Rule 240 of the Commission's Rules of Practice (49 CFR 1100.240). See Ex Parte 55 (Sub-No. 44), *Rules Governing Applications Filed By Motor Carriers Under 49 U.S.C. 11344 and 11349,* 363 I.C.C. 740 (1981). These rules provide among other things, that opposition to the granting of an application must be filed with the Commission in the form of verified statements within 45 days after the date of notice of filing of the application is published in the **Federal Register.** Failure seasonably to oppose will be construed as a waiver of opposition and participation in the proceeding. If the protest includes a request for oral hearing, the request shall meet the requirements of Rule 242 of the special rules and shall include the certification required.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.241. A copy of an application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00, in accordance with 49 CFR 1100.241(d).

Amendments to the request for authority will not be accepted after the date of this publication. However, the Commission may modify the operating authority involved in the application to conform to the Commission's policy of simplifying grants of operating authority.

We find, with the exception of those applications involving impediments (e.g., jurisdictional problems, unresolved fitness questions, questions involving possible unlawful control, or improper divisions of operating rights) that each applicant has demonstrated, in accordance with the applicable provisions of 49 U.S.C. 11301, 11302, 11343, 11344, and 11349, and with the Commission's rules and regulations, that the proposed transaction should be authorized as stated below. Except where specifically noted this decision is neither a major Federal action significantly affecting the quality of the human environment nor does it appear to qualify as a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests as to the finance application *or* to any application directly related thereto filed within 45 days of publication (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (unless the application involves impediments) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice. To the extent that the authority sought below may duplicate an applicant's existing authority, the duplication shall not be construed as conferring more than a single operating right.

Applicant(s) must comply with all conditions set forth in the grant or grants of authority within the time period specified in the notice of effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

By the Commission, Review Board Number 2, Carleton, Fisher and Williams.

Agatha L. Mergenovich,

Secretary.

MC–F–14859, filed May 21, 1982. SPACE CENTER, INC. (SPACE) (444 Lafayette Rd., St. Paul, MN 55101)—continuance in control—ALL AREA EXPRESS, INC. (ALL) (P.O. Box 5027, Sioux Falls, SD 57117). Representative: James E. Ballenthin, 630 Osborn Bldg., St. Paul, MN 55102. SPACE seeks authority to continue in control of ALL upon the institution by ALL of operations in interstate or foreign commerce, as a motor common carrier. ALL has filed an application in MC–157516 to transport *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in IL, IA, KS, MN, MO, NE, ND, SD, TX, and WI, on the one hand, and, on the other, points in the U.S. (except AK and HI). Space Center, Inc., also has an interest in Witte Transportation (MC–8964); and Space Carriers, Inc. (MC–136512).

Note: ALL has filed as a directly related application its initial common carrier application. This application, docketed No. MC–157516, is published in this same **Federal Register** issue.

[FR Doc. 82–16667 Filed 6–18–82; 8:45 am]

BILLING CODE 7035–01–M

[Volume No. OP4–VOL–216]

Motor Carriers; Permanent Authority Decision; Decision-Notice

Decided: June 15, 1982.

The following operating rights applications, filed on or after July 3, 1980, are filed in connection with pending finance applications under 49 U.S.C. 10926, 11343 or 11344. The applications are governed by Special Rule 252 of the Commission's General Rules of Practice (49 CFR 1100.252).

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.252. Persons submitting protests to applications filed in

connection with pending finance applications are requested to indicate across the front page of all documents and letters submitted that the involved proceeding is directly related to a finance application and the finance docket number should be provided. A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the request for authority are not allowed. However, the Commission may have modified the application to conform to the Commission's policy of simplifying grants of operating authority.

Findings: With the exceptions of those applications involving duly noted problems (e.g., unresolved common control, unresolved fitness questions, and jurisdictional problems) we find, preliminarily, that each applicant has demonstrated that its proposed service warrants a grant of the application under the governing section of the Interstate Commerce Act. Each applicant is fit, willing, and able properly to perform the service proposed and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where specifically 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 protests in the form of verified statements as to the finance application *or* to the following operating rights applications directly related thereto filed within 45 days of publication of this decision-notice (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (except where the application involves duly noted problems) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice. Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

Applicant(s) must comply with all conditions set forth in the grant or grants of authority within the time period specified in the notice of effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

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 Number 2, Carleton, Fisher and Williams.

Agatha L. Mergenovich,

Secretary.

MC 157516, filed May 21, 1982. Applicant: ALL AREA EXPRESS, INC., P.O. Box 5027, Sioux Falls, SD 57117. Representative: James W. Ballenthin, 630 Osborn Bldg., St. Paul, MN 55102, (612) 227–7731. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in IL, IA, KS, MN, MO, NE, ND, SD, TX, and WI, on the one hand, and, on the other, points in the U.S. (except AK and HI).

Note: This application is directly related to MC–F–14859, published in this same **Federal Register** Issue.

[FR Doc. 82–16668 Filed 6–18–82; 8:45 am]

BILLING CODE 7035–01–M

Motor Carriers; Permanent Authority Decisions; Decision-Notice

The following applications, filed on or after February 9, 1981, are governed by Special Rule of the Commission's Rules of Practice, see 49 CFR 1100.251. Special Rule 251 was published in the **Federal Register** on December 31, 1980, at 45 FR 86771. For compliance procedures, refer to the **Federal Register** issue of December 3, 1980, at 454 FR 80109.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.252. Applications may be protested *only* on the grounds that applicant is not fit, willing, and able to provide the transportation service or to comply with the appropriate statutes and Commission regulations. A copy of any application, including all supporting evidence, can be obtained from applicant's representative upon request and payment to applicant's representative of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g. unresolved common contol, 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 serivce proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. This presumption shall not be deemed to exist where the application is opposed. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient opposition in the form of verified statements filed on or before 45 days from date of publication (or, if the application later become unopposed), appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

Please direct status inquiries to the Ombudsman's Office, (202) 275–7326.

Volume No. OP1–101

Decided: June 10, 1982.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier.

MC 162280, filed June 1, 1982. Applicant: DARRIUS NOTTINGHAM, d.b.a. NHR DISTRIBUTORS, 926 West 2nd St., San Pedro, CA 90731. Representative: Richard D. Howe, 600 Hubbell Bldg., Des Moines, IA 50309, (515) 244–2329. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners*, by the owner of the motor vehicle in such vehicle, between points in the U.S. (except AK and HI).

MC 162290, filed June 1, 1982. Applicant: BUDDY BROOKSHIRE, 2207–7 Canterwood Dr., Charlotte, NC 28213. Representative: Buddy Brookshire (same

address as applicant), (704) 598–8304. As a broker of *general commodities* (except household goods), between points in the U.S.

Volume No. OP3–090

Decided: June 14, 1982.

By the Commission, Review Board No. 2, Members Carleton, Fisher, and Williams.

MC 139085 (Sub-2), filed June 4, 1982. Applicant: ROSS BROS. TRANSPORTATION, INC., P.O. Box 103, Circle, MT 59215. Representative: W. E. Seliski, 2 Commerce St., P.O. Box 8255, Missoula, MT 59807, (406) 543–8369. Transporting, for or on behalf of the U.S. Government, *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), between points in the U.S. (except AK and HI).

MC 162294, filed June 1, 1982. Applicant: MARINE INTERMODAL COOPERATIVE ASSOCIATION, d.b.a. CONTAINER TRANSFER SERVICE, 4533 N. Channel Ave., Portland, OR 97217. Representative: Edward A. Francom, P.O. Box 1970, Lake Oswego, OR 97034, (503) 285–2904. As a *broker of general commodities* (except household goods), between points in the U.S.

MC 162315, filed May 28, 1982. Applicant: AMERICAN FREIGHT FORWARDING, INC., 351 West 38th St., New York, NY 10123. Representative: Ronald Shapss, 450 Seventh Ave., New York, NY 10123, (212) 239–4610. As a *broker* of *general commodities* (except household goods), between points in the U.S. (except AK and HI).

MC 162334, filed June 3, 1982. Applicant: EDWARD C. WULF, d.b.a. WULF TRUCKING, R.R. #1, Washington, IA 52353. Representative: Larry D. Knox, 600 Hubbell Bldg., Des Moines, IA 50309, (515) 244–2329. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners* by the owner of the motor vehicle in such vehicle, between points in the U.S. (except AK and HI).

Volume No. OP4–210

Decided: June 9, 1982.

By the Commission, Review Board No. 2, Members Carleton, Fisher, and Williams.

MC 159577, filed May 27, 1982. Applicant: PAUL K. SCOTT, d.b.a., SCOTT TRUCKING COMPANY, 11201 Old Spanish Trail, New Orleans, LA 70128. Representative: Wade H. Brown, P.O. Box 217, Bessemer, AL 35020, (205) 428–8629. Transporting (1) *shipments weighing 100 pounds or less* if transported in a motor vehicle in which no one package exceeds 100 pounds, and (2) for and on behalf of the United States Government, *general commodities* (except used household goods, hazardous or secret materials and sensitive weapons and munitions), between points in the U.S. (except AK and HI).

MC 162307, filed June 1, 1982. Applicant: KEN L. SAYLES, R.R. 2, Vermontville, MI 49096. Representative: Ken L. Sayles (same address as applicant), (517) 726–1032. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners,* by the owner of the motor vehicle in such vehicle, between points in the U.S. (except AK and HI).

MC 162347, filed June 4, 1982. Applicant: TURTLE MOUNTAIN TRUCK BROKERS, INC., Route 1, Box 68, Bottineau, ND 58318. Representative: C. Jack Pearce, 1000 Connecticut Avenue NW., Washington, DC 20036, (202) 785–0048. As a *broker of general commodities* (except household goods), between points in the U.S. (except AK and HI).

Volume No. OP4–213

Decided: June 10, 1982.

By the Commission, Review Board No. 2, Members Carleton, Fisher, and Williams.

MC 162306, filed June 1, 1982. Applicant: TRADE AND MARKETING INTERNATIONAL, LTD., 3579 E. Cliff Dr., Salt Lake City, UT 84117. Representative: Frederick J. Coffman, 1834 N. Kelly Ave., P.O. Box 1455, Upland, CA 91786, (714) 981–9981. As a *broker of general commodities* (except household goods), between points in the U.S. (except AK and HI).

Volume No. OP4–218

Decided: June 15, 1982.

By the Commission, Review Board No. 2, Members Carleton, Fisher, and Williams.

MC 133846 (Sub-10), filed May 24, 1982. Applicant: FLITE LINE SERVICE, INC., 1414 Calcon Hook Rd., Sharon Hill, PA 19079. Representative: Gus A. Pedicone (same address as applicant), (215) 365–7350. Transporting (1) for or on behalf of the United States Government, *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), and (2) *shipments weighing 100 pounds or less* if transported in a motor vehicle in which no one package exceeds 100 pounds, between points in the U.S. (except AK and HI).

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82–16514 Filed 6–18–82; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–167 (Sub-No. 453N)]

Conrail Abandonment in Bradford, PA; Findings

Notice is hereby given pursuant to Section 308(e) of the Regional Rail Reorganization Act of 1973 that the Commission, Review Board Number 3 has issued a certificate authorizing the Consolidated Rail Corporation to abandon its rail line between milepost 0.2 and milepost 0.8 in the County of McKean, PA, a total distance of 0.6 miles effective on March 11, 1982.

The net liquidation value of this line is $10,551. If, within 120 days from the date of this publication, Conrail receives a bona fide offer for the sale, for 75 percent of the net liquidation value, of this line it shall sell such line and the Commission shall, unless the parties otherwise agree, establish an equitable division of joint rates for through routes over such lines.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82–16664 Filed 6–18–82; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–167 (Sub-161N)]

Conrail Abandonment Between Bowersville and Punxsutawaney, PA; Findings

Notice is hereby given pursuant to Section 308(e) of the Regional Rail Reorganization Act of 1973 that the Commission, Review Board Number 1 has issued a certificate authorizing the Consolidated Rail Corporation to abandon its rail line between South Dayton and Waterboro in the Counties of Chautauqua and Cattaraugus, NY, a total distance of 16.1 miles effective on May 18, 1982.

The net liquidation value of this line is $320,000. If, within 120 days from the date of this publication, Conrail receives a bona fide offer for the sale, for 75 percent of the net liquidation value, of this line it shall sell such line and the Commission shall, unless the parties otherwise agree, establish an equitable

division of joint rates for through routes over such lines.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-16665 Filed 6-18-82; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-167 (Sub-167)]

Conrail Abandonment Betweeen New Platz and Wallkill, NY; Findings

Notice is hereby given pursuant to Section 308(e) of the Regional Rail Reorganization Act of 1973 that the Commission, Review Board Number 1 has issued a certificate authorizing the Consolidated Rail Corporation to abandon its rail line between New Platz and Wallkill in the County of Ulster, NY, at total distance of 13.9 miles effective on February 23, 1982.

The net liquidation value of this line is $441,576. If, within 120 days from the date of this publication, Conrail receives a bona fide offer for the sale, for 75 percent of the net liquidation value, of this line it shall sell such line and the Commission shall, unless the parties otherwise agree, establish an equitable division of joint rates for through routes over such lines.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-16666 Filed 6-18-82; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 387 (Sub-No. 150); ICC-UP-C-0040]

Union Pacific Railroad Co.; Exemption for Contract Tariff

AGENCY: Interstate Commerce Commission.

ACTION: Notice of provisional exemption.

SUMMARY: Petitioners are 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: Tom Smerdon, (202) 275-7277.

SUPPLEMENTARY INFORMATION: The Union Pacific Railroad Company (UP), the Chicago and Northwestern Transportation Company (CNW), and the Chesapeake and Ohio Railway Company (CO), filed a joint petition on May 28, 1982, seeking an exemption under 49 U.S.C. 10505 from the statutory notice provisions of 49 U.S.C. 10713(e). Petitioners request that we permit contract ICC-UP-C-0040 filed on May 26, 1982, to become effective on one day's notice. The contract involves the movement of frozen foodstuffs.

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. However, the Commission has granted relief under our section 10505 exemption authority in exceptional situations.

The petition shall be granted. The contract provides for the shipper to tender to the petitioners a specified minimum volume of traffic. This minimum volume is based upon the shipper's projected traffic for its fiscal year 1982-83, which extends from May 1, 1982, to April 30, 1983. Petitioners state that due to unforeseen delays in negotiations the parties were unable to finalize the contract until May 25, 1982. Petitioners state further that this delay may hamper the shipper's ability to meet the minimum volume requirement unless short notice effectiveness of the contract is granted. We find this to be the type of exceptional circumstance which warrants a provisional exemption.

Petitioners' contract ICC-UP-C-0040 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(e) 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 and to disapprove it.

Subject to compliance with these conditions, under 49 U.S.C. 10505(a) we find that the 30-day notice requirement in this instance is not necessary to carry out the transportation policy of 49 U.S.C. 10101(a) 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(d) if protests are filed within 15 days of publication in the **Federal Register**. This action will not significantly affect either the quality of the human environment or conservation of energy resources.

Authority: 49 U.S.C. 10505.

Dated: June 14, 1982.

By the Commission, Division 2, Commissioners Gresham, Taylor, and Simmons. 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.

James H. Bayne,

Acting Secretary.

[FR Doc. 82-16663 Filed 6-18-82; 8:46 am]

BILLING CODE 7035-01-M

NUCLEAR REGULATORY COMMISSION

Abnormal Occurrence Report; Section 208 Report Submitted to the Congress

Notice is hereby given that pursuant to the requirements of Section 208 of the Energy Reorganization Act of 1974, as amended, the Nuclear Regulatory Commission (NRC) has published and issued the periodic report to Congress on abnormal occurrences (NUREG-0090, Vol. 4, No. 4). The release date is June 16, 1982.

Under the Energy Reorganization Act of 1974, which created the NRC, an abnormal occurrence is defined as "an unscheduled incident or event which the Commission (NRC) determines is significant from the standpoint of public health or safety." The NRC has made a determination, based on criteria published in the **Federal Register** (42 FR 10950) on February 24, 1977, that events involving an actual loss or significant reduction in the degree of protection against radioactive properties of source, special nuclear, and byproduct materials are abnormal occurrences.

This report to Congress is for the fourth calendar quarter of 1981. The report identifies the occurrences or events that the Commission determined to be significant and reportable; the remedial actions that were undertaken are also described. The report states that there were two abnormal occurrences at the nuclear power plants licensed to operate. One involved a generic concern pertaining to blockage of coolant flow to safety-related systems.

The other involved seismic design errors at the Diablo Canyon Nuclear Power Plant with a subsequent suspension of the fuel load and low power operating license for Unit 1. There were no abnormal occurrences for the other NRC licensees during the report period; the Agreement States reported no abnormal occurrences to the NRC.

The report to Congress also contains information updating a previously reported abnormal occurrence.

Interested persons may review the report at the NRC's Public Document Room, 1717 H Street, NW, Washington D.C. or at any of the more than 120 Local

Public Documents Rooms throughout the country. Single copies of the report, designated NUREG–0090, Vol. 4, No. 4, may be purchased from the National Technical Information Service, Springfield, Virginia 22161, on or about June 30, 1982.

A year's subscription to the NUREG–0090 series publication, which consists of four issues, is available from the NRC/GPO Sales Program, Division of Technical Information and Document Control, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Microfiche of single copies of the publication are also available from this source.

Dated at Wasington, D.C. this 16th of June 1982.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 82-16718 Filed 6-18-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-155]

Consumers Power Co., Big Rock Point Plant; Issuance of Director's Decision Under 10 CFR 2.206

By petitions sent in the form of Mailgrams on April 6, 1982 to the Commissioners of the Nuclear Regulatory Commission (the Commission) (NRC), Ms. JoAnn Bier and Ms. Christa-Maria requested to "intervene" in the startup of the Big Rock Point Plant until the "reactor core can be safely offloaded in the event of an emergency * * *" The petitions have been treated under 10 CFR 2.206 of the Commission's regulations. They were referred to the NRC staff for disposition on April 12, 1982.

On April 10, 1982, prior to the staff's receipt of the petitions, the Big Rock Point facility started up after the 1982 refueling outage. The petitions, which implicitly requested immediate action to prevent the startup, was consequently treated as requests to suspend continued plant operation.

The petitions are based on the fact that the spent fuel pool at the Big Rock Point Plant does not have adequate capacity to allow complete offloading of the reactor fuel in the core. The petitioners indicate four concerns which lead them to the conclusion that the situation presents a threat to public health and safety. These concerns pertain to embrittlement of the reactor vessel due to neutron bombardment, advanced age of reactor systems, lack of a fuel transfer canal and storage of fuel.

Upon review of information pertaining to the issues and the information provided by Ms. Bier and Ms. Christa-Maria, the Director of Nuclear Reactor Regulation has determined that immediate suspension of operation of the Big Rock Point Plant is not warranted. Accordingly, the requests of Ms. Bier and Ms. Christa-Maria have been denied. The reasons for this denial are explained in the "Director's Decision" under 10 CFR 2.206 (DD–82–05), which is available for public inspection in the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and at the local public document room for the Big Rock Point Plant, located at 107 Clinton Street, Charlevoix, Michigan 49720.

A copy of the decision will be file with the Secretary for the Commission's review in accordance with 10 CFR 2.206(c). As provided in this regulation, the decision will become the final action of the Commission twenty-five (25) days after issuance, unless the Commission on its own motion institutes review of the decision within that time.

Dated at Bethesda, Maryland, this 15th day of June, 1982.

For the Nuclear Regulatory Commission.

Harold R. Denton,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 82-16717 Filed 6-18-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-445, 50-446]

Texas Utilities Generating Co., et al., (Comanche Peak Steam Electric Station, Units 1 and 2); Evidentiary Hearing (Resumed) (Application for Operating License)

Please take notice that a resumption of an evidentiary hearing will be held in this operating license proceeding before an Atomic Safety and Licensing Board (Board), pursuant to the Atomic Energy Act of 1954 as amended (the Act), and the regulations in Title 10, Code of Federal Regulations (CFR), Part 50, "Licensing of Production and Utilization Facilities," Part 51, "Licensing and Regulatory Policy and Procedures for Environmental Protection," and Part 2, "Rules of Practice." Prior portions of the evidentiary hearing were held December 2, 1981, and June 7–11, 1982.

This continuation of the evidentiary hearing will commence on July 26, 1982, at 8:30 a.m., local time, at the Metro Center Hotel, 600 Commerce Street, Fort Worth, Texas 76102 and will continue until completion of taking evidence on the issues and contentions described hereafter. This evidentiary hearing will address the remaining matters in controversy from Contention 5 (QA/QC).

Written limited appearance statements may be submitted to the Board at any time prior to closing the record in this phase of the proceeding. Oral statements will only be received at times designated by the Board in order not to interfere with the taking of evidence in this adjudicatory proceeding. Both oral and written statements will be made a part of the official record of this proceeding.

It is so ordered.

For the Atomic Safety and Licensing Board.

Marshall E. Miller,

Chairman, Administrative Judge.

June 15, 1982.

[FR Doc. 82-16719 Filed 6-18-82; 8:45 am]

BILLING CODE 7590-01-M

SMALL BUSINESS ADMINISTRATION

Region III Advisory Council Meeting

The U.S. Small Business Administration Region III Advisory Council, located in the geographical area of Pittsburgh, will hold a public meeting beginning at 11:00 a.m. on June 29, 1982 and adjournment will be mid-day June 30 1982, at the Pike Run Country Club, Jones Mills, Pennsylvania 15646, to have various committees of the Advisory Council meet to discuss committees roles and such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

There are limited facilities and for further information, write or call David P. Malone, Acting District Director, U.S. Small Business Administration, 960 Penn Avenue, Convention Tower, 5th Floor, Pittsburgh, Pennsylvania 15222, (412) 644–4306.

Dated: June 16, 1982.

Jean M. Nowak,

Acting Director, Office of Advisory Councils.

[FR Doc. 82-16722 Filed 6-18-82; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Air Traffic Procedures Advisory Committee; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. 1) notice is hereby given of a meeting of the Federal Aviation Administration Air Traffic Procedures Advisory Committee to be held from July 26, at 1 p.m., through July 30, at 1 p.m., at the FAA New England Region Headquarters, 12 New England

Executive Park, Burlington, Massachusetts.

The agenda for this meeting is as follows: A continuation of the Committee's review of present air traffic control procedures and practices for standardization, clarification, and upgrading of terminology and procedures.

Attendance is open to the interested public, but limited to the space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons desiring to attend and persons desiring to present oral statements should notify, not later than the day before the meeting, and information may be obtained from, Mr. L. Lane Speck, Executive Director, Air Traffic Procedures Advisory Committee, Air Traffic Service, AAT-301, 800 Independence Avenue, S.W., Washington, D.C. 20591, telephone (202) 426-3725.

Any member of the public may present a written statement to the Committee at any time.

Issued in Washington, D.C., on June 9, 1982.

L. Lane Speck,

Executive Director, ATPAC.

[FR Doc. 82-16635 Filed 6-18-82; 8:45 am]

BILLING CODE 4910-13-M

Over Speed Warning Instruments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Request for comments on draft Technical Standard Order (TSO).

SUMMARY: The draft TSO-C101 prescribes the minimum performance standard that overspeed warning equipment must meet in order to be identified with the TSO marking "TSO-C101."

DATE: Comments must identify the TSO file number and be received on or before October 22, 1982.

ADDRESS: Send all comments on the draft Technical Standard Order to: Federal Aviation Administration, Engineering Analysis, AWS-120, Aircraft Engineering Division, Office of Airworthiness, File No. TSO-C101, 800 Independence Avenue SW., Washington, D.C. 20591.

Or deliver comments to: Room 335, 800 Independence Avenue SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT: Ms. Bobbie, J. Smith, Standards Section, AWS-132, Aircraft Engineering Division, Office of Airworthiness, Federal Aviation Administration, 800 Independence Avenue SW., Washington, D.C. 20591, Telephone (202) 426-8323.

Comments received on the draft Technical Standard Order may be inspected, before and after the closing date for comments, at Room 335, FAA Headquarters Building (FOB-10A), 800 Independence Avenue SW., Washington, D.C. 20591, between 8:30 a.m. and 5:00 p.m.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on the proposed TSO listed in this notice by submitting such written data, views, or arguments as they may desire. Communications should identify the TSO File number and be submitted to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Director of Airworthiness before issuing the final TSO.

How To Obtain Copies

A copy of the proposed draft TSO may be obtained by contacting the person under "For Further Information Contact." TSO-C101 references Society of Automotive Engineers, Inc. (SAE) Aerospace Standard (AS) 8007 dated February, 1978 for the minimum performance standard, and the Radio Technical Commission for Aeronautics (RTCA) Document No. DO-160A dated January, 1980 for the environmental conditions and test procedures. SAE AS 8007 may be purchased from the Society of Automotive Engineers, Inc., Department 331, 400 Commonwealth Drive, Warrendale, Pennsylvania 15096. RTCA Document No. DO-160A may be purchased from the Radio Technical Commission for Aeronautics Secretariat, 1717 H Street NW., Washington, D.C. 20006.

Issued in Washington, D.C., on June 2, 1982.

Jerold M. Chavkin,

Acting Director, Office of Airworthiness.

[FR Doc. 82-16642 Filed 6-18-82; 8:45 am]

BILLING CODE 4910-13-M

Airborne Radar Approach and Beacon Systems for Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Request for comments on draft Technical Standard Order (TSO).

SUMMARY: The draft TSO-C102 prescribes the minimum performance standard that airborne radar approach systems for helicopters must meet in order to be identified with the TSO marking "TSO-C102."

DATE: Comments must identify the TSO file number and be received on or before October 22, 1982.

ADDRESS: Send all comments on the draft Technical Standard Order to: Federal Aviation Administration, Engineering Analysis, AWS-120, Aircraft Engineering Division, Office of Airworthiness—File No. TSO-C102, 800 Independence Avenue, S.W., Washington, D.C. 20591; or deliver comments to: Room 335, 800 Independence Avenue, S.W., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT: Ms. Bobbie J. Smith, Standards Section AWS-132, Aircraft Engineering Division, Office of Airworthiness, Federal Aviation Administration, 800 Independence Avenue, S.W., Washington, D.C. 20591; Telephone (202) 426-8323.

Comments received on the draft Technical Standard Order may be inspected, before and after the closing date of comments, at Room 335, FAA Headquarters Building (FOB-10A), 800 Independence Avenue, S.W., Washington, D.C. 20591, between 8:30 a.m. and 5:00 p.m.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on the proposed TSO listed in this notice by submitting such written data, views, or arguments as they may desire. Communications should identify the TSO file number and be submitted to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Director of Airworthiness before issuing the final TSO.

How to Obtain Copies

A copy of the proposed draft TSO may be obtained by contracting the person under **"FOR FURTHER INFORMATION CONTACT."** TSO-C102 references Radio Technical Commission for Aeronautics Secretariat (RTCA) Document No. DO-160A "Environmental Conditions and Test Procedures for Airborne Equipment," dated January 1980, and DO-172 "Minimum Operational Performance Standards for Airborne Radar Approach and Beacon Systems for Helicopters," dated November 1980. RTCA Document Nos. DO-160A and DO-172 may be purchased from the Radio Technical Commission for Aeronautics Secretariat, 1717 H Street, N.W., Washington, D.C. 20006.

Issued in Washington, D.C., on June 2, 1982.

Jerold M. Chavkin,

Acting Director, Office of Airworthiness.

[FR Doc. 82-16643 Filed 6-18-82; 8:45 am]

BILLING CODE 4910-13-M

Aircraft Tires

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Request for comments on Addendum 1 for TSO-C62c, aircraft tires.

SUMMARY: Addendum 1 incorporates provisions for helicopter tires and makes certain non-substantive clarifications to the existing minimum performance standards that aircraft tires must meet in order to be identified with the TSO marking "TSO-C62c."

DATE: Comments must identify the TSO file number and be received on or before October 22, 1982.

ADDRESS: Send all comments to Addendum 1 to: Federal Aviations Administration, Engineering Analysis, AWS-132, Aircraft Engineering Division, Office of Airworthiness—File No. TSO-C62c, 800 Independence Avenue, S.W., Washington, D.C. 20591; or deliver comments to: Room 335, 800 Independence Avenue, S.W., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT:

Ms. Bobbie J. Smith, Standards Section, AWS-132, Aircraft Engineering Division, Office of Airworthiness, Federal Aviation Administration, 800 Independence Avenue, S.W., Washington, D.C. 20591; Telephone (202) 426-8323. Comments received on Addendum 1 for Aircraft Tires may be inspected, before and after the closing date for comments, at Room 335, FAA Headquarters Building (FOB-10A), 800 Independence Avenue, S.W., Washington, D.C. 20591, between 8:30 a.m. and 5:00 p.m.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on Addendum 1 for TSO-C62c, Aircraft Tires listed in this notice by submitting such written data, views, or arguments as they may desire. Communications should identify the TSO file number and be submitted to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Director of Airworthiness before issuing the final TSO.

How to Obtain Copies

A copy of Addendum 1 for TSO-C62c, Aircraft Tires may be obtained by contacting the person under **"FOR FURTHER INFORMATION CONTACT."**

Issued in Washington, D.C., on June 2, 1982.

Jerold M. Chavkin,

Acting Director, Office of Airworthiness.

[FR Doc. 82-16641 Filed 6-18-82; 8:45 am]

BILLING CODE 4910-13-M

Aircraft Wheels and Wheel Brake Assemblies

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Request for comments on Addendum 1 for TSO-C26c, aircraft wheels and wheel brake assemblies.

SUMMARY: Addendum 1 makes certain non-substantive clarifications to the existing minimum performance standards that aircraft tires must meet in order to be identified with the TSO marking "TSO-C26c."

DATE: Comments must identify the TSO file number and be received on or before October 22, 1982.

ADDRESS: Send all comments on Addendum 1 for Aircraft Wheels and Wheel Brake Assemblies to: Federal Aviation Aministration, Systems Branch, AWS-130, Aircraft Engineering Division, Office of Airworthiness—File No. TSO-C26c, 800 Independence Avenue, S.W., Washington, D.C. 20591; or deliver comments to: Room 335, 800 Independence Avenue, S.W., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT:

Ms. Bobbie J. Smith, Systems Branch, AWS-130, Aircraft Engineering Division, Office of Airworthiness, Federal Aviation Administration, 800 Independence Avenue, S.W., Washington, D.C. 20591; Telephone (202) 426-8395. Comments received on Addendum 1 for TSO-C26c, Aircraft Wheels and Wheel Brake Assemblies may be inspected, before and after the closing date for comments, at Room 335, FAA Headquarters Building (FOB-10A), 800 Independence Avenue, S.W., Washington, D.C. 20591, between 8:30 a.m. and 5:00 p.m.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on Addendum 1 for TSO-C26c, Aircraft Wheels and Wheel Brake Assemblies listed in this notice by submitting such written data, views, or arguments as they may desire. Communications should identify the TSO file number and be submitted to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Director of Airworthiness before issuing the final TSO.

How to Obtain Copies

A copy of Addendum 1 for TSO-C26c, Aircraft Wheels and Wheel Brake Assemblies may be obtained by contacting the person under **"FOR FURTHER INFORMATION CONTACT."**

Issued in Washington, D.C., on June 2, 1982.

Jerold M. Chavkin,

Acting Director, Office of Airworthiness.

[FR Doc. 82-16648 Filed 6-18-82; 8:45 am]

BILLING CODE 4910-13-M

Airspeed Instruments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Request for comments on draft Technical Standard Order (TSO).

SUMMARY: The draft TSO-C2c prescribes the minimum performance standard that airspeed instruments must meet in order to be identified with the TSO marking "TSO-C2c."

DATE: Comments must identify the TSO file number and be received on or before October 22, 1982.

ADDRESS: Send all comments on the draft Technical Standard Order to: Federal Aviation Administration, Engineering Analysis Branch, AWS-120, Aircraft Engineering Division, Office of Airworthiness—File No. TSO-C2c, 800 Independence Avenue, S.W., Washington, D.C. 20591; or deliver comments to: Room 335, 800 Independence Avenue, S.W., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT:

Ms. Bobbie J. Smith, Standards Section, AWS-132, Aircraft Engineering Division, Office of Airworthiness, Federal Aviation Administration, 800 Independence Avenue, S.W., Washington, D.C. 20591; Telephone (202) 426-8323. Comments received on the draft Technical Standard Order may be inspected, before the closing date for comments, at Room 335, FAA Headquarters Building (FOB-10A), 800 Independence Avenue, S.W., Washington, D.C. 20591, between 8:30 a.m. and 5:00 p.m.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on the proposed TSO listed in this notice by submitting such written

data, views, or arguments as they may desire. Communications should identify the TSO file number and be submitted to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Director of Airworthiness before issuing the final TSO.

How To Obtain Copies

A copy of the proposed draft TSO may be obtained by contacting the person under "**FOR FURTHER INFORMATION CONTACT**" TSO–C2b references Society of Automotive Engineers, Inc. (SAE) Aerospace Standard (AS) 8019 dated March 30, 1981, for the minimum performance standard and Radio Technical Commission for Aeronautics (RTCA) Document No. DO–160A dated January 1980 for the environmental conditions and test procedures. SAE AS 8019 may be purchased from the Society of Automotive Engineers, Inc., Department 331, 400 Commonwealth Drive, Warrendale, Pennsylvania 15096. RTCA Document No. DO–160A may be purchased from the Radio Technical Commission for Aeronautics Secretariat, 1717 H Street, N.W., Washington, D.C. 20006.

Issued in Washington, D.C., on June 2, 1982.

Jerold M. Chavkin,

Acting Director, Office of Airworthiness.

[FR Doc. 82–16645 Filed 6–18–82; 8:45 am]

BILLING CODE 4910–13–M

Direction Instrument, Non-Magnetic (Gyroscopically Stabilized)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Request for comments on draft Technical Standard Order (TSO).

SUMMARY: The draft TSO–C5d prescribes the minimum performance standard that direction instrument, non-magnetic (gyroscopically stabilized) must meet in order to be identified with the TSO marking "TSO–C5d."

DATE: Comments must identify the TSO file number and be received on or before October 22, 1982.

ADDRESS: Send all comments on the draft Technical Standard Order to: Federal Aviation Administration, Engineering Analysis, AWS–120, Aircraft Engineering Division, Office of Airworthiness—File No. TSO–C5d, 800 Independence Avenue, S.W., Washington, D.C. 20591; or deliver comments to: Room 335, 800 Independence Avenue, S.W., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT:

Ms. Bobbie J. Smith, Standards Section, AWS–132, Aircraft Engineering Division, Office of Airworthiness, Federal Aviation Administration, 800 Independence Avenue, S.W., Washington, D.C. 20591; Telephone (202) 426–8323. Comments received on the draft Technical Standard Order may be inspected, before and after the closing date for comments, at Room 335, FAA Headquarters Building (FOB–10A), 800 Independence Avenue, S.W., Washington, D.C. 20591, between 8:30 a.m. and 5:00 p.m.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on the proposed TSO listed in this notice by submitting such written data, views, or arguments as they may desire. Communications should identify the TSO file number and be submitted to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Director of Airworthiness before issuing the final TSO.

How To Obtain Copies

A copy of the proposed draft TSO may be obtained by contacting the person under "**FOR FURTHER INFORMATION CONTACT.**" TSO–C5d references Society of Automotive Engineers, Inc. (SAE) Aerospace Standard (AS) 8021 dated March 18, 1981 for the minimum performance standard and Radio Technical Commission for Aeronautics (RTCA) DO–160A dated January 1980 for the environmental conditions and test procedures. SAE AS 8021 may be purchased from the Society of Automotives Engineers, Inc. Department 331, 400 Commonwealth Drive, Warrendale, Pennsylvania 15096. RTCA Document No. DO–160A may be purchased from the Radio Technical Commission for Aeronautics Secretariat, 1717 H Street, N.W., Washington, D.C. 20006.

Issued in Washington, D.C., on June 2, 1982.

Jerold M. Chavkin,

Acting Director, Office of Airworthiness.

[FR Doc. 82–16646 Filed 6–18–82; 8:45 am]

BILLING CODE 4910–13–M

ILS Glide Slope Receiving Equipment Operating Within 328.6 To 335.4 Megahertz

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Request for comments on draft Technical Standard Order (TSO).

SUMMARY: The draft TSO–C34d prescribes the minimum performance standard that ILS glide slope receiving equipment operating within 328.6 to 335.4 Megahertz must meet in order to be identified with TSO marking "TSO–C34d."

DATE: Comments must identify the TSO file number and be received on or before October 22, 1982.

ADDRESS: Send all comments on the draft Technical Standard Order to: Federal Aviation Administration, Engineering Analysis, AWS–120, Aircraft Engineering Division, Office of Airworthiness—File No. TSO–C34d, 800 Independence Avenue, S.W., Washington, D.C. 20591; or delivered comments to: Room 335, 800 Independence Avenue, S.W., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT:

Ms. Bobbie J. Smith, Standards Section, AWS–132, Aircraft Engineering Division, Office of Airworthiness, Federal Aviation Administration, 800 Independence Avenue, S.W., Washington, D.C. 20591; Telephone (202) 426–8323. Comments received on the draft Technical Standard Order may be inspected, before and after the closing date for comments, at Room 335, FAA Headquarters Building (FOB–10A), 800 Independence Avenue, S.W., Washington, D.C. 20591, between 8:30 a.m. and 5:00 p.m.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on the proposed TSO listed in this notice by submitting such written data, views, or arguments as they may desire. Communications should identify the TSO file number and be submitted to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Director of Airworthiness before issuing the final TSO.

How To Obtain Copies

A copy of the proposed draft TSO may be obtained by contacting the person under "**FOR FURTHER INFORMATION CONTACT.**" TSO–C34d reference Radio Technical Commission for Aeronautics (RTCA) Document No. DO–132A dated November 2, 1978 for the minimum performance standard and DO–160A dated January 1980 for the environmental conditions and test procedures. RTCA Document No. DO–132A or DO–160A may be purchased from the Radio Technical Commission

for Aeronautics Secretariat, 1717 H Street, N.W., Washington, D.C. 20006.

Issued in Washington, D.C., on June 2, 1982.

Jerold M. Chavkin,

Acting Director, Office of Airworthiness.

[FR Doc. 82-16640 Filed 6-18-82; 8:45 am]

BILLING CODE 4910-13-M

Optional Display Equipment for Weather and Ground Mapping Radar Indicators

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Request for comments on draft Technical Standard Order (TSO).

SUMMARY: The draft TSO-C105 prescribes the minimum performance standard that optional display equipment for weather and ground mapping radar indicators must meet in order to be identified with the marking "TSO-C105."

DATE: Comments must identify the TSO file number and be received on or before October 22, 1982.

ADDRESS: Send all comments on the draft Technical Standard Order to: Federal Aviation Administration, Engineering Analysis, AWS-132, Aircraft Engineering Division, Office of Airworthiness—File No. TSO-C105, 800 Independence Avenue, S.W., Washington, D.C. 20591; or deliver comments to: Room 335, 800 Independence Avenue, S.W., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT: Ms. Bobbie J. Smith, Standard Section, AWS-132, Aircraft Engineering Division, Office of Airworthiness, Federal Aviation Administration, 800 Independence Avenue, S.W., Washington, D.C. 20591; Telephone (202) 426-8323. Comments received on the draft Technical Standard Order may be inspected, before and after the comment closing date at Room 335, FAA Headquarters Building (FOB-10A), 800 Independence Avenue, S.W., Washington, D.C. 20591, between 8:30 a.m. and 5:00 p.m.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on the proposed TSO listed in this notice by submitting such written data, views, or arguments as they may desire. Communications should identify the TSO file number and be submitted to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Director of Airworthiness before issuing the final TSO.

How To Obtain Copies

A copy of the proposed draft TSO may be obtained by contacting the person under **"FOR FURTHER INFORMATION CONTACT."** TSO-C105 references Radio Technical Commission for Aeronautical (RTCA) Document No. DO-174 dated July 1981, for the minimum performance standard and RTCA Document No. DO-160A dated January 1980 for the environmental conditions and test procedures. RTCA Document Nos. DO-160A and DO-174 may be purchased from the Radio Technical Commission for Aeronautics Secretariat, 1717 H Street, N.W., Washington, D.C. 20006.

Issued in Washington, D.C., on June 2, 1982.

Jerold M. Chavkin,

Acting Director, Office of Airworthiness.

[FR Doc. 82-16644 Filed 6-18-82; 8:45 am]

BILLING CODE 4910-13-M

Powerplant Fire Detection Instruments (Thermal and Flame Contact Types)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Request for comments on draft Technical Standard Order (TSO).

SUMMARY: The draft TSO-C11e prescribes the minimum performance standard that powerplant fire detection instruments (thermal and flame contact types) must meet in order to be identified with the TSO marking "TSO-C11e."

DATE: Comments must identify the TSO file number and be received on or before October 22, 1982.

ADDRESS: Send all comments on the draft Technical Standard Order to: Federal Aviation Administration, Engineering Analysis, AWS-120, Aircraft Engineering Division, Office of Airworthiness—File No. TSO-C11e, 800 Independence Avenue, S.W., Washington, D.C. 20591; Room 335, 800 Independence Avenue, S.W., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT: Ms. Bobbie J. Smith, Standards Section, AWS-132, Aircraft Engineering Division, Office of Airworthiness, Federal Aviation Administration, 800 Independence Avenue, S.W., Washington, D.C. 20591; Telephone (202) 426-8323. Comments received on the draft Technical Standard Order may be inspected, before and after the closing date for comments, at Room 335, FAA Headquarters Building (FOB-10A), 800 Independence Avenue, S.W., Washington, D.C. 20591, between 8:30 a.m. and 5:00 p.m.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on the proposed TSO listed in this notice by submitting such written data, views, or arguments as they may desire. Communications should identify the TSO file number and be submitted to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Director of Airworthiness before issuing the final TSO.

How to Obtain Copies

A copy of the proposed draft TSO may be obtained by contacting the person under **"FOR FURTHER INFORMATION CONTACT."** TSO-C11e references Society of Automotive Engineers, Inc. (SAE) Aerospace Standard (AS) 8028 dated April, 1980 for the minimum performance standard and Radio Technical Commission for Aeronautics (RTCA) Document No. DO-160A dated January 1980 for the environmental conditions and test procedures. SAE AS 8028 may be purchased from the Society of Automotive Engineers, Inc., Department 331, 400 Commonwealth Drive, Warrendale, Pennsylvania 15096. RTCA Document No. DO-160A may be purchased from the Radio Technical Commission for Aeronautics Secretariat, 1717 H Street, N.W., Washington, D.C. 20006.

Issued in Washington, D.C., on June 2, 1982.

Jerold M. Chavkin,

Acting Director, Office of Airworthiness.

[FR Doc. 82-16647 Filed 6-18-82; 8:45 am]

BILLING CODE 4910-13-M

Research and Special Programs Administration

Office of Hazardous Materials Regulation; Applications for Renewal or Modification of Exemptions of Applications To Become a Party to an Exemption

Correction

In FR Doc. 82-15832, published on page 25649, on Monday, June 14, 1982 in the first column, in the **"DATE:"** paragraph, "July 14, 1982." should be corrected to read "June 29, 1982."

BILLING CODE 1505-01-M

[Docket No. 79-10W; Notice 2]

Transportation of Liquids by Pipeline; Waiver of Compliance With Requirement To Inspect Valves for Proper Functioning at 6-Month Intervals

The Alyeska Pipeline Service Company petitioned (Petition 79-10W) the Materials Transportation Bureau (MTB) for a waiver to extend the 6-month interval within which main line valves must be inspected for proper functioning under § 195.420(b). Alyeska requested that the inspection interval be extended from 6 months to two inspections annually, with intervals not greater than 8 months between inspections. The waiver was sought for all remotely controlled main line valves (RGV) on the entire 800-mile length of the Trans-Alaska Pipeline System.

The Alyeska request stated that the severe weather conditions for much of the year must be considered in all operating and maintenance procedures, and such procedures developed for the region must be designed to minimize hazardous exposure to personnel. As a result, visits to the RGV sites during the winter are performed under emergency conditions only. In order to perform the tests for the function prescribed by § 195.420(b) during favorable weather, Alyeska requested a waiver from compliance with § 195.420(b).

Alyeska argued that it is not possible to remotely operate each valve without visiting each RGV site, because the RGV's are remotely controlled in groups, and operating a group of valves would require shutting down pipeline operations.

According to Alyeska, in the history of the Trans-Alaska Pipeline System, there have been few instances where RGV's have failed to operate and none of these resulted in an unsafe condition.

In view of the above, the MTB published a notice on October 26, 1981 (46 FR 52268) proposing to grant to Alyeska the requested waiver.

Interested persons were invited to comment on the proposed waiver by submitting data, views, or arguments as they desired. Two industry commenters responded to the notice and both commenters recommended granting the proposed waiver arguing that the current 6-month inspection interval as prescribed in § 195.420(b), does not allow sufficient flexibility in scheduling the valve inspections.

In consideration of (1) the hazards to operating personnel presented by the winter wather conditions along the Trans-Alaska Pipeline System, (2) lack of opportunity to substitute a remote functional test of the RGV's for an attended functional test, (3) the record of reliability of the RGV's, and (4) the comments received in favor of granting the proposed waiver, the MTB hereby grants Alyeska the requested waiver from compliance with § 195.420(b), provided the following requirement is met:

"Alyeska shall inspect two times each calendar year, with intervals between inspections not to exceed 8 months, each main line valve to determine that it is functioning properly."

(49 U.S.C. 2002; 49 CFR 1.53(a), Appendix A to Part 1 and Appendix A to Part 106)

Issued in Washington, D.C. on June 16, 1982.

Melvin A. Judah,

Acting Associate Director for Pipeline Safety Regulation, Materials Transportation Bureau.

[FR Doc. 82-16752 Filed 6-18-82; 8:45 am]

BILLING CODE 4910-60-M

VETERANS ADMINISTRATION

Veterans Administration Wage Committee; Meetings

Under the provisions of section 10 of Pub. L. 92-463, notice is hereby given that meetings of the Veterans Administration Wage Committee will be held on:

Thursday, July 8, 1982
Thursday, July 22, 1982
Thursday, August 5, 1982
Thursday, September 2, 1982
Thursday, September 30, 1982

The meetings will convene at 2:30 p.m. and will be held in Room 815A, Veterans Administration Central Office, 810 Vermont Avenue, NW., Washington, DC 20420.

The Committee's primary responsibility is to consider and make recommendations to the Chief Medical Director, Department of Medicine and Surgery, on all matters involved in the development and authorization of wage rate schedules for Federal Wage System (blue-collar) employees.

At these scheduled meetings, the Committee will consider wage survey specifications, wage survey data, local committee reports and recommendations, statistical analyses, and proposed wage schedules derived therefrom.

Under the provisions of section 10(d) of Pub. L. 92-463, the Federal Advisory Committee Act, as amended by Pub. L. 94-409, meetings may be closed to the public when they are concerned with matters listed under section 552b, Title 5, United States Code. Two of the matters so listed are those related solely to the internal personnel rules and practices of an agency (5 U.S.C. 552b(c)(2)), and those involving trade secrets and commercial or financial information obtained from a person and privileged or confidential (5 U.S.C. 552b(c)(4)).

Accordingly, I hereby determine that all portions of the meetings cited above will be closed to the public because the matters considered are related to the internal rules and practices of the Veterans Administration (5 U.S.C. 552b(c)(2)), and the detailed wage data considered by the Committee during its meetings have been obtained from officials of private establishments with a guarantee that the date will be held in confidence (5 U.S.C. 552b(c)(4)).

However, members of the public who wish to do so are invited to submit material in writing to the Chairman regarding matters believed to be deserving of the Committee's attention.

Additional information concerning these meetings may be obtained by contacting the Chairman, Veterans Administration Wage Committee, Room 1175, 810 Vermont Avenue, NW., Washington, DC 20420.

Dated: June 14, 1982.

Robert P. Nimmo,

Administrator.

[FR Doc. 82-16650 Filed 6-18-82; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 47, No. 119
Monday, June 21, 1982

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

	Items
Civil Aeronautics Board	1
Commodity Credit Corporation	2
Federal Communications Commission	3, 4
Federal Deposit Insurance Corporation	5, 6, 7, 8
Federal Home Loan Bank Board	9
Federal Mine Safety and Health Review Commission	10
National Credit Union Administration	11
Nuclear Regulatory Commission	12

1

CIVIL AERONAUTICS BOARD

Addition and Closure of Item to the June 15, 1982 Board Meeting.

June 15, 1982

TIME AND DATE: 10 a.m., June 15, 1982.

PLACE: Room 1027 (open), Room 1012 (closed), 1825 Connecticut Avenue, NW., Washington, D.C. 20428.

SUBJECT: 28. Negotiations with Venezuela. (BIA)

STATUS: Closed.

PERSON TO CONTACT: Phyllis T. Kaylor, the Secretary (202) 673-5068.

[S-9B13-82 Filed 6-17-82; 3:15 pm]

BILLING CODE 6320-01-M

2

COMMODITY CREDIT CORPORATION

TIME AND DATE: 2 p.m., June 25, 1982.

PLACE: Room 104-A Administration Building, U.S. Department of Agriculture, Washington, D.C.

STATUS: Open/closed.

MATTERS TO BE CONSIDERED:

1. Minutes of Closed meeting of April 9, 1982.
2. Minutes of Closed Meeting of May 19, 1982.
3. Docket XCP 137a re: Barley, Oats, Corn, Rye, and Sorghum, Loan and Purchase, Payment, and Production Adjustment Programs for the 1982 through 1985 Marketing Years.
4. Docket XCP 72a re: Cotton Loan Program for the 1982 and Subsequent Marketing Years (Extra Long Staple).
5. Docket XCP 72a re: Cotton Loan, Payment, and Production Adjustment Programs for the 1982 through 1985 Marketing Years (Upland).
6. Docket XCP 66a re: Honey Loan and Purchase Program for the 1982 and Subsequent Crops.
7. Docket XCP 31a re: Peanut Loan and Purchase Program for the 1982 through 1985 Marketing Years.
8. Docket XCP 33a re: Rice Loan and Purchase, Payment, and Production Adjustment Program for the 1982 through 1985 Marketing Years.
9. Docket XCP 105 re: Soybean Loan and Purchase Program for the 1982 through 1985 Marketing Years.
10. Docket XCP 40a re: Tobacco Price Support Program for the 1982 and Subsequent Crops.
11. Docket XCP 2a re: Wheat Loan and Purchase, Payment, and Production Adjustment Program for the 1982 through 1985 Marketing Years.
12. Report re: Status of Commodity Credit Corporation Claims.
13. Ratification re: Commodities Available for Pub. L. 480 During Fiscal Year 1982, Amendment 1 (Resolution No. 19, CZ-266).
14. Memorandum re: Memorandum from FmHA to Commodity Credit Corporation Concerning Biomass Proposal.

Closed portion of meeting:

15. Discussion re: Export Trade Policy.

CONTACT PERSON FOR MORE INFORMATION: Edward D. Hews, Secretary, Commodity Credit Corporation, P.O. Box 2415, Room 3090-South Building, U.S. Department of Agriculture, Washington, D.C. 20013; telephone (202) 447-7583.

[S-909-82 Filed 6-17-82; 11:23 am]

BILLING CODE 3410-05-M

3

FEDERAL COMMUNICATIONS COMMISSION

FCC To Hold Open Commission Meeting Wednesday, June 23, 1982

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Wednesday, June 23, 1982, which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street, N.W., Washington, D.C.

Agenda, Item No., and Subject

General—1—*Title:* In re petition by Alaska Public Broadcasting Commission (RM-3533) for amendment of Parts 2, 73 and 74 of the FCC's Rules and Regulations. *Summary:* The FCC released a Notice of Proposed Rule Making on January 7, 1982, in General Docket 81-911, looking toward reallocation of the 76-100 MHz band, in Alaska, for broadcasting. The Commission will not consider the merits of such action.

General—2—*Title:* Report and Order Relating to Preparation for an International Communication Union (ICU) 1983 World Administrative Radio Conference (WARC) for Mobile Telecommunications. *Summary:* Presents the Agenda of the 1983 WARC, and the FCC recommended U.S. proposals for that conference to be sent to the Department of State with a request that they be sent as the formal U.S. input to that WARC.

General—3—*Title:* Adoption of rules for Direct Broadcast Satellite (DBS) service. *Subject:* Commission will consider whether to adopt *Report and Order* containing rules and frequency allocations for DBS.

General—4—*Title:* In re Establishment of a spectrum utilization policy for the fixed and mobile services' use of certain bands between 17.7 and 40.0 GHz. *Summary:* The Commission will consider initiating a proceeding to establish a policy for utilization of spectrum between 17.7 and 40.0 GHz which is allocated to the fixed and mobile services.

General—5—*Title:* Notice of Proposed Rulemaking to expand the frequencies available for use by Aural broadcast STL and Intercity relay stations. *Summary:* The Commission will consider the merits of RM-2697, filed by the National Association of Broadcasters (NAB), to reallocate the 942-947 MHz band back to the Broadcast Auxilitary Service and RM-3246, filed by Moseley Associates, Inc., to use unassigned UHF-TV channels for Broadcast Auxiliary Service. Additionally, the Commission will consider the merits of sharing the 2130-2150 MHz and 2180-2200 MHz bands presently allocated to the Private Operational-Fixed Microwave Service, with the Broadcast Auxiliary Service.

Private Radio—1—*Title:* Reconsideration of Amendment of Subpart H of Part 90 of the Commisison's Rules and Regulations to Facilitate Interservice Sharing of Frequencies in the Private Land Mobile Services Below 470 MHz. *Summary:* FCC has before it for consideration disposition of two petitions for reconsideration of action taken in a Report and Order released November 5, 1981 which allowed for the Interservice sharing of frequencies in the Private Land Mobile Radio Services.

Common Carrier—1—*Title:* In the Matter of Xerox Corporation and MCI Communications Corporation. Application for Consent to Transfer Control of WUI, Inc., Western Union International, Inc., Airsignal International, Inc. *et al.* *Summary:* The Commission will consider the Application filed by Xerox and MCI for consent to transfer control of WUI, Inc. and its subsidiaries from Xerox to MCI. Issues include whether MCI is a wireline carrier and the effects of the acquisition on competition.

Renewal—1—*Title:* Renewal applications for Stations WABC–TV, WCBS–TV, WNBC–TV, WNEW–TV, New York, New York, and for Stations KYW–TV, WCAU–TV, and WPIX–TV, and WPVI–TV, Philadelphia, Pennsylvania, and the license for Station WOR–TV, New York, New York. *Subject:* The Commission will consider the various proposals of the licensees of the subject stations to enhance their physical presence in New Jersey by establishing news bureaus in New Jersey, with interconnections to the main studios and with a variety of promotional efforts to publicize the facilities, and petitions to deny the renewal applications, filed by the New Jersey Coalition for Fair Broadcasting.

Renewal—2—*Title:* Renewal application of Educational Broadcasting Corporation for educational television station WNET, Newark, New Jersey. *Subject:* The Commission considers a petition to deny WNET's renewal application filed by the New Jersey Coalition for Fair Broadasting, in which the Coalition alleges that WNET has failed and will continue to fail to provide adequate coverage of New Jersey news, events, and other items of interest.

Renewal—3—*Title:* Competing applications of United Broadcasting Company of Eastern Maryland, Inc. for renewal of license of Station WYST(FM), Baltimore, Mayland, and SRW Inc. and Belvedere Broadcasting Corporation for construction permits. *Summary:* The Commission considers designating the mutually exclusive applications for a consolidated proceeding.

Renewal—4—*Title:* License Renewal Applications of Northern Television, Inc., for Stations KTVA(TV), KBYR, and KNIK(FM), Anchorage, Alaska and KTVF(TV) and KCBF, Fairbanks, Alaska. *Summary:* The Commission will consider a petition to deny the license renewal applications of the above stations filed by Alaskans for Better Media, Inc.

Renewal—5—*Title:* Competing applications of Faith Center, Inc. for renewal of its license for Station KVOF–TV, San Francisco, California, and of LDA Communications, Inc., West Coast United Broadcasting Company, and Together Media Ministries for construction permits on KVOF–TV's frequency. *Subject:* The Commission considers designating these applications for comparative hearing with appropriate issues.

Renewal—6—*Title:* Renewal application of United Broadcasting Company of New York, Inc. for AM Station WBNX, New York, New York, and mutually exclusive application by Osborne Communications Corporation for a construction permit. *Summary:* The Commission considers designating these applications for comparative hearing.

Aural—1—*Title:* In re application of Ettlinger Broadcasting Corporation for a construction permit for a new FM station. *Summary:* The Commission considers a petition by Ettlinger Broadcasting Corporation, applicant for a new FM station at Westmorland, California for reconsideration of our *Memorandum Opinion and Order,* adopted July 18, 1980, denying its waiver request and dismissing its application.

Broadcast—1—*Title:* Petition for reconsideration filed by CBS, Inc., licensee of Station WBBM–TV, Chicago, Illinois. *Summary:* The Commission will consider the assignment of the call letters WBBS–TV to a new television station in West Chicago, Illinois.

Broadcast—2—*Title:* In the Matter of Review of the Commission's Rules Affecting Broadcast Network Conduct. *Summary:* The Commission will consider a recommendation by the Broadcast Bureau concerning the syndication and financial interest rule. 47 CFR 73.658(j).

Broadcast—3—*Title:* Public Notice in re *Report and Order,* An Inquiry into the Future Role of Television Translators and Low Power Television Broadcasting in the National Telecommunications System. (BC Docket No. 78–253). *Summary:* The FCC considers an application amendment period pursuant to the new television translator and low power television rules.

Complaints and Compliance—1—*Title:* Petition for Reconsideration by George Miller of the Commission's denial of his Application for Review. *Summary:* Mr. Miller reiterates allegations that he was personally attacked in three station programs presented on WBPZ–AM–FM. He claims that the licensee's past program performance has not served the public interest, and that the station has engaged in self-serving and discriminatory conduct. He requests that the Commission either hold oral arguments or an evidentiary hearing; suspend the stations' licenses; or order the licensee to broadcast his responses to the alleged personal attacks.

Complaints and Compliance—2—*Title:* Application for Review, filed on March 10, 1981, by De La Hunt Broadcasting Corporation, licensee of radio station KPRM, Park Rapids, Minnesota, of the Broadcast Bureau's February 10, 1981, Memorandum Opinion and Order denying the licensee's request for a reduction of forefeiture. *Summary:* The licensee requests remission of a forfeiture imposed by the Broadcast Bureau for apparent violation of the fraudulent billing rule and reduction of a forfeiture imposed for apparent violation of the lowest unit charge rule which applies to uses by political candidates.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Maureen P. Peratino, FCC Public Affairs Office, telephone number (202) 254–7674.

Issued: June 16, 1982.

William J. Tricarico,

Secretary, Federal Communications Commission.

S–911–82 Filed 6–17–82; 2:31 pm]

BILLING CODE 6712–01–M

4

FEDERAL COMMUNICATIONS COMMISSION

FCC To Hold a Closed Commission Meeting, Wednesday, June 23, 1982

The Federal Communications Commission will hold a Closed Meeting on the subject listed below on Wednesday, June 23, 1982, following the Open Meeting which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street, NW., Washington, D.C.

Agenda, Item No., and Subject

Complaints and Compliance—1—Field investigation into the operation of Station WABC–TV New York, New York.

This item is closed to the public because it concerns adjudicatory and investigatory records matters (See CFR 0.603 (j) and (g)).

The following persons are expected to attend:

Commissioners and their Assistants
General Counsel and members of his staff
Managing Director and members of his staff
Chief, Broadcast Bureau and his staff
Chief, Office of Public Affairs and members of his staff

Action by the Commission June 3, 1982. Commissioners Fowler, Chairman; Quello, Washburn, Fogarty, Jones, Dawson and Rivera voting to consider this item in Closed Session.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Maureen P. Peratino, FCC Public Affairs Office, telephone number (202) 254–7674.

Issued: June 16, 1982.

William J. Tricarico,

Secretary, Federal Communications Commission.

[S–912–82 Filed 6–17–82; 2:31 pm]

BILLING CODE 6712–01–M

5

FEDERAL DEPOSIT INSURANCE CORPORATION

Changes in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 2:00 p.m. on Monday, June 14, 1982, the Corporation's Board of Directors determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Director C. T. Conover (Comptroller of the Currency), that Corporation business

required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matters:

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. 45,267-L—Franklin National Bank of New York, New York

Case No. 45,269-L—The Hamilton National Bank of Chattanooga, Chattanooga, Tennessee

Memorandum re: Guidelines on Membership Dues, Conferences and Training.

By the same majority vote, the Board further determined that no earlier notice of these changes in the subject matter of the meeting was practicable.

Dated: June 16, 1982.

Federal Deposit Insurance Corporation.

Alan J. Kaplan,

Deputy Executive Secretary.

[S-910-82 Filed 6-17-82; 11:42 am]

BILLING CODE 6714-01-M

6

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 12:43 p.m. on Saturday, June 12, 1982, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider a recommendation with respect to an administrative enforcement proceeding against an insured bank and persons participating in the conduct of the affairs thereof. The names of such persons and the name and location of the bank are 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)).

At that same meeting the Board of Directors (1) received sealed bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in Banco Regional, Bayamon, Puerto Rico, which was closed on June 12, 1982, by the Secretary of the Treasury of the Commonwealth of Puerto Rico; (2) accepted the bid for the transaction submitted by Citibank, N.A., New York City (Manhattan), New York; and (3) provided such financial assistance, pursuant to section 13(e) of the Federal Deposit Insurance Act (12 U.S.C. 1823(e)), as was necessary to effect the purchase and assumption transaction.

In calling the meeting, the Board determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Mr. Doyle L. Arnold, acting in the place and stead of Director C. T. Conover (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Chairman's Office, Room 6023 of the FDIC Building located at 550 17th Street, N.W., Washington, D.C.

Dated: June 14, 1982.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[S-914-82 Filed 6-17-82; 3:16 pm]

BILLING CODE 6714-01-M

7

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Monday, June 21, 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), and (c)(9)(A)(ii) 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 (b)(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:

Application for consent to purchase assets and assume liabilities and to establish one branch:

Frontier Bank, Everett, Washington, for consent to purchase the assets of and assume the liability to pay deposits made in Bank of Arlington, Arlington, Washington, and to establish the sole office of Bank of Arlington as a branch of the resultant bank.

Recommendation regarding the Corporation's assistance agreement with an insured bank pursuant to section 13(c) of the Federal Deposit Insurance 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 Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389-4425.

Dated: June 14, 1982.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[S-915-82 Filed 6-17-82; 3:17 pm]

BILLING CODE 6714-01-M

8

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Monday, June 21, 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 than an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

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. 45,257-SR—Franklin Bank, Houston, Texas
Case No. 45,259-L—Franklin National Bank, New York, New York
Case No. 45,260-SR—First State Bank, Dodson, Texas
Case No. 45,264-SR—Surety Bank and Trust Company, Wakefield, Massachusetts
Case No. 45,266-NR—United States National Bank, San Diego, California
Case No. 45,273-SR—Bank of Enville, Enville, Tennessee

Memorandum and resolution re: Proposed amendments to Parts 303 and 308 of the Corporation's rules and regulations, entitled "Applications, Requests, Submittals, and Notices of Acquisition of Control" and "Rules of Practice and Procedures," respectively, which would (1) delegate to the Corporation's Board of Review and to certain officers of the Corporation the authority to take certain actions with respect to administrative enforcement proceedings brought by the Corporation; (2) delegate to the Executive Secretary the authority to act on certain procedural motions in connection with the conduct of such proceedings; and (3) make certain technical corrections to Part 308.

Memorandum and resolution re: Amendment to Part 329 of the Corporation's rules and regulations, entitled "Interest on Deposits," which would extend from August 1, 1982 to March 31, 1986 the grandfather provision of paragraph 329.10(b)(2), thereby permitting insured State nonmember banks to continue to offer repurchase agreements in denominations of less than $100,000 with maturities of 90 days or more so long as the aggregate amount does not exceed that of such obligations outstanding on August 1, 1979.

Memorandum and resolution re: Delegation of authority to administer petty cash funds.

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 to applications or request 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, NW., Washington, D.C.

Requests for information concerning the meeting may be directed to Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389-4425.

Dated: June 14, 1982.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[S-916-82 Filed 6-17-82; 3:18 pm]

BILLING CODE 6714-01-M

9

FEDERAL HOME LOAN BANK BOARD

TIME AND DATE: 10 a.m., Thursday, June 24, 1982.

PLACE: Board Room, sixth floor, 1700 G Street NW., Washington, D.C.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Marshall (202-377-6679).

MATTERS TO BE CONSIDERED:

Request for a Commitment to Insure Accounts—Midwest Savings and Loan Association, Inc., Aberdeen, South Dakota
Bank Membership and Insurance of Accounts—Sterling Savings Association, Spokane, Washington (New Stock Association)
Amendments Relating to the Issuance and Use of Subordinated Debt Securities, Mutual Capital Certificates and Preferred Stock

[No. 42, June 17, 1982]

[S-907-82 Filed 6-17-82; 10:38 am]

BILLING CODE 6720-01-M

10

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

June 16, 1982.

TIME AND DATE: 10 a.m., Wednesday, June 23, 1982.

PLACE: Room 600, 1730 K Street, NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. Carolina Stalite Co., Docket Nos. SE 80-21-M, etc.; Petition for Discretioinary Review. (Issues include whether the judge properly dismissed these cases on the grounds that the operation in question was not subject to the jurisdiction of the Mine Act.)

2. A. H. Smith Stone, Docket No. VA 81-51-M. (Issues include whether judge properly concluded that the operator violated 30 CFR 56.4-35, which deals with safety practices when applying heat to pipelines or containers that have contained flammable substances.)

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653-5632.

[S-908-82 Filed 6-17-82; 11:22 am]

BILLING CODE 6735-01-M

11

NATIONAL CREDIT UNION ADMINISTRATION:

Change in Subject of Meeting

The National Credit Union Administration Board has determined that its business required that the previously announced closed meeting on Wednesday, June 16, 1982, include the following additional item, which was closed to public observation:

Relocation of two regional offices and the establishment of a regional sub-office. Closed pursuant to exemptions (2).

Earlier announcement of this change was not possible.

The previously announced items were:

1. Requests from federally insured credit unions for special assistance to prevent liquidation under Section 208(a)(1) of the Federal Credit Union Act. Closed pursuant to exemptions (8) and (9)(A)(ii).

2. Administrative Adjudication pursuant to 12 U.S.C. 1786. Closed pursuant to exemption (8) and (10).

The Board voted unanimously to add this item to the closed agenda.

The meeting was held at 10:30 a.m., in the Seventh Floor Board Room, 1776 G Street N.W., Washington, D.C.

For More Information Contact: Rosemary Brady, Secretary of the Board, telephone (202) 357-1100.

[S-906-82 Filed 6-17-82; 9:18 am]

BILLING CODE 7535-01-M

12

NUCLEAR REGULATORY COMMISSION

DATE: Week of June 21, 1982.

PLACE: Commissioners' Conference Room, 1717 H Street, N.W., Washington, D.C.

STATUS: Open and Closed.

MATTERS TO BE DISCUSSED:

Tuesday, June 22:

10:00 a.m.:
Discussion of Emergency Response Facilities (Public Meeting)
2:00 p.m.:
Discussion of Full Power Operating License for LaSalle-1 (Open—Portions may be Closed)

Wednesday, June 23:

3:00 p.m.:
Discussion of Management-Organization and Internal Personnel Matters (Closed—Exemptions 2 and 6)

Thursday, June 24:

10:00 a.m.:
Discussion of Decision Dates for Effectiveness of Licensing Board Decisions for Authorization of Full Power Licenses (Public Meeting)
3:30 p.m.:
Affirmation/Discussion Session (Public Meeting)
Affirmation and/or Discussion and Vote:
a. Proposed Rulemaking Requiring Fitness for Duty for Personnel with Unescorted Access to Protected Areas
b. S-3 Policy Statement
c. Amendment to 10 CFR Part 140, "Financial Protection Requirements and Indemnity Agreements"
d. Partial Vacating of Commission Order of May 22, 1979, on Preservation of Records of TMI-2 Accident
e. Application for a Stay of San Onofre-2 Low-Power Operating License and Review of ALAB-673 (Tentative)

Friday, June 25:

10:00 a.m.:
Briefing by Executive Branch (Tentative) (Closed—Exemption 1)

ADDITIONAL INFORMATION: The Affirmation Session scheduled June 10 was held June 11. On June 10 the Commission voted 5-0 to hold on short notice the Discussion of Management-Organization and Internal Personnel Matters, which was held on June 11, and to add Affirmation of South Texas Recusal Proceeding to the June 11 meeting.

AUTOMATIC TELEPHONE ANSWERING SERVICE FOR SCHEDULE UPDATE: (202) 634-1498. Those planning to attend a meeting should reverify the status on the day of the meeting.

CONTACT PERSON FOR MORE INFORMATION: Walter Magee (202) 634-1410.

Walter Magee,

Office of the Secretary.

[S-905-82 Filed 6-16-82; 4:14 pm]

BILLING CODE 7590-01-M

federal register

Monday
June 21, 1982

Part II

Environmental Protection Agency

Standards of Performance for New Stationary Sources in the Phosphate Fertilizer Industry

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL-2061-3]

Standards of Performance for New Stationary Sources in the Phosphate Fertilizer Industry; Wet Process Phosphoric Acid, Superphosphoric Acid, Diammonium Phosphate, and Triple Superphosphate Plants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed amendments.

SUMMARY: These proposed rules revise the standards of performance for fluoride emissions from four categories of sources in the phosphate fertilizer industry. Each proposal would limit the applicability of standards to plants with a capacity of more than 15 tons of equivalent phosphorus pentoxide (P_2O_5) feed per day. The effect of these revisions is to exempt from the standard small plants used for research and development of production processes.

DATES: Comments. Comments must be received on or before August 5, 1982.

Public Hearing. A public hearing will be held if requested.

ADDRESSES: Comments. Comments should be submitted (in duplicate if possible) to: Central Docket Section (A–130), Attention: Docket Number A–81–33, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460.

Public Hearing. Persons wishing to request a public hearing should notify Ms. Naomi Durkee, Standards Development Branch, Emission Standards and Engineering Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5578.

Docket. The docket, number A–81–33, containing supporting information used in developing the proposed amendments to the standards, is available for public inspection and copying between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section, West Tower Lobby, Gallery 1, Waterside Mall, 401 M Street, SW, Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Ajax, U.S. Environmental Protection Agency, Standards Development Branch, Emission Standards and Engineering Division (MD–13), Research Triangle Park, North Carolina 27711, telephone number (919) 541–5624.

SUPPLEMENTARY INFORMATION: On August 6, 1975 (40 FR 33152), the Administrator promulgated standards of performance for fluoride emissions for five new affected facilities within the phosphate fertilizer industry: wet-process phosphoric acid plants superphosphoric acid plants, diammonium phosphate plants, triple superphosphate plants, and granular triple superphosphate storage facilities. The Clean Air Act Amendments of 1977 require that the Administrator of EPA review and, if appropriate, revise established standards of performance for new stationary sources at least every 4 years [Section 111 (b)(1)(B)]. During 1980 EPA undertook a review of the phosphate fertilizer industry and the associated NSPS. On the basis of this review, the Agency concluded that NSPS revision was not warranted. The findings and conclusions of this review were published for comment in the **Federal Register** on November 21, 1980 (45 FR 77075).

In December 1980, EPA received a comment from the Tennessee Valley Authority (TVA) that small research plants in the phosphate fertilizer industry have been unable to achieve the existing standards for fluorides. TVA provides about 75 percent of the Nation's research in phosphate fertilizers. Although at present TVA's only phosphate fertilizer research facility is a small wet-process phosphoric acid plant, TVA anticipates other phosphate fertilizer research facilities in the future and foresees similar control problems with the three other standards pertaining to phosphate fertilizer.

After investigating the problem, the Administrator has concluded that research facilities should be exempted from the standards. Therefore, the Administrator proposes to amend the NSPS for wet-process phosphoric acid plants, superphosphoric acid plants, diammonium phosphate plants, and triple superphosphate plants to cover only those facilities with a design capacity greater than 15 tons of equivalent P_2O_5 feed per day. This processing rate is less than that of any known existing commercial production facility and no production units of this size are expected to be built in the future.

In research facilities the air system is sized to accommodate frequent process changes, to ensure operator safety, and to facilitate maintenance. This practice results in oversizing of the air handling system compared to commercial plants and produces much more air per ton of product being pulled into the air system at the emission control points. At low inlet concentrations, scrubbers are less efficient at removing fluorides than at the higher concentrations typical of commercial production facilities. This principle was confirmed by emission tests at a wet process phosphoric acid research facility. The unit was equipped with a medium-energy scrubber, which is the basis of the standard. The lowest average fluoride emission rate measured as being 0.14 pound per ton P_2O_5 input, which is seven times the allowable emission limit of 0.02 pound per ton.

In light of the ineffectiveness of medium energy scrubbers in controlling emissions from research facilities, the Administrator has concluded that, for such facilities, they are not adequately demonstrated within the meaning of Section 111(a)(1). *See, Essex Chemical Corp. v. Ruckelshaus*, 486 F.2d 427, 440 (D.C. Cir. 1973). Because these facilities were not investigated during the development of the standard and because adequate information is not available to assess alternate technologies, the Administrator is unable to determine what, if any, technology represents the best demonstrated system of emission reduction, considering costs, nonair quality health and environmental impacts, and energy requirements. The standard is, therefore, being rescinded as it applies to these facilities.

Exemption of small plants would have no adverse environmental impacts. TVA's wet-process phosphoric acid research facility, which is considered typical of research facilities, is operated intermittently for about 10 to 20 percent of the total time per year that a commercial plant is operated. This research facility's production capacity is about 3.5 tons P_2O_5 input per day as compared to 500 tons P_2O_5 input per day for a typical commercial plant. The facility is equipped with the scrubbers comparable to those required by the standard at commercial plants. Total controlled fluoride emissions from the research facility, due to its low capacity and limited operating schedule, are estimated to be about 25 pounds per year as compared to about 4,000 pounds per year from a typical commercial plant meeting the NSPS.

Since research facilities are much smaller than commercial plants, the Administrator, as authorized by section 111(b)(2) of the Clean Air Act, believes that a size cutoff is the appropriate mechanism for excluding research facilities from NSPS requirements. A size cutoff for a facility with a maximum capacity of 15 tons of equivalent P_2O_5 feed per day should be appropriate to exclude any research facility operating

now or in the future. A plant which produces 1 ton of product per hour is considered a research pilot plant by TVA. This is equivalent to 10 to 14 tons of equivalent P_2O_5 feed per day for the four phosphate fertilizer categories. There are no known phosphate fertilizer industry commercial production plants with maximum capacities of 15 tons or less of equivalent P_2O_5 feed per day. Also, there is a trend toward larger plants in the phosphate fertilizer industry. The proposed size cutoff is less than one/half the size of the smallest commercial plant and one/fiftieth the size of a typical commercial plant.

The Agency anticipates no adverse environmental impacts. Due to low capacity and intermittent production, annual fluoride emissions from research facilities are negligible. It is expected that these research facilities will continue to use pollution control equipment to meet State regulations. There will be no adverse energy or economic impacts associated with the proposed revision to the standard.

Docket: The docket is an organized and complete file of all the information submitted to or otherwise considered by EPA in the development of these proposed amendments. The principal purposes of the docket are: (1) To allow interested parties to readily identify and locate documents so they can effectively participate in the rulemaking process, and (2) to serve as the record in case of judicial review.

Miscellaneous: Section 317 of the Clean Air Act requires the Administrator to prepare an economic impact assessment of any revision to a new source standard of performance "which the Administrator determines to be (a) substantial revision * * *" (Section 317(a)). These proposed amendments are not substantial revisions. The revisions will only reduce the economic impacts of the standards. Therefore, no eonomic impact assessment of the proposed amendment has been prepared.

Executive Order 12291 requires that EPA determine whether a regulation is "major" and therefore subject to the requirements of a regulation impact analysis (RIA). These proposed amdments to the standards are not major because they would result in none of the adverse economic effects set forth in section 1 of the Order as grounds for finding a regulation to be major. The only economic change is to lessen the economic impact on research facilities. These research facilities will no longer be required to incur unreasonable costs in order to achieve the NPS. Because there are no adverse economic impacts associated with these proposed revisions, no RIA has been prepared.

This regulation was submitted to OMB under Executive Order 12291.

The provisions of 5 U.S.C. 605(b) require the Administrator to prepare a regulatory flexibility analysis (RFA) or to certify that a proposed rule will not (if promulgated) have a significant economic impact on a substantial number of small entities. These amendments will not create additional impacts since the only change will be to lessen the economic burdens on research facilities. Therefore, the Administrator certifies that the proposed rules will have no adverse economic impact on small entities.

The Paperwork Reduction Act of 1980 (Pub. L. 95–511) requires clearance from the Office of Management and Budget (OMB) of certain public reporting/recordkeeping requirements before a rulemaking can be promulgated. There are no reporting/recordkeeping requirements associated with these revisions. A statement to that effect has been submitted to OMB.

List of Subjects in 40 CFR Part 60

Air pollution control, Aluminum, Ammonium sulfate plants, Cement plants, Coal, Copper, Electric power plants, Glass and glass products, Grains, Intergovernmental relations, Iron, Lead, Metals, Motor vehicles, Nitric acid plants, Paper and paper products industry, Petroleum, Phosphate, Reporting and recordkeeping requirements, Sewage disposal, Steel, Sulfuric acid plants, Waste treatment and disposal, Zinc.

Dated: June 14, 1982.

Anne M. Gorsuch,

Administrator.

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

For the reasons set out in the preamble, it is proposed to amend 40 CFR Part 60, paragraph (a) of §§ 60.200, 60.210, 60.220, and 60.230 (to read as follows):

§ 60.200 Applicability and designation of affected facility.

(a) The affected facility to which the provisions of this subpart apply is each wet-process phosphoric acid plant having a design capacity of more than 15 tons of equivalent P_2O_5 feed per day. For the purpose of this subpart, the affected facility includes any combination of: reactors, filters, evaporators, and hot wells.

* * * * *

§ 60.210 Applicability and designation of affected facility.

(a) The affected facility to which the provisions of this subpart apply is each superphosphoric acid plant having a design capacity of more than 15 tons of equivalent P_2O_5 feed per day. For the purpose of this subpart, the affected facility includes any combination of: evaporators, hot wells, acid sumps, and cooling tanks.

* * * * *

§ 60.220 Applicability and designation of affected facility.

(a) The affected facility to which the provisions of this subpart apply is each granular diammonium phosphate plant having a design capacity of more than 15 tons of equivalent P_2O_5 feed per day. For the purpose of this subpart, the affected facility includes any combination of: reactors, granulators, dryers, coolers, screens, and mills.

* * * * *

§ 60.230 Applicability and designation of affected facility.

(a) The affected facility to which the provisions of this subpart apply is each triple superphosphate plant having a design capacity of more than 15 tons of equivalent P_2O_5 feed per day. For the purpose of this subpart, the affected facility includes any combination of: mixers, curing belts (dens), reactors, granulators, dryers, cookers, screens, mills, and facilities which store run-of-pile triple superphosphate.

* * * * *

[FR Doc. 82–16715 Filed 6–18–82; 8:45 am]

BILLING CODE 6560–50–M

federal register

Monday
June 21, 1982

Part III

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

Surface Coal Mining and Reclamation Operations

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 701, 816, and 817

Surface Coal Mining and Reclamation Operations; Permanent and Temporary Impoundments

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

ACTION: Proposed rule.

SUMMARY: The Office of Surface Mining (OSM) proposes to revise its rules which provide minimum standards for permanent and temporary impoundments for all surface coal mining and reclamation operations. The rules, as proposed, would require procedures implementing the provisions of the Surface Mining Control and Reclamation Act, provide design latitude to professionals, remove inconsistencies between the existing rules and the rules of other Federal agencies, and clarify certain paragraphs of the existing rules.

DATES:

Written comments: Accepted until further notice.

Public hearings: Held on request only, on August 4, 1982, at 9:00 a.m. (local).

Public meetings: Scheduled on request only. See Supplementary Information for more detail.

ADDRESSES:

Written comments: Hand-deliver to the Office of Surface Mining, U.S. Department of the Interior, Administrative Record (TSR 14.12), Room 5315, 1100 L Street, NW., Washington, D.C.; or *mail* to the Office of Surface Mining, U.S. Department of the Interior, Administrative Record (TSR 14.12), Room 5315L, 1951 Constitution Avenue, NW., Washington, DC 20240.

Public hearings: Washington, D.C.—Department of the Interior Auditorium, 18th and C Streets, NW.; Pittsburgh, Pa.—William S. Moorehead, Federal Building, Room 2212, 1000 Liberty Avenue; Denver, Colo.—Brooks Tower, 2d Floor Conference Room, 1020 15th Street.

Public meetings: OSM offices in Washington, D.C.; Pittsburgh, Pa.; and Denver, Colo.

FOR FURTHER INFORMATION CONTACT: Jerry R. Ennis, Office of Surface Mining, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, DC 20240; 202–343–7881.

SUPPLEMENTARY INFORMATION:

I. Public Commenting Procedures.
II. Background.
III. Discussion of Proposed Rules.
IV. Procedural Matters.

I. Public Commenting Procedures

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Commenters are requested to submit five copies of their comments (see "Addresses"). Comments received at locations other than Washington, D.C., will not necessarily be considered or included in the Administrative Record for the final rulemaking. The comment period will remain open until the close of the comment period on the draft environmental impact statement that will consider this proposed rule.

Public Hearings

Persons wishing to comment at the public hearings should contact the person listed under "For Further Information Contact" by the close of business *three working days* before the date of the hearing. If no one requests to comment at a public hearing at a particular location by that date, the hearing will not be held. If only one person requests to comment, a public meeting, rather than a public hearing, may be held and the results of the meeting included in the Administrative Record.

Filing of a written statement at the time of the hearing is requested and will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare appropriate questions.

Public hearings will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment, and persons present in the audience who wish to comment, have been heard.

Public Meetings

Persons wishing to meet with OSM representatives to discuss these proposed rules may request a meeting at any of the OSM offices listed in "Addresses" by contacting the person listed under "For Further Information Contact."

All such meetings are open to the public and, if possible, notices of meetings will be posted in advance in the Administrative Record room (1100 L St.). A written summary of each public meeting will be made a part of the Administrative Record.

II. Background

Section 515(b)(10) of the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 *et seq.* (the Act), requires surface coal mining operations to minimize disturbances to the prevailing hydrologic balance and to the quality and quantity of water in surface- and ground-water systems. Section 515(b)(8) of the Act requires that permanent impoundments be of adequate size, that the impoundment dam construction achieve stability comparable to that of the structures constructed under Pub. L. 83–566, that the quality of the impounded water be permanently suitable for its intended use, that impoundment discharges not degrade the water quality of the receiving waters below the standards established in applicable Federal and State law, that the final grading provide adequate safety and access, that the water level be reasonably stable, and that the impoundment not diminish the quality or quantity of water used by adjacent or surrounding landowners.

Sections 516(b) (9) and (10) of the Act impose similar requirements on the surface effects of underground mining. Section 516(b)(10) also provides that modifications should be made to accommodate the distinct differences between surface and underground mining. OSM proposes, however, to promulgate identical impoundments rules for surface and underground mining, because the environmental and safety concerns that affect the design, construction, and maintenance of surface impoundments are the same whether they are associated with surface or underground mines.

On March 13, 1979, OSM, published permanent program rules (44 FR 15312) that contained standards for permanent and temporary impoundments (30 CFR 816.49, 816.56, 817.49, and 817.56). The rules being proposed today would revise some of those rules.

III. Discussion of Proposed Rules

Section 701

OSM proposes to amend 30 CFR 701.5 by adding a definition of the term "MSHA" to mean the Mine Safety and Health Administration. This will allow use of the abbreviation rather than the lengthy full title throughout OSM's regulations.

Sections 816.49, 816.56, 817.49, and 817.56

Proposed §§ 816.49 and 816.56, which would govern impoundments associated with surface mines, are identical to proposed §§ 817.49 and 817.56, which

would address underground mine impoundments. The following discussions of proposed §§ 816.49 and 816.56 are therefore equally applicable to proposed §§ 817.49 and 817.56.

The titles of proposed §§816.49, 816.56, 817.49, and 817.56 would be modified by deleting the phrase "Hydrologic balance" to more precisely describe the content of the rules.

Sections 816.49 and 817.49

Existing § 816.49(a) prohibits construction of permanent impoundments unless authorized by the regulatory authority on the basis of certrain demonstrations. Proposed § 816.49(a) would allow the regulatory authority to authorize construction of permanent impoundments if certain determinations are made. No change in effect is intended.

Proposed §§ 816.49(a)(1)(i)–(vi), which provide some of the standards for approving permanent impoundments, are virtually identical to Paragraphs (a)(1)–(4), (a)(6), and (a)(7) of the existing § 816.49. These provisions implement the permanent impoundment standards of Section 515(b)(8)(A), (C), (D), (E), and (F) of the Act and require, in addition, that permanent impoundments be suitable for the approved postmining land use. Proposed Paragraph (a)(1)(vii) would require permanent impoundments to comply with the requirements of Paragraph (b), which implements, among other things, the requirement of Section 515(b)(8)(B) of the Act that permanent impoundments be designed to achieve stability compatible with that of structures constructed under Section 6 of the Watershed Protection and Flood Prevention Act, 16 U.S.C. 1006. The requirements of existing Paragraph (a)(5), which implements the Section 515(b)(8)(B) requirements, would therefore be incorporated in proposed Paragraph (b), as discussed more fully below.

Proposed § 816.49(a)(2) would require temporary impoundments to meet the standards of proposed § 816.49(b), which are also applicable to permanent impoundments. Existing § 816.49(b) requires instead that temporary impoundments comply with the requirements for sedimentation ponds (existing §§ 816.46(e)–(u)). OSM has proposed to revise the sedimentation pond design criteria completely (46 FR 34784 (July 2, 1981)). OSM believes that the detailed proposed standards for permanent and temporary impoundments are more appropriate than the sedimentation pond design criteria. The comment period for the sedimentation pond rulemaking has recently been reopened (47 FR 20631 (May 13, 1982)). OSM solicits comments as to whether the sedimentation pond regulations should cross-reference the impoundments regulations and, if so, to what extent.

Existing §§ 816.49 (c) through (h) set forth additional requirements for design, construction, and inspection of permanent impoundments. These provisions, together with existing § 816.49(a)(5), do not reflect the extent to which existing MSHA reguations at 30 CFR Part 77 already provide requirements for impoundment design, construction, and maintenance. Similarly, OSM's existing impoundment regulations do not take into account MSHA's regulatory obligations for review and approval of impoundment designs, inspections of impoundments, and other aspects of impoundment regulation and have thereby created overlapping and duplicative MSHA and regulatory authority responsibilities. Proposed § 816.49(b) would replace these provisions and differentiate between the regulatory functions of MSHA and those of the regulatory authority to avoid unnecessary duplication. As described more fully below, MSHA and not the regulatory authority would be responsible for certain aspects of impoundment regulation.

OSM implemented the requirements of Section 515(b)(8)(B) of the Act in part by referencing certain of MSHA's impoundment regulations at 30 CFR Part 77 as they apply to large impoundments meeting MSHA's size criteria. (*See* 30 CFR 77.216(a).) OSM proposes in § 816.49(b)(1) that MSHA would continue to review plans for and regulate impoundments structures meeting the criteria of 30 CFR 77.216(a) according to the terms of 30 CFR Part 77. The regulatory authority, though, would be responsible for reviewing the plans for and regulating such large permanent and temporary impoundments for compliance with the requirements of proposed § 816.49(a). Under proposed § 816.49(b)(2), the regulatory authority would be responsible for regulation of impoundments that do not meet the 30 CFR 77.216(a) criteria. MSHA would be responsible, however, for implementation of the emergency plans for hazardous conditions.

Proposed § 816.49(b)(1)(i) would require MSHA to review the plans for impoundments meeting the 30 CFR 77.216(a) criteria to determine whether they comply with the requirements of 30 CFR Part 77. Impoundment plans would be submitted to MSHA concurrently with their submission to the regulatory authority as part of the permit application. MSHA's approval of an impoundment plan would constitute a finding that the impoundment is designed to achieve necessary stability with an adequate margin of stability compatible with that of structures constructed under Section 6 of the Watershed Protection and Flood Prevention Act, 16 U.S.C. 1006. Under proposed § 816.49(b)(1)(ii), MSHA would be responsible for regulating impoundments for compliance with 30 CFR Part 77. Thus, for large impoundments meeting the 30 CFR 77.216(a) criteria, MSHA alone would be responsible for reviewing plans and regulating performance with respect to the considerations addressed by current §§ 816.49 (a)(5) and (c) through (h). This revision would end the current confused regulatory regime under which MSHA has regulated large impoundments under 30 CFR Part 77 while the regulatory authority has similarly regulated impoundments under 30 CFR 816.49.

MSHA's regulatory program has proven effective in regulating the safety and stability of impoundments as required by Section 515(b)(8)(B) of the Act. Proposed §§ 816.49(b) (i) and (ii) would therefore eliminate a duplicative and wasteful regulatory system while preserving the required level of protection for the public and the environment.

Proposed § 816.49(b)(1)(iii) would require the regulatory authority to notify MSHA when it believes that MSHA should take regulatory action pursuant to 30 CFR Part 77 with respect to a large impoundment. The regulatory authority would not take action itself, but would in this manner utilize its own inspections to supplement those of MSHA in determining compliance with 30 CFR Part 77.

Proposed § 816.49(b)(1)(iv) would require the regulatory authority to evaluate each plan for an impoundment meeting the 30 CFR 77.216(a) criteria for compliance with the standards of proposed §816.49(a). Proposed §816.49(a)(1)(vii) would require a finding that the impoundment will comply with § 816.49(b); because proposed § 816.49(b)(1)(i) would require an MSHA finding that each impoundment complies with 30 CFR Part 77, MSHA's approval would be a prerequisite to the regulatory authority's approval of the impoundment. On the other hand, any modifications of impoundment design that appear necessary as a result of the regulatory authority's approval of the impoundment. On the other hand, any modifications of impoundment design that appear necessary as a result of the regulatory authority's review would

have to be concurred in by MSHA to be sure they do not alter the basis for MSHA's approval of the plan. Proposed § 816.49(b)(1)(iv) would also require the regulatory authority to determine whether impoundments adequately provide for safety of the public during emergency situations, because OSM believes that MSHA's current regulatory scheme does not sufficiently address this issue.

Proposed §816.49(b)(2) provides standards for impoundments not meeting the 30 CFR 77.216(a) criteria. Section 816(b)(2)(i) requires operators to submit plans and specifications for impoundments to the regulatory authority for approval, and requires that impoundments meet the performance standards of § 816.49(b)(2)(iv). Existing § 816.49(a)(5) implements the requirement of Section 515(b)(8)(B) of the Act that impoundments meet the minimum requirements for structures subject to Section 6 of the Watershed Protection and Flood Prevention Act by requiring impoundments to conform to standards published by the Soil Conservation Service (SCS) of the U.S. Department of Agriculture. OSM believes that these generally accepted standards, published under the authority of 7 CFR Part 653, are valid for water impoundments associated with surface coal mining operations. As described below, the impoundment performance standards proposed in § 816.49(b)(2)(iv) are based on SCS published standards. Thus, operators would be able, in most cases, to comply with regulations by utilizing an appropriate SCS design guide. By not referencing specific design guides, however, the proposed regulations would allow appropriate professionals the latitude necessary for application of technological advances and innovative techniques as well as of updated design guides.

Proposed § 816.49(b)(2)(ii) would allow the regulatory authority to require specific monitoring practices, design precipitation events, or other control or inspection measures where appropriate. This provision is designed to enable the regulatory authority to ensure that impoundments are stable and safe under all conditions. Similarly, proposed § 816.49(b)(2)(iii) would authorize the regulatory authority to ensure that operators develop, as part of their impoundment planning, procedures for protecting the public if potentially hazardous conditions develop.

Section 816.49(b)(2)(iv) of the proposed rule would set forth specific performance criteria to be achieved in the design and construction of small impoundments. The performance levels listed incorporate actions which will meet or exceed the criteria for structures designed and constructed pursuant to Section 6 of the Watershed Protection and Flood Prevention Act as implemented by SCS at 7 CFR Part 653. OSM believes the performance parameters in this paragraph will allow full latitude for application of current engineering practices, technological advances, innovative techniques, and updated design guides.

Proposed § 816.49(b)(2)(iv)(A) would require that impoundments not meeting the 30 CFR 77.216(a) criteria be designed, constructed, and maintained on the basis of certain precipitation events; i.e., 25-year, 6-hour for temporary impoundments and 50-year, 6-hour for permanent impoundments. The regulatory authority would be able to increase the storm intensity design specifications for particular impoundments if site-specific conditions warrant, such as a larger drainage area, higher than normal sediment loads, or safety considerations.

Proposed § 816.49(b)(2)(iv)(B) would require water impoundments to attain a static safety factor that is determined by prudent engineering design. Rather than require a specific static safety factor, OSM has chosen to allow operators and their design professionals to tailor the static safety factor to meet site-specific conditions while being consistent with prudent engineering design.

Proposed § 816.49(b)(2)(iv)(C) would require operators to protect the integrity of impoundments by providing freeboard that is adequate for resisting overtopping by waves and by sudden increases in storage volume.

Proposed § 816.49(b)(2)(iv)(D) would require that the foundations of impoundments be excavated and prepared to resist impoundment failure and would require the impoundments to have cutoff trenches installed where necessary to ensure stability.

Proposed § 816.49(b)(2)(iv)(E) would protect against erosion and sedimentation by requiring that slopes of impoundments be protected against surface erosion and against sudden drawdown, which can lead to slope failure.

Proposed § 816.49(b)(2)(iv)(F) would protect embankment stability by requiring embankment faces to be vegetated except the embankment face where water is impounded, which may be riprapped or otherwise stabilized in accordance with accepted design practices.

Proposed § 816.49(b)(2)(iv)(G) would require that the principal and emergency spillways of each impoundment be designed and constructed so that in combination they can safely pass the design precipitation event.

Proposed § 816.49(b)(2)(iv)(H) would require excavated ponds to meet all these standards and, in addition, would require that the top of any remaining highwall be located far enough below the low waterline to avoid exposure and spalling and to protect embankment stability.

Proposed § 816.49(b)(2)(v) would parallel MSHA regulations in 30 CFR Part 77 and existing §§ 816.46 (r) and (t) and 816.49(h) with respect to the role of design professionals (registered professional engineers and others certified to provide design services) and other qualified persons in the design, construction, maintenance, inspection, and certification of impoundments.

Proposed § 816.49(b)(2)(v)(A) would require impoundments to be designed by qualified design professionals with respect to critical dimensions, stability, and hydraulic performance. Concentration on these key elements of impoundment design will ensure stable and safe impoundments.

Proposed § 816.49(b)(2)(v)(B) would require that impoundments be inspected during construction under the direction of a qualified design professional to ensure that the impoundments are constructed as designed, while § 816.49(b)(2)(v)(C) would require certification of impoundments upon completion of construction as constructed in accordance with approved plans and specifications. These provisions together are intended to ensure that impoundments are constructed in accordance with all requirements.

Proposed §§ 816.49(b)(2)(v)(D) and (E) are intended to ensure that impoundments continue to perform as designed. Paragraph (b)(2)(v)(D) would require inspection of each impoundment by a qualifed person at least every 30 days, while Paragraph (6)(2)(v)(E) would require annual certifications by the qualifed design professional. MSHA requires large impoundments to be inspected every 7 days. Thirty-day inspections are considered appropriate since smaller impoundments do not present the degree of potential hazard to the public, environment, or miner safety as do impoundments meeting the size criteria of 30 CFR 77.216(a). In site-specific instances, the regulatory authority would be able to require an increased number of inspections under proposed § 816.49(b)(2)(ii).

Proposed § 816.49(b)(2)(vi) would make clear that qualified registered professional engineers and other

certified professionals involved in impoundment design, construction, and certification must be licensed in the State where the impoundment is located, must be qualified to design impoundments, and must accept professional liability for their work. The qualified person performing the 30-day inspections must be a person trained and qualifed to perform inspection services according to MSHA criteria (30 CFR 77.216–3(g)).

Proposed § 816.49(c) would incorporate the provisions of existing § 816.49(i), which governs modifications of impoundments, but would require MSHA invovlement in modifications of impoundments administered under 30 CFR Part 77. The principal change proposed is that in emergency situations the procedures of 30 CFR 77.216–3(b) for notification of the MSHA District Manager and evacuation of miners and the public under hazardous situations would apply and would be carried out under MSHA's direction for all impoundments, including those not meeting the 30 CFR 77.216(a) criteria.

Sections 816.56 and 817.56

Proposed §§ 816.56 and 817.56 are identical and would continue the basic requirements of existing §§ 816.56 and 817.56 that permanent sedimentation ponds, diversions, impoundments, and treatment facilities meet the criteria in the design plan for the structures prior to abandoning the permit area. The proposed provisions would, however, require renovation of the structures only where determined necessary by a qualified registered professional engineer. The qualified registered professional engineer would certify the completion of any required renovation. This revision would make clear that renovation of structures will not be required where the structures are already in compliance with the approved design plan and the applicable regulations. OSM intends that the certification by the qualified registered professional engineer of the adequacy of permanent sedimentation pounds would consider whether sufficient provisions for future maintenance of the ponds have been made as required by Section 519(c)(2) of the Act.

E. Reference Materials.

Reference materials used to develop these proposed rules are as follows:

BOM (U.S. Bureau of Mines), 1973, Analysis of coal refuse dam failure, Middle Fork Buffalo Creek, Saunders, W. Va.: (Prepared by W. A. Wahler and Associates.) U.S. Bureau of Mines Contract S0122084, vol. 1, text; vol. 2, appendices (various pagings).

BOR (U.S. Bureau of Reclamation), 1973, (reprinted 1977), Design of small dams—A water resources technical publication, 2d edition: U.S. Government Printing Office, Washington, D.C., 816 pp.

Cedergren, H.R., 1977, Seepage, drainage, and flow nets: John Wiley and Sons, Inc., New York, 534 pp.

Griffiths, D.H., and King, R.F., 1965, Applied geophysics for engineers and geologists: Pergamon Press, London, 223 pp.

Harr, M.E., 1962, Groundwater and seepage: McGraw-Hill Book Co., New York City, 315 pp.

MESA (U.S. Mining Enforcement and Safety Administration), 1975, Engineering and design manual—Coal refuse disposal facilities: (Prepared by D'Appolonia Consulting Engineers, Inc., Pittsburgh, Pa.) U.S. Mining Enforcement and Safety Administration report, various pagings.

MESA (U.S. Mining Enforcement and Safety Administration), 1976, Design guidelines for coal refuse piles and water, sediment, or slurry impoundments and impounding structures: U.S. Mining Enforcement and Safety Administration report, 7 pp.

Morgenstern, N.R., and Price, V.E., 1965, The analysis of the stability of general slip surfaces: Geotechnique, vol. 15, No. 1, pp. 79–93.

MSHA (U.S. Mine Safety and Health Administration), 1979, Design guidelines for coal refuse piles and water, sediment, or slurry impoundments and impounding structures: Information Report 1R1109, 29 pp.

Naval Facilities Engineering Command, 1971 (revised 1974), Soil mechanics, foundations, and earth structures: U.S. Naval Facilities Engineering Command report NAVFAC DM–7, various pagings.

NCB (National Coal Board—Great Britain), 1970, Spoil heaps and lagoons: National Coal Board, London, Technical Handbook, 232 pp.

Newmark, N.M. 1965, Effects of earthquakes on dams and embankments: Fifth Rankine Lecture, Geotechnique, June, pp. 139–160.

OSM (U.S. Office of Surface Mining), 1981, Manual for planning and management of mine-cut lakes at surface coal mines, 2d draft, September 1981: Prepared by R. Wayne Nelson and Associates under OSM Contract No. J5101046.

SCS (U.S. Soil Conservation Service), 1972, National engineering handbook. Section 4, Hydrology.

SCS (U.S. Soil Conservation Service), 1976 (revised 1981), Earth dams and reservoirs: Technical Release No. 60.

SCS (U.S. Soil Conservation Service), 1977, Pond: Practice Standard 378, 8 pp.

SCS (U.S. Soil Conservation Service), 1978, Rating soils for selected uses, 403 in Section 400, Application of soil survey information, in Part II, Procedure guide, of National soils handbook: U.S. Soil Conservation Service National Soils Handbook, various pagings.

Sherard, J.L., Woodward, R.J., Gizienski, S.F., and Clevenger, W.A., 1963, Earth and earth-rock dams: John Wiley and Sons, Inc., New York, 725 pp.

IV. Procedural Matters

National Environmental Policy Act

OSM has prepared an Environmental Assessment (EA) of the cumulative impacts on the human environment of this rulemaking and related rulemakings under the Act. This cumulative EA is on file in the OSM Administrative Record office of the address listed in the "Addresses" section of this preamble. OSM is also preparing a Supplemental Environmental Impact Statement that will consider this proposed rule. (See 47 FR 18920, May 3, 1982.)

Federal Paperwork Reduction Act

The information collection requirements in existing 30 CFR Parts 816 and 817 were approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3507 and assigned new clearance numbers 1029–0047 and 1029–0048 on April 1, 1981. This approval was identified in "Notes" at the introduction to 30 CFR Parts 816 and 817 under the old numbers R0618 and R0619 (both under No. B–190462). OSM will delete those "Notes" and codify the OMB approvals under new §§ 816.10 and 817.10. OSM is requesting OMB approval of the information collection requirements being proposed for the following sections and will codify the OMB approvals when the final rules are promulgated:

Section 816.49(b)(1)(i), 816.49(b)(1)(iv), 816.49(b)(2)(i), 816.49(b)(2)(v), 816.49(b)(2)(v) (A) and (D), § 816.56 and the corresponding underground § 817.49(b)(1)(i), 817.49(b)(1)(iv), 817.49(b)(2)(i), 817.49(b)(2)(v), 817.49(b)(2)(v) (A) and (D), 817.56.

The information required by the above Sections will be used by the requlatory authority in evaluating structures in relation to surface and underground mining activities to ensure that they meet the established performance standards. This information required by 30 CFR Parts 816 and 817 is mandatory.

Standard Forms 83 and supporting statements justifying the need for this

information will be submitted to OMB. These documents will estimate the compliance burden of these requirements. Opportunity to comment will be available through separate notice.

Regulatory Flexibility Act

The Department has also determined, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, that these rules will not have a significant economic impact on a substantial number of small entities. The proposed rules will allow small coal operators increased flexibility in meeting performance standards and should especially ease the regulatory burden on small coal operators in Appalachia.

Executive Order 12291

The Department of the Interior (DOI) has examined these proposed rules according to the criteria of Executive Order 12291 (February 17, 1981). OSM has determined that these are not major rules and do not require a regulatory impact analysis because they will impose only minor costs on the coal industry and coal consumers. In addition, the proposed rules emphasize the use of performance standards instead of design criteria and will allow operators to utilize the most cost-effective means of achieving the performance standards.

List of Subjects in 30 CFR

Part 701

Coal mining, Law enforcement, Surface mining, Underground mining.

Part 816

Coal mining, Environmental protection, Reporting requirements, Surface mining.

Part 817

Coal mining, Environmental protection, Reporting requirements, Underground mining.

Accordingly, it is proposed to amend 30 CFR Parts 701, 816, and 817 as set forth herein.

Dated: June 9, 1982.

Daniel N. Miller, Jr.,

Assistant Secretary, Energy and Minerals.

PART 701—PERMANENT REGULATORY PROGRAM

§ 701.5 [Amended]

1. In § 701.5, the new term "MSHA" is added in aphabetical order to read as follows:

MSHA means the Mine Safety and Health Administration.

PART 816—PERMANENT PROGRAM PERFORMANCE STANDARDS—SURFACE MINING ACTIVITIES

2. Section 816.49 is revised to read as follows:

§ 816.49 Permanent and temporary impoundments.

(a)(1) Permanent impoundments of water may be created, if authorized by the regulatory authority in the approved permit and if the following determinations are made:

(i) The size and configuration of such impoundment is adequate for its intended purposes.

(ii) The quality of impounded water is suitable on a permanent basis for its intended use, and discharge from the impoundment will not degrade the quality of receiving waters below the water quality standards of this chapter and those established pursuant to applicable Federal and State laws.

(iii) The water level will be reasonably stable and be capable of supporting the intended use.

(iv) Final grading will provide for adequate safety and access for proposed water users.

(v) The impoundment will not result in the diminution of the quality and quantity of water utilized by adjacent or surrounding landowners for agricultural, industrial, recreational, or domestic uses.

(vi) The impoundment will be suitable for the approved postmining land use.

(vii) The impoundment will comply with the requirements of Paragraph (b) of this section.

(2) The regulatory authority may authorize the construction of temporary impoundments other than sedimentation ponds as part of surface coal mining operations if the impoundments will comply with the requirements of paragraph (b) of this section.

(b) Permanent and temporary water impoundments, excluding sedimentation ponds, that meet the size of other criteria contained in 30 CFR 77.216(a) shall meet the following requirements in addition to those of Paragraph (a) of this section:

(1)(i) Water impoundments shall comply with the provisions of 30 CFR Part 77. The required impoundments plan shall be submitted directly to the District Manager of MSHA concurrently with its submission to the regulatory authority as part of the permit application. Approval of a plan by MSHA shall constitute a finding that the impoundment is designed to achieve the minimum design requirements applicable to structures subject to Section 6 of the Watershed Protection and Flood Prevention Act, 16 U.S.C. 1006.

(ii) MSHA is responsible for regulating impoundments approved under this paragraph pursuant to the requirements of 30 CFR Part 77.

(iii) The regulatory authority is responsible for regulating impoundments approved under this paragraph for compliance with the requirements of paragraph (a) of this section. The regulatory authority shall notify MSHA when it believes that regulatory action pursuant to 30 CFR Part 77 is required with respect to an impoundment approved pursuant to this paragraph.

(iv) The regulatory authority shall evaluate each plan for permanent and temporary impoundments submitted as part of the permit application for compliance with the requirements of paragraph (a) of this section and to determine whether the plan adequately ensures protection of the public under emergency situations.

(2) Permanent and temporary water impoundments other than those subject to paragraph (b)(1) of this section and other than sedimentation ponds shall be designed, constructed, and maintained as follows:

(i) Plans and specifications for the design, construction, and maintenance of impoundments shall be submitted to the regulatory authority for approval and shall meet or exceed the performance standards of paragraph (b)(2)(iv) of this section.

(ii) The regulatory authority may require additional specific practices it deems necessary to fulfill environmental performance standards of the Act.

(iii) The regulatory authority shall ensure that operators develop emergency procedures to protect the public should a potentially hazardous condition develop.

(iv) Performance standards:

(A) Impoundments shall be designed, constructed, and maintained on the basis of the following precipitation events:

Temporary impoundments, on 25-year, 6-hour event; permanent impoundments, on 50-year, 6-hour event. The regulatory authority may specify a larger volume design storm if site-specific conditions warrant.

(B) Structures that will impound water during or after mining operations shall attain an adequate static factor of safety as determined by prudent engineering design.

(C) Impounding embankments shall have adequate freeboard to resist overtopping by waves and by sudden increases in storage volume.

(D) Foundations shall be excavated and prepared to resist failure and cutoff trenches shall be installed if necessary to ensure stability.

(E) Slope protection shall be provided to protect against surface erosion at the site and to protect against sudden drawdown.

(F) Faces of embankments shall be vegetated, except that faces where water is impounded may be riprapped or otherwise stabilized in accordance with accepted design practices.

(G) The combination of principal and emergency spillways shall be designed and constructed to pass the design precipitation event.

(H) Excavated ponds shall meet the standards above, and additionally, the top of any remaining highwall shall be located far enough below the low waterline to avoid exposure and spalling and to protect embankment stability.

(v) Dams and embankments for water impoundments under this paragraph shall be—

(A) Designed by a qualified registered professional engineer or other certified professional with respect to critical dimensions, stability, and hydraulic performance;

(B) Inspected during construction under the direction of a qualified registered professional engineer or other certified professional to ensure that the impoundments are constructed as designed;

(C) Certified upon completion of construction by a qualified registered professional engineer or other certified professional as constructed in accordance with approved plans and specifications;

(D) Inspected by a qualified person at least every 30 days with respect to stability, maintenance, water quality, and continued performance in accordance with the design and performance standards; and

(E) Certified thereafter by a qualified registered professional engineer or other certified professional annually until bond release, abandonment, or removal as continuing to meet the approved plans and specifications.

(vi) As used in paragraph (b)(2)(v) of this section, a qualified registered professional engineer or other certified professional is a professional who is licensed by a State licensing authority to provide design services in the State where such impounding structure is to be located, who is qualified to design impounding structures, and who accepts the professional liability, and a qualified person is a person trained and qualified under 30 CFR 77.216–3(g) to perform inspection services.

(c) Plans for any enlargement, reduction in size, reconstruction, or any other modification to all dams or impoundments shall be approved before modifications begin by the regulatory authority and, if the impoundment meets the size or other criteria contained in 30 CFR 77.216(a), MSHA, except that if a modification is required to eliminate a potentially hazardous condition involving public health, safety of coal mining personnel, or the environment, the provisions of 30 CFR 77.216–3(b) shall apply.

3. Section 816.56 is revised to read as follows:

§ 816.56 Postmining adequacy of sedimentation ponds, diversions, impoundments, and treatment facilities.

Before abandoning a permit area or seeking bond release, the operator shall demonstrate to the satisfaction of the regulatory authority and, if the operation includes impoundments meeting the size and other criteria of 30 CFR 77.216(a), to the satisfaction of MSHA that all permanent sedimentation ponds, diversions, impoundments, and treatment facilities meet the requirements of this chapter for permanent structures, have been maintained properly, and meet the requirements of the approved reclamation plan for permanent structures and impoundments. The operator shall renovate such structures if necessary to meet the requirements of this chapter and to conform to the approved reclamation plan. Such demonstration shall require the certification of a qualified registered professional engineer, and any renovation required shall be certified as completed before final acceptance by the regulatory authority.

PART 817—PERMANENT PROGRAM PERFORMANCE STANDARDS—UNDERGROUND MINING ACTIVITIES

4. Section 817.49 is revised to read as follows:

§ 817.49 Permanent and temporary impoundments.

(a)(1) Permanent impoundments of water may be created, if authorized by the regulatory authority in the approved permit and if the following determinations are made:

(i) The size and configuration of such impoundment is adequate for its intended purposes.

(ii) The quality of impounded water is suitable on a permanent basis for its intended use, and discharge from the impoundment will not degrade the quality of receiving waters below the water quality standards of this chapter and those established pursuant to applicable Federal and State laws.

(iii) The water level will be reasonably stable and be capable of supporting the intended use.

(iv) Final grading will provide for adequate safety and access for proposed water users.

(v) The impoundment will not result in the diminution of the quality and quantity of water utilized by adjacent or surrounding landowners for agricultural, industrial, recreational, or domestic uses.

(vi) The impoundment will be suitable for the approved postmining land use.

(vii) The impoundment will comply with the requirements of Paragraph (b) of this section.

(2) The regulatory authority may authorize the construction of temporary impoundments other than sedimentation ponds as part of surface coal mining operations if the impoundments will comply with the requirements of Paragraph (b) of this section.

(b) Permanent and temporary water impoundment, excluding sedimentation ponds, that meet the size or other criteria contained in 30 CFR 77.216(a) shall meet the following requirements in addition to those of paragraph (a) of this section:

(1)(i) Water impoundments shall comply with the provisions of 30 CFR Part 77. The required impoundments plan shall be submitted directly to the District Manager of MSHA concurrently with its submission to the regulatory authority as part of the permit application. Approval of a plan by MSHA shall constitute a finding that the impoundment is designed to achieve the minimum design requirements applicable to structures subject to Section 6 of the Watershed Protection and Flood Prevention Act, 16 U.S.C. 1006.

(ii) MSHA is responsible for regulating impoundments approved under this paragraph pursuant to the requirements of 30 CFR Part 77.

(iii) The regulatory authority is responsible for regulating impoundments approved under this paragraph for compliance with the requirements of paragraph (a) of this section. The regulatory authority shall notify MSHA when it believes that regulatory action pursuant to 30 CFR Part 77 is required with respect to an impoundment approved pursuant to this paragraph.

(iv) The regulatory authority shall evaluate each plan for permanent and temporary impoundments submitted as part of the permit application for compliance with the requirements of

paragraph (a) of this section and to determine whether the plan adequately ensures protection of the public under emergency situations.

(2) Permanent and temporary water impoundments other than those subject to paragraph (b)(1) of this section and other than sedimentation pounds shall be designed, constructed, and maintained as follows:

(i) Plans and specifications for the design, construction, and maintenance of impoundments shall be submitted to the regulatory authority for approval and shall meet or exceed the performance standards of Paragraph (b)(2)(iv) of this section.

(ii) The regulatory authority may require additional specific practices it deems necessary to fulfill environmental performance standards of the Act.

(iii) The regulatory authority shall ensure that operators develop emergency procedures to protect the public should a potentially hazardous condition develop.

(iv) Performance standards:

(A) Impoundments shall be designed, constructed, and maintained on the basis of the following precipitation events:

Temporary impoundments, on 25-year, 6-hour event; permanent impoundments, on 50-year, 6-hour event. The regulatory authority may specify a larger volume design storm if site-specific conditions warrant.

(B) Structures that will impound water during or after mining operations shall attain an adequate static factor of safety as determined by prudent engineering design.

(C) Impounding embankments shall have adequate freeboard to resist overtopping by waves and by sudden increases in storage volume.

(D) Foundations shall be excavated and prepared to resist failure and cutoff trenches shall be installed if necessary to ensure stability.

(E) Slope protection shall be provided to protect against surface erosion at the site and to protect against sudden drawdown.

(F) Faces of embankments shall be vegetated, except that faces where water is impounded may be riprapped or otherwise stabilized in accordance with accepted design practices.

(G) The combination of principal and emergency spillways shall be designed and constructed to pass the design precipitation event.

(H) Excavated ponds shall meet the standards above, and additionally, the top of any remaining highwall shall be located far enough below the low waterline to avoid exposure and spalling and to protect embankment stability.

(v) Dams and embankments for water impoundments under this paragraph shall be—

(A) Designed by a qualified registered professional engineer or other certified professional with respect to critical dimensions, stability, and hydraulic performance;

(B) Inspected during construction under the direction of a qualified registered professional engineer or other certified professional to ensure that the impoundments are constructed as designed;

(C) Certified upon completion of construction by a qualified registered professional engineer or other certified professional as constructed in accordance with approved plans and specifications;

(D) Inspected by a qualified person at least every 30 days with respect to stability, maintenance, water quality, and continued performance in accordance with the design and performance standards; and

(E) Certified thereafter by a qualified registered professional engineer or other certified professional annually until bond release, abandonment, or removal as continuing to meet the approved plans and specifications.

(vi) As used in paragraph (b)(2)(v) of this section, a qualified registered professional engineer or other certified professional is a professional who is licensed by a State licensing authority to provide design services in the state where such impounding structure is to be located, who is qualified to design impounding structures, and who accepts the professional liability, and a qualified person is a person trained and qualified under 30 CFR 77.216–3(g) to perform inspection services.

(c) Plans for any enlargement, reduction in size, reconstruction, or any other modification to all dams or impoundments shall be approved before modifications begin by the regulatory authority and, if the impoundment meets the size or other criteria contained in 30 CFR 77.216(a), MSHA, except that if a modification is required to eliminate a potentially hazardous condition involving public health, safety of coal mining personnel, or the environment, the provisions of 30 CFR 77.216–3(b) shall apply.

5. Section 817.56 is revised to read as follows:

§ 817.56 Postmining adequacy of sedimentation ponds, diversions, impoundments, and treatment facilities.

Before abandoning a permit area or seeking bond release, the operator shall demonstrate to the satisfaction of the regulatory authority and, if the operation includes impoundments meeting the size and other criteria of 30 CFR 77.216(a), to the satisfaction of MSHA that all permanent sedimentation ponds, diversions, impoundments, and treatment facilities meet the requirements of this chapter for permanent structures, have been maintained properly, and meet the requirements of the approved reclamation plan for permanent structures and impoundments. The operator shall renovate such structures if necessary to meet the requirements of this chapter and to conform to the approved reclamation plan. Such demonstration shall require the certification of a qualified registered professional engineer, and any renovation required shall be certified as completed before final acceptance by the regulatory authority.

(Pub. L. 95–87, 30 U.S.C. 1201 *et seq.*)

[FR Doc. 82-16728 Filed 6-18-82; 8:45 am]
BILLING CODE 4310-05-M

---

30 CFR Parts 816, 817, and 826

Surface Coal Mining and Reclamation Operations Permanent Regulatory Program: Backfilling and Grading

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

ACTION: Proposed rule.

SUMMARY: The Office of Surface Mining (OSM) is proposing to revise the rules relating to the backfilling and grading requirements for surface and underground mining activities. The rules would be reorganized, duplication would be eliminated, specific design criteria would be removed, and the backfilling and grading performance standards for steep slope mining would be combined with the backfilling and grading performance standards for other types of surface coal mining operations. OSM believes these changes would allow more flexibility in the backfilling and grading procedures.

DATES: *Written comments:* Accepted until further notice.

Public hearings: Held on request only, on August 4, 1982, at 9:00 a.m.

Public meetings: Scheduled on request only. See Supplementary Information for more detail.

ADDRESSES: *Written comments: Hand-deliver* to the Office of Surface Mining,

U.S. Department of the Interior, Administrative Record (TSR 14.16), Room 5315, 1100 L Street, NW., Washington, D.C.; or *mail* to the Office of Surface Mining, U.S. Department of the Interior, Administrative Record (TSR 14.16), Room 5315L, 1951 Constitution Avenue, NW., Washington, DC 20240.

Public hearings: Washington, D.C.—Department of the Interior Auditorium, 18th and C Streets, NW.; Pittsburgh, Pa.—William S. Moorehead Federal Building, Room 2212, 1000 Liberty Avenue; and Denver, Colo.—Brooks Towers, 2d Floor Conference Room, 1020 15th Street.

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

FOR FURTHER INFORMATION CONTACT:

Public hearings and information: Raymond E. Aufmuth, Division of Engineering Analysis, Office of Surface Mining, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, DC 20240; 202–343–5244.

Public meetings: Jose del Rio, 202–343–4022.

SUPPLEMENTARY INFORMATION:

I. Public Commenting Procedures.
II. Background.
III. Discussion of Proposed Rules.
IV. Discussion of Comments on Draft Proposed Rules.
V. Procedural Matters.

I. Public Commenting Procedures

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Commenters are requested to submit five copies of their comments (see "Addresses"). Comments received at locations other than Washington, D.C., will not necessarily be considered or be included in the Administrative Record for the final rulemaking. The comment period will remain open until the close of the comment period on the draft supplemental environmental impact statement that will consider this proposed rule.

Public Hearings

Persons wishing to comment at the public hearings should contact the person listed under "For Further Information Contact" by the close of business *three working days* before the date of the hearing. If no one requests to comment at a public hearing at a particular location by that date, the hearing will not be held. If only one person requests to comment, a public meeting, rather than a public hearing, may be held and the results of the meeting included in the Administrative Record.

Filing of a written statement at the time of the hearing is requested and will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare appropriate questions.

Public hearings will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment, and persons present in the audience who wish to comment, have been heard.

Public Meetings

Persons wishing to meet with OSM representatives to discuss these proposed rules may request a meeting at any of the OSM offices listed in "Addresses" by contacting the person listed under "For Further Information Contact."

All such meetings are open to the public and, if possible, notices of meetings will be posted in advance in the Administrative Record room (1100 L Street). A written summary of each public meeting will be made a part of the Administrative Record.

II. Background

The overburden removed as spoil during surface coal mining operations is either returned to the disturbed area by backfilling and grading, or it is disposed of in other locations. The safety and environmental protection standards for backfilling and grading areas disturbed by surface mining activities are set forth in section 515(b)(3) of the Surface Mining Control and Reclamation Act of 1977 (the Act), 30 U.S.C. 1201 *et seq.*, and those for underground mining activities are set forth in Section 516(b). Spoil that is disposed of in locations other than the disturbed area is subject to the standards for disposal of excess spoil. See 30 U.S.C. 1265(b)(22).

To comply with the provisions of the Act, backfilling and grading rules for the permanent regulatory program were promulgated on March 13, 1979, as 30 CFR 816.100–816.106 for surface mining activities and as 30 CFR 817.100–817.103 and 817.106 for underground mining activities (44 FR 15411–15413 and 15437–15438, respectively). Part 816 includes requirements for contemporaneous reclamation (§ 816.100), general requirements for backfilling and grading (§§ 816.101 and 816.102), covering coal and acid- and toxic-forming materials (§ 816.103), requirements for areas with thin and thick overburden (§§ 816.104 and 816.105), and requirements for regrading rills and gullies (§ 816.106). Similar requirements for the surface effects of underground mining activities are included in Part 817, except that there are no rules for areas with thin or thick overburden.

Backfilling and grading rules for auger mining and steep slope operations were promulgated in the same March 13, 1979, rulemaking, but they were included in 30 CFR Parts 819 and 826, respectively, in a group of rules that was established for operations that require special performance standards. However, the backfilling and grading rules for these two types of operations are similar to the general backfilling and grading rules of Parts 816 and 817. Consequently, it was proposed on March 19, 1982 (47 FR 12087), in the proposed rulemaking for auger mining, that the backfilling and grading rules for auger mining be moved to Part 816, as a new § 816.108, and it is proposed in this rulemaking that the backfilling and grading rules for steep slope operations be moved to Parts 816 and 817 as new §§ 816.107 and 817.107, respectively.

The revised backfilling and grading rules proposed herein would eliminate duplication, remove specific design criteria, and consolidate the backfilling and grading rules for most types of surface coal mining operations except mountaintop removal operations, which have special requirements.

III. Discussion of the Proposed Rules.

Introduction

OSM is proposing to revise the performance standards in Parts 816 and 817 that govern the backfilling and grading of spoil on areas disturbed by surface coal mining operations. The proposed rules would eliminate duplication in the existing rules, thereby shortening and clarifying them, and they would further simplify the rules by moving to Parts 816 and 817 similar requirements from Part 826 that prescribe the performance standards for steep slope operations.

In addition, most of the specific design criteria in the existing rules would be eliminated in the proposed rules, to allow the professional engineering community greater flexibility by adapting engineering procedures to site-specific conditions. However, even though it is not always practicable for rules to include specific criteria that are applicable to all conditions anywhere in the country, the design criteria that

would be removed are applicable to many mining situations. Accordingly, OSM is developing a technical handbook that will provide state-of-the-art knowledge on backfilling and grading and that will be updated as new information becomes available through research, experience, and experimental practices. The handbook will be placed in the technical reference file of the Administrative Record.

OSM is also proposing that the disposal of coal processing waste and underground development waste in the backfill of disturbed areas be allowed.

Finally, it is proposed that the backfilling and grading rules for the remining of previously mined areas be removed from the backfilling and grading rules proposed herein, because revised rules for that type of operation are going to be proposed in another rulemaking.

In order to simplify the preamble, the following discussion of the proposed changes to §§ 816.100–816.103 and 816.107 also applies to §§ 817.100–817.103 and 817.107, unless otherwise noted. The sections for thin and thick overburden, §§ 816.104 and 816.105, respectively, apply only to surface mining activities. The preamble for the existing rules was published on March 13, 1979 (44 FR 15225 and 44 FR 15271, respectively.)

Part 816—Permanent Program Performance Standards—Surface Mining Activities

Section 816.100 Contemporaneous reclamation

The existing requirement that all land disturbed by surface mining activities must be reclaimed as contemporaneously as possible with mining operations would not be modified.

Section 816.101 Backfilling and grading: General requirements

It is proposed that §§ 816.101 and 816.102 be combined and that § 816.101 be removed, because some of the requirements in § 816.101 are duplicative of requirements in § 816.102. In addition, specific design criteria in both sections would be removed.

The timing and distance requirements in paragraph (a) of § 816.101 for rough backfilling and grading of contour, open pit, and area strip mining operations would be removed from the backfilling and grading requirements. A detailed timetable for each step in the reclamation plan already is required by § 780.18(b)(1), and the specific design criteria would more properly be described in a technical report.

The requirement in existing § 816.101(b)(1) that all disturbed areas, except as specifically exempted, must be returned to their approximate original contour (AOC) would be moved to proposed § 816.102(a), to replace the less clear requirement in existing § 816.102(a) that final-graded slopes must approximate the general nature of the premining topography. The exceptions and variances to return the land surface to AOC are discussed in more detail in § 816.102.

The additional requirements in existing § 816.101(b)(1) to eliminate all spoil piles and depressions and to compact all spoil where advisable to ensure stability or to prevent leaching would be moved to proposed §§ 816.102(b)(2)(i) and 816.102(b)(3), respectively.

The requirements in existing § 816.101(b)(2) that backfilled material must be placed so as to minimize adverse effects on ground water, minimize offsite effects, and support the approved postmining land use would also be moved to proposed § 816.102 as paragraphs (b)(2)(iii) and (b)(2)(iv), respectively. The wording of existing § 816.101(b)(2), "minimize adverse effects on ground water, minimize offsite effects" refers to section 515(b)(10) of the Act, and the wording in proposed paragraph (b)(2)(iii) has been changed to more closely parallel the Act.

The statement in existing § 816.101(b)(3) that the grade of postmining slopes does not have to be uniform would not be included in proposed § 816.102(a) because it is superfluous. The fact that terraces and small depressions may be allowed indicates that uniformity is not necessary.

The statement in existing § 816.101(b)(4) that allows cut-and-fill terraces in certain situations would be removed, as it is only a cross reference to existing § 816.102(c), in which the conditions under which terraces would be allowed are described in detail.

For the foregoing reasons, it is proposed that § 816.101 be removed.

Section 816.102 Backfilling and grading: General grading requirements

The title of proposed § 816.102 would be revised to "Backfilling and grading: General requirements," because existing § 816.101, "Backfilling and grading: General requirements," would be removed. Additionally, the requiremetns in existing § 816.102 are not just for grading, contrary to the wording of the section title, and the requirements in proposed § 816.102 also would not be limited to grading.

The requirement in existing § 816.102(a) that postmining final-graded slopes must approximate the general nature of the premining topography would be replaced in proposed § 816.102(a) by the requirement in § 816.101(b)(1) that all disturbed areas must be returned to their approximate original contour. The requirements are identical, and "approximate original countour" is the more common term and the term that is used in the Act.

Existing § 816.102(a) also specifies that the final-graded slopes cannot exceed in grade the approximate premining slopes (i.e., approximate original countour), but that lesser slopes may be approved by the regulatory authority on the basis of soil, climate, or other characteristics. The exception refers to steep slope mining, as the wording is from the definition of "steep slope" in section 515(d)(4) of the Act. However, lower grades are also allowed in section 515(b)(3) for thin-overburden conditions, and the same section of the Act allows the grades of postmining land surfaces to be greater than those of premining land surfaces where the overburden is thick. Therefore, in proposed § 816.102(a), paragraph (1) provides an exception for thin-overburden conditions and paragraph (2) provides an exception for thick-overburden conditions. In addition, exceptions are or may be allowed for special types of operations such as mountaintop removal, land-use variances, and remining of previously mined areas. Therefore, paragraphs (a)(3)(i), (a)(3)(ii), and (a)(3)(iii), respectively, have been added to indicate that these exceptions exist.

The statement in existing § 816.102(a) that final-graded slopes need not be uniform would be removed as discussed under § 816.101(b)(3).

The provision in existing § 816.102(a) describing the conditions under which the regulatory authority may modify the reclamation requirements for remining in previously mined areas would be removed from this section, because OSM is preparing a notice of proposed rulemaking for a new section that contains the requirements. However, remining would be listed as an exception to the requirement to return to approximate original contour in proposed § 816.102(a)(3)(iii).

Proposed § 816.102(b)(1) would broaden the requirement in existing § 816.102(a)(1) by stating that all spoil must be retained in the mined-out area. The requirement is broadened because the term "bench" seems to imply mining by the countour method and does not include the other types of mining

operations to which this rule would apply. Also, the exception that, if authorized, excess spoil may be disposed of elsewhere in the permit area, as allowd in section 515(b)(22) of the Act, would be added to the paragraph. The term "spoil" is defined in § 701.5 as "overburden that has been removed during surface coal mining operatons." OSM feels that the definition includes faceup material removed during surface preparation for underground mining and construction of support facilities. A definition of the term "excess spoil" that is proposed to be added to § 701.5 in the excess spoil rulemaking proposed on June 8, 1982 (47 FR 24954) states that "excess spoil" means "spoil material disposed of in a location other than the mined-out area, except that material used to blend spoil from the mined out area with the surrounding terrain after achieveing the approximate original contour in non-steep areas."

The reference to existing benches in existing § 816.102(a)(1) would be deleted because it refers to the discussion of remining in previously mined areas in existing § 816.102(a).

Proposed § 816.102(b)(2)(i) would include the requirements in existing §§ 816.101(b)(1) and 816.102(a)(2) that all highwalls must be eliminated by backfilling and grading the spoil, and would also include the requirement in existing § 816.101(b)(1) that all spoil piles and depressions must be eliminated. A reference to the fact that small depressions may be allowed has been added to the paragraph because of the apparent contradiction of existing paragraph (c) (proposed paragraph (g)) concerning conditions under which small depressions may be authoirzed.

Proposed § 816.102(b)(2)(ii) would include the requirements in existing § 816.102(a)(2) that final slopes must be as moderate as possible, that they cannot exceed the angle of repose, and that they must have a minimum long-term static safety factor of 1.3. The requirement to eliminate highwalls, stated twice in existing § 816.102(a)(2), would be in proposed § 816.102(b)(2)(i).

Proposed §§ 816.102(b)(2)(iii) and (b)(2)(iv) would include the requirements in existing § 816.101(b)(2) that material must be backfilled so as to minimize adverse effects on surface and ground water on and off the site and to support the approved postimining land use, respectively.

Proposed § 816.102(b)(3) would include the requirement in existing § 816.101(b)(1) that spoil must be compacted where advisable to ensure stability or to prevent leaching.

Proposed § 816.102(c) would address situations where spoil may be placed outside the active mine workings in nonsteep slope areas to blend the backfilled and graded disturbed area into the surrounding terrain. This rule, which is not in the existing rules, would ensure that placement of spoil would be done in an environmentally sound manner. The placement of spoil outside the mined-out area would be approved by the regulatory authority as required by § 816.102(b)(1).

Proposed § 816.102(d) would add a new provision that would allow coal processing waste and underground development waste to be placed in the backfilled area. However, such materials must be disposed of in accordance with §§ 816.83 and 816.85 for disposal of coal processing waste. OSM believes that in spite of the many variable physical characteristics of these two types of materials, it would be possible, with proper design and construction control by a registered professional engineer, to place the materials in mined-out areas without endangering the long-term integrity of the fill. This provision would allow industry to take advantage of more cost-effective designs and still afford adequate protection to the public health and safety and to the environment.

Proposed § 816.102(e) would contain the requirements in existing § 816.103 for covering exposed coal seams and acid- and toxic-forming materials. The requirements are the same for all types of operations and more properly belong in this general-requirements section. Proposed changes in the requirements are discussed under existing § 816.103.

Proposed § 816.102(f)(1) would retain the provisions of existing § 816.102(b) that cut-and-fill terraces may be allowed in order to conserve soil moisture, ensure stability, and control erosion on final-graded slopes if they are compatible with the postmining land use, but no specific design requirements for terrace construction would be provided. OSM has already eliminated the requirement that limits terraces to a maximum 20-foot width, when § 816.102(b)(1) was revised to read as follows:

> Where specialized grading, foundation conditions, or roads are required for the approved postmining land use, the final grading may include a terrace of adequate width to ensure the safety, stability, and erosion control necessary to implement the postmining land use plan. See 47 FR 18553 (April 29, 1982).

OSM also believes that the other design requirements of existing § 816.102(b)(2)–(b)(4) should be left to the professional engineer in considering site-specific situations.

Final § 816.102(b)(1), cited above would be renumbered as § 816.102(f)(2).

Proposed § 816.102(g) would contain the provision of existing § 816.102(c)(1) that small depressions may be constructed if they are needed to retain moisture, minimize erosion, or to assist revegetation. The limitation in existing § 816.102(c)(2) that prohibits depressions that restrict normal access and in existing § 816.102(c)(3) that prohibits depressions that are inappropriate substitutes for lower grades would be removed so that the design of small depressions may be site specific. The reclamation plan submitted to the regulatory authority would show the benefit of the depressions.

The reference in existing § 816.102(d) to mining on steep slopes would be removed. Backfilling and grading performance standards for mining on steep slopes are proposed to be moved from Part 826 to a new § 816.107, which is discussed below. Existing Paragraph (d) would therefore no longer be applicable.

Proposed § 816.102(h) would allow permanent impoundments in backfilled areas. Existing § 816.104(b)(4) contains the only reference in the backfilling and grading requirements to impoundments, and construction of impoundments is clearly not restricted to thin-overburden conditions (Section 515(b)(8) of the Act).

Proposed § 816.102(i) would require that surface and shallow ground water control be provided on the backfilled and graded area by diversions and water-control structures in accordance with § 816.43. This requirement, which is not in the existing rules, would ensure that the requirement to minimize disturbances to the quality and quantity of water in surface and ground water systems contained in section 515(b)(10) of the Act would be met on backfilled areas.

Proposed § 816.102(j), on grading the final slopes and preparing the surface for replacement of topsoil using methods to minimize erosion and subsequent instability, would remove the method-of-practice requirement of existing § 816.102(e). This would allow operators greater flexibility, as other measures other than working along the contour exist to minimize erosion.

Section 816.103 Backfilling and grading: Covering coal and acid- and toxic-forming materials

It has been proposed in the foregoing discussion of § 816.102 that the requirements for covering exposed coal and acid- and toxic-forming materials be

moved to that section as paragraph (e) and that § 816.103 be removed. The following, however, discusses the requirements in existing § 816.103(a) and proposed changes to those requirements.

Section 816.103(a)(1) of the permanent program rules originally required that exposed coal seams, acid- and toxic-forming materials, combustible materials, and other materials used or produced during mining be covered with nontoxic and noncombustible material and that the cover be at least 4 feet thick. However, on October 29, 1979, the Director of OSM stated that "changes will be proposed to provide for treatment as an alternative to cover of acid- and toxic-forming materials." Affadavit of Walter N. Heine, October 29, 1979, paragraph M. On November 27, 1979 (44 FR 67492), OSM suspended §§ 816.103(a)(1) and 817.103(a)(1) and stated that the standards of section 515(b)(14) of the Act would apply to surface mining activities and that section 516(b)(10) would apply to underground mining activities. See *In re: Permanent Surface Mining Regulations Litigation*, No. 79–1144 (D.D.C. February 26, 1980) at page 58.

Proposed § 816.102(e), which would replace existing § 816.103(a)(1), would require either an adeuqate amount of cover or the treatment of toxic materials to meet the water-quality standards of § 816.41. Because determination of the conditions under which treatment is necessary and the amount of cover that is adequate for various conditions are specific design criteria and should be left to the judgment of the professional engineer, existing paragraphs (a)(2) and (a)(3) are unnecessary and would be deleted. The requirement in existing paragraph (a)(4) that acid- and toxic-forming materials are not to be buried in such proximity to drainage courses as to cause pollution would be implicit in proposed § 816.102(b)(2)(iii) and would be removed.

The backfilling requirement in existing § 816.103(b) repeats the requirements in proposed § 816.102(b) and would be deleted. Also, since the regulatory authority approves the reclamation plan in Part 780, it is not necessary to repeat the statment that the regulatory authority shall approve the method to cover acid-forming or toxic-forming materials.

Section 816.104 Backfilling and grading: Thin overburden

In existing § 816.104(a), overburden is considered to be thin if the final thickness of the spoil is less than 80 percent of the initial thickness of the overburden plus the thickness of the coal before removal. In section 515(b)(3) of the Act, overburden is considered to be thin if replacement of all spoil and waste materials in the permit area will not result in return to approximate original contour. The mathematical limit set in existing § 816.104(a) has proved to be impractical because of its preciseness. Consequently, the guideline in the Act would be substituted in proposed § 816.104(a).

It is clear from the legislative history of the Act that the discussions leading to the proviso for thin overburden in section 515(b)(3) of the Act were the result of specific concerns by Western State operators where operations generally continue for a long period of time at the same location and the coal beds are thick in comparison to the thickness of the overburden. Section 515(b)(3) therefore describes thin-overburden conditions using similar language. OSM believes that some operations in the East and Midwest may also meet the criteria for thin overburden. The determination of whether this section should apply is necessarily site specific, and each permit application requesting treatment under this section should be individually evaluated by the regulatory authority.

The requirements of existing §§ 816.104 (b)(1), (b)(2), and (b)(3), which duplicate the general backfilling and grading requirements, would be indicated by a cross reference to proposed § 816.102 to make it clear that the general backfilling and grading requirements, other than return to approximate original contour, apply to mining where the overburden is thin.

The requirements for the construction of impoundments, in existing § 816.104(b)(4), are the only such requirements in the backfilling and grading rules and therefore would be moved to proposed § 816.102(h), as the construction of impoundments is not limited to thin-overburden conditions.

Section 816.105 Backfilling and grading: Thick overburden

In existing § 816.105(a), overburden is considered to be thick if the final thickness of the spoil is more than 120 percent of the initial thickness of the overburden plus the thickness of the coal before removal. In section 515(b)(3) of the Act, overburden is considered to be thick if there is more than sufficient spoil to restore the approximate original contour. As was true of the thin overburden rule, the mathematical limit proved to be impractical, and the guideline in the Act would be substituted in proposed § 816.105.

Proposed § 816.105(a) would clarify that spoil in excess of that required to achieve approximate original contour may continue to be backfilled on the disturbed area if it is graded to achieve the lowest practicable grade, but not more than the angle of repose. This proposal would not change the substance of existing § 816.105(b)(1) but would clarify the provision by using the language of section 515(b)(3) of the Act.

The remainder of existing § 816.105(b)(1) and existing §§ 816.105(b)(3)–(b)(6) are duplicative of the general backfilling and grading requirements in proposed § 816.102. Consequently, it would be indicated in proposed § 816.105(b), by cross reference, that those requirements, other than return to approximate original contour, also apply to thick overburden conditions.

Proposed § 816.105(c) would retain the requirement in existing § 816.105(b)(2) that excess spoil must be disposed of in accordance with the excess spoil disposal rules.

Section 816.106 Regrading or stabilizing rills and gullies

Existing § 816.106, which requires that rills and gullies in regraded and topsoiled areas must be filled, graded, or otherwise stabilized, was proposed for removal from the rules on February 18, 1982 (47 FR 7384).

Section 816.107 Backfilling and grading: Steep slopes

It is proposed that § 826.12, the backfilling and grading requirements for steep slope operations, be moved from Part 826 to form a new § 816.107. Only the standards applicable to steep slopes would be addressed in the new section, because many of the backfilling and grading requirements in Part 826 are the same as those in existing §§ 816.101–816.103, and would be in proposed § 816.102. The repetition in Part 826 is necessary because that part is one of a group of self-contained parts in the permanent program rules that describes performance standards for special types of operations. However, OSM has proposed that § 826.15 be moved to another section of the rules (47 FR 16152, April 14, 1982) and has already removed § 816.16 (47 FR 18552, April 29, 1982). Thus, Part 826 would no longer be needed (see preamble discussion of Part 826).

In addition, the provisions of § 826.11, which describe the applicability of the steep slope rules, would be moved to this new proposed section.

Proposed § 816.107(a) would combine the provisions of Paragraphs (a) and (b) of § 826.11 regarding the conditions under which the steep slope rules would apply.

Proposed § 816.107(b) would retain the prohibition against placement of certain materials on the downslope that is stated in § 826.12(a)(1).

Proposed §§ 816.107(b)(1)–(b)(4) would list the types of materials that are not allowed on the downslope, presently listed in paragraphs (a)(1)(i)–(a)(1)(iv) of § 826.12.

The exception stated in § 826.12(a)(2) for placing material in road embankments on the downslope would not be included in the new section because roads are considered to be structures and the ban concerns only such materials as spoil and debris. The requirements in § 826.12(b) for return to approximate original contour, elimination of highwalls, and a 1.3 static safety factor would not be included because these standards would be stated in paragraphs (a), (b)(2)(i), and (b)(2)(ii), respectively, or proposed § 816.102.

Proposed § 816.107(c), the circumstances under which land above the highwall may be disturbed, would be moved from § 826.12(c) with minor editorial modification and with the addition of the provision from section 515(d)(3) of the Act that limits the disturbance to that necessary to facilitate compliance with the environmental standards.

Reference to the requirements for disposal of excess spoil in existing § 826.12(d) would not be included because it would be covered by proposed § 816.102(b)(1).

Proposed § 816.107(d) would incorporate from § 826.12(e) the conditions under which woody material may be buried in the backfill.

The prohibition in § 826.12(f) against unlined or unprotected channels would not be included in proposed § 816.107 because it would be covered by proposed § 816.102(i).

Part 817—Permanent Program Performance Standards—Underground Mining Activities

Section 817.100 Contemporaneous reclamation

The existing requirement that all land disturbed by underground mining activities must be reclaimed as contemporaneously as possible with mining operations would not be modified.

Section 817.101 Backfilling and grading: General requirements

It is proposed that existing § 817.101, the general backfilling and grading requirements for restoring surface areas disturbed by underground mining activities, be combined with § 817.102 and that § 817.101 be removed, for the same reasons given in the preamable for §§ 816.101 and 816.102.

Section 817.102 Backfilling and grading: General grading requirements

The title of proposed § 817.102 would be revised to "Backfilling and grading: General requirements," because existing § 817.101, "Backfilling and grading: General Requirements," would be removed. Additionally, the requirements in existing § 817.102 are not just for grading, contrary to the wording of the section title, and the requirements in proposed § 817.102 also would not be limited to grading.

The rationale for proposed paragraphs (a)–(j) is the same as that for proposed paragraphs (a)–(j) of § 816.102. The provisions allowing for exceptions from the approximate original contour standard for thick and thin overburden and mountaintop removal operations in proposed § 816.102(a)(1)–(a)(3) are not included in proposed § 817.102 because those situations do not present difficulties for underground mines.

A new provision, proposed § 817.102(k), would be added to allow flexibility for settled fills that have become stabilized and revegetated. In litigation contesting the original permanent program rules, the District Court remanded the rule requiring return to approximate original contour for underground mines. *In re: Permanent Surface Mining Regulation Litigation*, No. 79–1144 (D.D.C. May 16, 1980) (Round II). The Court recognized that one distinct difference between surface and underground mines was that the latter could remain active much longer, up to 40 years. As a result, the Court reasoned that "surface disturbances thereby become settled and revegetated. In this situation, it is duplicitous to require the removal of previously settled and revegetated land only to achieve the purpose of a second revegetation." The Court directed the Secretary "to provide some flexibility for settled fills that have become stabilized and revegetated." *Id* at page 18.

If such fills meet the criteria listed in Paragraphs (k)(1)(i)–(k)(1)(iii) of proposed § 817.102, thus proving that they are sufficiently stable and revegetated to meet the objectives of the Act, then redisturbance would not be required. The criteria include that the spoil must not be located so as to the detrimental to the environment and must not be a health and safety concern (paragraph (i)). The spoil must also be stable as demonstrated by geotechnical analysis (paragraph (ii)) and be sufficiently vegetated to prevent erosion and contribution of suspended solids from normal runoff (paragraph (iii)). In addition, the regulatory authority may decide to leave the spoil in place if more harm would be caused by moving it (paragraph (2)). Finally, the regulatory authority may require stabilization of the spoil (paragraph (3)) if the pile does not meet the criteria of paragraphs (1)(i).(1)(iii).

Section 817.1003 Backfilling and grading: Covering coal and acid- and toxic-forming materials

It is proposed that this section be revised and moved to proposed § 817.102 as paragraph (e), for the same reasons discussed in the premable for proposed § 816.102(e).

Section 817.106 Regarding or stabilizing rills and gullies

Existing § 817.106, which requires that rills and gullies in regarded and topsoiled areas must be filled, graded, or otherwise stabilized, was proposed for removal from the rules on February 18, 1982 (47 FR 7384).

Section 817.107 Backfilling and grading: Steep slopes

It is proposed that the backfilling and grading requirements for steep slope operations in connection with underground mining activities be moved from Part 826 to a new § 817.107. The rationale for this proposed amendment is given in the foregoing discussion of § 816.107 and in the following discussion of Part 826.

Part 826 Special Permanent Program Performance Standards—Operations on Steep Slopes

It is proposed that Part 826, which applies both to surface and underground mining activities, be removed from the rules. The content of §§ 826.11 and 826.12 would be moved to Part 816 as new § 816.107 for surface mining activities and to Part 817 as new § 817.107 for the surface effects of underground mining activities. OSM has proposed in the postmining land use rulemaking that the requirements of § 826.15 be moved to Parts 816 and 817 (47 FR 16152, April 14, 1982); and OSM has, in an earlier rulemaking, removed § 826.16 (47 FR 18553, April 29, 1982). The rationale for moving the backfilling and grading requirements is given under the discussion of the proposed new § 816.107.

Sections 826.1, "Scope," and 826.2, "Objectives," would therefore be duplicative of §§ 816.1 and 816.2 and of §§ 817.1 and 817.2, and would be removed.

Section 826.15, which provides a variance from the requirement to return disturbed land to approximate original contour for the limited circumstances described in section 515(e) of the Act, was proposed for revision in a separate rulemaking to amend §§ 816.133 and 817.133, postmining land use (47 FR 16152, April 14, 1982). Section 826.16, multiple seam mining, has already been removed from this part by the rules for disposal of excess spoil on preexiting benches (47 FR 18555, April 29, 1982).

For the foregoing reasons, it is proposed that Part 826 be removed.

IV. Discussion of Public Comments on Draft Proposed Rules

OSM informally circulated a draft of these proposed rules before this rulemaking. The following discussion is of the comments received on that draft. Accepted and rejected substantive comments are addressed, but accepted editorial changes have been made without discussion.

Part 816

Several commenters requested a definition of contemporaneous reclamation or encouraged OSM to retain a time period for the completion of backfilling and grading. Also, another commenter indicated that the draft rules suffered from lack of detailed design criteria. The comments requesting time limits and additional design criteria for backfilling and grading are rejected. OSM believes that each regulatory authority should establish time periods and design criteria for reclamation that would be compatible with the type of mining in a particular area. The reclamation plan is the proper place for specifying time periods and design criteria for backfilling and grading, not rules that are national in scope.

Another commenter stated that nothing in section 515(b)(16) of the Act requires OSM to establish periods for backfilling and grading and that the rules should be flexible. OSM agrees, and the flexibility that is available to the regulatory authority is discussed in the preceding paragraph.

One commenter expressed a need for guidance by means of a technical memorandum on backfilling and grading, but another commenter pointed out that a technical memorandum is unnecessary because of the "State window" concept. OSM is developing a technical manual that will provide guidance for the regulatory authorities and the coal industry; therefore, the former comment is accepted and the latter is rejected.

One commenter suggested adding the words "as defined in the regulatory program" to the section on contemporaneous reclamation. The comment is rejected because the regulatory authority approves the reclamation plan on the basis of its own requirements.

Section 816.102

One commenter suggested modifying the requirement that all highwalls, spoil piles, and depressions be completely backfilled, allowing an exemption if desirable for meeting the postmining land use included in the approved reclamation plan. The comment is rejected because the present wording provides for the only exemptions to the backfilling requirements allowed by section 515(b)(3) of the Act.

Another commenter requested removal of the long-term static safety factor. The stability of an embankment is stated by the safety factor, and the requirement is needed for proper design of backfilled embankments. Consequently, the comment is rejected.

One commenter wanted the rules clarified by stating that the regulatory authority would approve the use of cut-and-fill terraces. The comment is rejected because the regulatory authority approves the postmining land use, which may include terraces.

One commenter proposed that depressions in the postmining land-use plan may be desirable and that this should be recognized when the postmining plan is approved. OSM accepts the comment on the value of small depressions and believes the rule recognizes the situation.

Another commenter requested that the method-of-practice requirements for final grading of slopes and preparation of the surface for topsoiling be retained. The existing rule is lengthy, and there are measures to control erosion other than working along the contour. The comment is rejected because mention of working along the contour was guidance rather than a requirement.

Several commenters indicated that it is not necessary to state that materials are not to be graded steeper than the angle of repose; that fills cannot be graded steeper than the angle of repose, by definition; and that the factor of safety precludes grading a slope approaching the angle of repose. OSM believes that the angle of repose provides a reasonable guide for the final surface configuration in the mined-out area. Therefore, the proposed rule specifies the angle of repose as a limiting factor in the backfilling and grading rules.

Section 816.105

One commenter was concerned that some highwalls would be reduced by disturbance above the highwalls if existing § 816.105(b)(5) on thick overburden was removed by the proposed rules. The paragraph in question states that all highwalls must be eliminated by backfilling. With this restriction deleted from the rules, the commenter believed there would be a tendency to reduce highwalls by means other than backfilling. The requirement has been reinstated in the proposed rules.

Another commenter proposed to delete the section on thick overburden because it contains material covered in other sections. The comment is rejected because OSM believes there is a need for a section that considers specific actions for surface mining activities in thick overburden, just as the Act recognized that need in section 515(b)(3).

Part 817

Section 817.102

Several commenters indicated that the draft of the proposed rule for settled and revegetated spoil seemed to apply to all mining activities. Their comments have been accepted, and the wording has been changed to apply to underground mining activities as indicated in *In re: Permanent Surface Mining Regulation Litigation*, No. 79-1144 (D.D.C. May 16, 1980). Several commenters suggested deletion of this provision, but their recommendation is rejected because the provision is necessary to comply with the court order.

Several commenters suggested that § 817.102(k) on settled and revegetated fills be limited to underground mines in existence before the effective date of the Act. They reasoned that the court ruled, in general, that underground mines do have to meet approximate original contour requirements, However, OSM believes the court did not rule on approximate original contour requirements but directed "the Secretary to provide some flexibility for settled fills that have become stabilized and revegetated" (*In re: Permanent Surface Mining Regulation Litigation*, No. 79-1144, D.D.C. May 16, 1980). Section 817.102(k) provides the flexibility for material that has remained in place for a long time, but is does not change the approximate original contour requirement for any excavated area or elimination of the highwall. Also, § 817.102(k) cannot be applied to underground mines in existence before passage of the Act, because the existing-

structure requirements in § 701.11(d) would apply to those mines.

One commenter suggested that stabilized-cut areas should be exempt from approximate original contour requirements for the same reasons that settled and revegetated spoil is exempt. The comment is rejected. For surface mining operations, section 515(b)(3) of the Act imposes the requirement that the disturbed area must be restored to approximate original contour for which exception is allowed only under sections 515(c) and 515(e) of the Act, provisions which are not applicable in this instance. As to cuts remaining as surface effects of underground mining, OSM believes that this is not an area in which it is necessary under section 516(b)(10) of the Act to accommodate differences between surface and underground mining.

One commenter suggested that if a settled and revegetated spoil pile is detrimental to the environment or to the public health or safety, it must be stabilized or relocated. OSM believes that the regulatory authority needs the discretion to specify the requirements for stabilization or relocation of spoil that may present a hazard to the public. The comment is rejected.

Several commenters requested clarification concerning the treatment of underground mine entries in draft § 816.103(a) on the treatment of acid- and toxic-forming and hazardous materials. The reference to control of water from underground mine entries was not included in the proposed rule (§ 816.102(c)) and will be covered in a separate rulemaking that OSM will announce soon.

Some commenters expressed concern with the wording in the draft "achieve an ecologically sound land use compatible with the surrounding region," that reclamation might not be required in areas surrounded by old works and that in some situations operators would be required to exceed natural conditions. However, the phrase is from section 515(b)(3) of the Act. In order to avoid misinterpretation, the wording has been changed to "support the approved postmining land use," which is in the reclamation plan that is submitted for approval by the regulatory authority under § 784.13.

Another commenter wanted to retain the original requirement that 4 feet of cover be required for acid- or toxic-forming materials. OSM believes that each regulatory authority should establish the depth of cover for, or need for treatment of, acid- or toxic-forming materials, and the comment is rejected.

Part 826

A commenter wanted the definition of steep slope in section 515(d)(4) of the Act to be added to the proposed rules. However, the definition of steep slope in § 701.5 of the existing rules (44 FR 15321) follows the definition in the Act.

Another commenter wanted the cross reference for road embankments restored to the section on steep slope mining. The reference to road embankments would be removed from the proposed rules because roads are structures and the section on steep slope mining prohibits materials rather than structures on the downslope (see discussion of § 816.107). Therefore, the comment is rejected.

A commenter pointed out that the paragraph on woody materials was not included in the draft proposed rules on steep slope mining as indicated in the preamble to the draft rules. The comment is accepted, and the paragraph has been added to the section on steep slope mining.

VI. Procedural Matters

Executive Order 12291

The Department of the Interior (DOI) has examined these proposed rules according to the criteria of Executive Order 12291 (Februry 17, 1981). OSM has determined that these are not major rules and do not require a regulatory impact analysis because they will impose only minor costs on the coal industry and coal consumers. In addition, the proposed rules emphasize the use of performance standards instead of design criteria, which will allow operators to utilize the most cost-effective means of achieving the performance standards.

Regulatory Flexibility Act

The Department has also determined, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, that these rules will not have a significant economic impact on a substantial number of small entities. The proposed rules will allow small coal operators increased flexibility in meeting performance standards and should especially ease the regulatory burden on small coal operators in Appalachia.

National Environmental Policy Act

OSM has prepared an Environmental Assessment (EA) of the cumulative impacts on the human environment of this rulemaking and related rulemakings under the Act. This cumulative EA is on file in the OSM Administrative Record office at the address listed in the "Addresses" section of this preamble. OSM is also preparing a Supplemental Environmental Impact Statement that will consider this proposed rule. (See 47 FR 18920, May 3, 1982.)

Lists of Subjects in 30 CFR

Part 816

Coal mining, Environmental protection, Reporting requirements, Surface mining.

Part 817

Coal mining, Environmental protection, Reporting requirements, Underground mining.

Part 826

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

Accordingly, it is proposed to revise 30 CFR Parts 816, 817, and 826 as set forth herein.

Dated: June 8, 1982.

William P. Pendley,

Acting Assistant Secretary, Energy and Minerals.

PART 816—PERMANENT PROGRAM PERFORMANCE STANDARDS—SURFACE MINING ACTIVITIES

§ 816.101 [Removed]

1. Part 816 is amended by removing § 816.101.

2. Section 816.102 is revised to read as follows:

§ 816.102 Backfilling and grading: General requirements.

(a) Postmining slopes shall be returned to the approximate original contour of the premining slopes, except when—

(1) The standards for thin overburden in § 816.104 are met;

(2) The standards for thick overburden in § 816.105 are met, or

(3) A variance is obtained from the regulatory authority for—

(i) Mountaintop removal operations in accordance with § 785.14,

(ii) Land-use variances in accordance with § 785.16 or

(iii) Remining of previously mined areas.

(b) Spoil shall be—(1) Retained in the mined-out area, unless disposal elsewhere in the permit area is approved;

(2) Backfilled and graded to— (i) Eliminate all highwalls, spoil piles, and depression, except that small depressions may be constructed in accordance with § 816.102(g);

(ii) Achieve the most moderate slope possible that does not exceed either the angle of repose or such lesser slope as is

necessary to achieve a minimum long-term static safety factor of 1.3;

(iii) Minimize disturbance of the hydrologic balance both on and off the site; and

(iv) Support the approved postmining land use; and

(3) Compacted where advisable to ensure stabliity or to prevent leaching.

(c) Placement of spoil outside the active mine workings in nonsteep slope areas in order to restore the approximate original contour by blending the spoil into the surrounding terrain shall meet the following requirements:

(1) All vegetative and organic material shall be removed from the area.

(2) The topsoil shall be removed, segregated, stored, and redistributed in accordance with §§ 816.21–816.25.

(3) The spoil shall be backfilled and graded in accordance with this section.

(d) Disposal of coal processing waste and underground development waste in the backfilled area shall be in accordance with §§ 816.83 and 816.85, except that a long-term static safety factor of 1.3 shall be achieved.

(e) Exposed coal seams and acid- and toxic-forming materials, combustible materials, and any other materials identified as exposed, used, or produced during mining shall be adequately covered with nontoxic and noncombustible material, or treated, to control the impact on surface and ground water in accordance with § 816.41, prevent sustained combustion, and minimize adverse effects on plant growth and land use.

(f) Cut-and-fill terraces may be allowed where—

(1) Needed to conserve soil moisture, ensure stability, and control erosion on final-graded slopes, if the terraces are compatible with the approved postmining land use; or

(2) Specialized grading, foundation conditions, or roads are required for the approved postmining land use, in which case the final grading may include a terrace of adequate width to ensure the safety, stability, and erosion control necessary to implement the postmining land use plan.

(g) Small depressions may be constructed if they are needed to retain moisture, minimize erosion, or assist revegetation.

(h) Permanent impoundments may be approved if they meet the requirements of §§ 816.41–816.56 and if they are suitable for the approved postmining land use.

(i) Overland and shallow ground-water flow from undisturbed areas and flow in ephemeral streams shall be controlled by diversions and other water-control measures in accordance with § 816.43.

(j) Preparation of final-graded surfaces shall be conducted in a manner that minimizes erosion and provides a surface for replacement of topsoil that will minimize slippage.

§ 816.103 [Removed]

3. Part 816 is amended by removing § 816.103.

4. Section 816.104 is revised to read as follows:

§ 816.104 Backfilling and grading: Thin overburden.

In surface coal mining which is carried out at the same location over a substantial period of time where the operation transects the coal deposit, and where the thickness of the coal deposit relative to the thickness of the overburden is large and where the operator demonstrates that the spoil and other waste materials available from the entire permit area are insufficient, giving due consideration to volumetric expansion, to restore the disturbed area to its approximate original contour, the operator shall, at a minimum—

(a) Backfill, grade, and compact (where advisable) using all available spoil and waste materials to attain the lowest practicable grade but not more than the angle of repose, and

(b) Meet the other requirements of § 816.102.

5. Section 816.105 is revised to read as follows:

§ 816.105 Backfilling and grading: Thick overburden.

In surface coal mining where the thickness of the overburden is large relative to the thickness of the coal deposit and where the operator demonstrates that the volume of the spoil and other waste materials is more than sufficient to restore the disturbed area to approximate original contour, the operator shall, at a minimum, after restoring to approximate original contour—

(a) Backfill, grade, and compact (where advisable) the spoil to attain the lowest practicable grade but not more than the angle of repose;

(b) Meet the other requirements of § 816.102; and

(c) Dispose of any excess spoil in accordance with §§ 816.71–816.74.

6. A new § 816.107 is added to read as follows:

§ 816.107 Backfilling and grading: Steep slopes.

(a) Surface mining activities on steep slopes shall be conducted so as to meet the requirements of § 816.102 and the requirements of this section, except where mining is conducted on flat or gently rolling terrain with an occasional steep slope through which the mining proceeds and leaves a plain or predominantly flat area or where operations are conducted in accordance with Part 824 of this chapter.

(b) The following materials shall not be placed on the downslope:

(1) Spoil.

(2) Waste materials of any type.

(3) Debris, including that from clearing and grubbing for haul-road construction.

(4) Abandoned or disabled equipment.

(c) Land above the highwall shall not be disturbed unless the regulatory authority finds that this disturbance will facilitate compliance with the environmental protection standards of Subchapter K of this chapter and the disturbance is limited to that necessary to facilitate compliance.

(d) Woody materials shall not be buried in the backfilled area unless the regulatory authority determines that the proposed method for placing woody material within the backfill will not deteriorate the stable condition of the backfilled area. Woody materials may be chipped and distributed over the surface of the backfill as mulch, if special provision is made for their use and is approved by the regulatory authority.

PART 817—PERMANENT PROGRAM PERFORMANCE STANDARDS—UNDERGROUND MINING ACTIVITIES

§ 817.101 [Removed]

7. Part 817 is amended by removing § 817.101.

Section 817.102 is revised to read as follows:

§ 817.102 Backfilling and grading: General requirements.

(a) Postmining slopes shall be returned to the approximate original contour of the premining slopes, except when a variance is obtained from the regulatory authority for—

(1) Land-use variances in accordance with § 785.16, or

(2) Remining of previously mined areas.

(b) Spoil shall be—

(1) Retained in the mined-out area, unless disposal elsewhere in the permit area is approved;

(2) Backfilled and graded to—

(i) Eliminate all highwalls, spoil piles, and depressions, except that small depressions may be constructed in accordance with § 817.102(g);

(ii) Achieve the most moderate slope possible that does not exceed either the angle of repose or such lesser slope as is

necessary to achieve a minimum long-term static safety factor of 1.3;

(iii) Minimize disturbance of the hydrologic balance both on and off the site; and

(iv) Support the approved postmining land use; and

(3) Compacted where advisable to ensure stability or to prevent leaching.

(c) Placement of spoil outside the active mine workings in nonsteep slope areas in order to restore the approximate original contour by blending the spoil into the surrounding terrain shall meet the following requirements:

(1) All vegetative and organic material shall be removed from the area.

(2) The topsoil shall be removed, segregated, stored, and redistributed in accordance with §§ 817.21–817.25.

(3) The spoil shall be backfilled and graded in accordance with this section.

(d) Disposal of coal processing waste and underground development waste in the backfilled area shall be in accordance with §§ 817.83 and 817.85, except that a long-term static safety factor of 1.3 shall be achieved.

(e) Exposed coal seams and acid- and toxic-forming materials, combustible materials, and any other materials identified as exposed, used, or produced during mining shall be adequately covered with nontoxic and noncombustible materials, or treated, to control the impact on surface and ground water in accordance with § 817.41, prevent sustained combustion, and minimize adverse effects on plant growth and land use.

(f) Cut-and-fill terraces may be allowed where—

(1) Needed to conserve soil moisture, ensure stability, and control erosion on final-graded slopes, if the terraces are compatible with the approved postmining land use; or

(2) Specialized grading, foundation conditions, or roads are required for the approved postmining land use, in which case the final grading may include a terrace of adequate width to ensure the safety, stability, and erosion control necessary to implement the postmining land use plan.

(g) Small depressions may be constructed if they are needed to retain moisture, minimize erosion, or assist revegetation.

(h) Permanent impoundments may be approved if they meet the requirements of §§ 817.41–817.56 and if they are suitable for the approved postmining land use.

(i) Overland and shallow groundwater flow from undisturbed areas and flow in ephemeral streams shall be controlled by diversions and other water-control measures in accordance with § 817.43.

(j) Preparation of final-graded surfaces shall be conducted in a manner that minimizes erosion and provides a surface for replacement of topsoil that will minimize slippage.

(k) Regrading of settled and revegetated fills to achieve approximate original contour at the conclusion of underground mining activities shall not be required if the conditions of paragraph (k)(1) are met.

(l) Settled and revegetated fill shall be composed of spoil or non-toxic or non-acidic underground development waste and meet the following criteria:

(i) The spoil or underground development waste shall not be located so as to be detrimental to the environment, or to the health and safety of the public.

(ii) Stability of the spoil or underground development waste shall be demonstrated through standard geotechnical analysis to be consistent with backfilling and grading requirements for material on the solid bench (1.3 static safety factor) or excess spoil requirements for material on the outslope (1.5 static safety factor).

(iii) The surface of the spoil or underground development waste shall be vegetated according to § 817.116 or § 817.117 and surface runoff shall be controlled in accordance with § 817.41.

(2) If the criteria of paragraph (k)(1) of this section are not met and if it is determined by the regulatory authority that disturbance of the existing spoil or underground development waste would increase environmental harm or adversely affect the health and safety of the public, then the regulatory authority may allow the existing spoil or underground development waste pile to remain in place.

(3) The regulatory authority may require stabilization of the spoil or underground development waste allowed to remain in place according to paragraph (k)(2) of this section to meet the requirements of paragraphs (k)(1)(i)–(k)(1)(iii) of this section.

§ 817.103 [Removed]

8. Part 817 is amended by removing § 817.103.

9. Part 817 is amended by adding new § 817.107 to read as follows:

§ 817.107 Backfilling and grading: Steep slopes.

(a) Underground mining activities on steep slopes shall be conducted so as to meet the requirements of § 817.102 and the requirements of this section.

(b) The following materials shall not be placed on the downslope:

(1) Spoil.

(2) Waste materials of any type.

(3)Debris, including that from clearing and grubbing for haul-road construction.

(4) Abandoned or disabled equipment.

(c) Land above the highwall shall not be disturbed unless the regulatory authority finds that this disturbance will facilitate compliance with the environmental protection standards of Subchapter K of this chapter and the disturbance is limited to that necessary to facilitate compliance.

(d) Woody materials shall not be buried in the backfilled area unless the regulatory authority determines that the proposed method for placing woody material within the backfill will not deteriorate the stable condition of the backfilled area. Woody materials may be chipped and distributed over the surface of the backfill as mulch, if special provision is made for their use and if approved by the regulatory authority.

PART 826—SPECIAL PERMANENT PROGRAM PERFORMANCE STANDARDS—OPERATIONS ON STEEP SLOPES [REMOVED]

10. Subchapter K is amended by removing Part 826.

Authority: Pub. L. 95–87, 30 U.S.C. 1201 et seq.

[FR Doc. 82–16729 Filed 6–18–82; 8:45 am]

BILLING CODE 4310–05–M

---

30 CFR Part 934

Surface Coal Mining and Reclamation Operations on Federal Lands Under the Permanent Program; State-Federal Cooperative Agreements; North Dakota

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

ACTION: Proposed rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is proposing to adopt a cooperative agreement between the Department of the Interior and the State of North Dakota for the regulation of surface coal mining operations on Federal lands in North Dakota under the permanent regulatory program. Such a cooperative agreement is provided for in the Surface Mining Control and Reclamation Act of 1977. This notice of proposed rulemaking provides additional information on the proposed terms of the cooperative agreement and other issues.

DATES: The public comment period on this proposed rule will extend until August 20, 1982. The public hearing will be held at the location shown in

"ADDRESSES," below, on August 10, 1982, beginning at 9:30 a.m. Any person interested in making an oral or written presentation at the hearing must contact OSM at the address and phone number listed under **"FOR FURTHER INFORMATION CONTACT"** by July 21, 1982.

ADDRESSES: Written comments must be mailed to: Administrative Record R&I–07, Office of Surface Mining, Room 5315–L, 1951 Constitution Avenue, NW., Washington, D.C. 20240.

Written comments may be hand carried to: Office of Surface Mining, Administrative Record R&I–07, Room 5315, 1100 L Street, NW., Washington, D.C.

Copies of the proposed Agreement and of the related information required under 30 CFR Part 745 are available for inspection Monday through Friday, 8:30 a.m. to 4 p.m., excluding holidays, at the following addresses:

State of North Dakota, Public Service Commission, Capital Building, Bismarck, North Dakota 58505

Office of Surface Mining, Room 5315, 1100 L Street, NW., Washington, D.C. 20005

The public hearing will be held in the 16th floor conference room, Capital Building, Bismarck, North Dakota 58505. If no person has contacted OSM by July 21, 1982, to express an interest to participate in the hearing, the hearing will be cancelled. A notice announcing any cancellation will be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Andrew DeVito, Office of Surface Mining, South Interior Building, 1951 Constitution Avenue, NW., Washington, D.C. 20240, Phone: (202) 343–5866.

SUPPLEMENTARY INFORMATION:

I. Procedural Matters

A. Public Hearing

Individual testimony at the public hearing will be limited to 15 minutes. The hearings will be transcribed by a court reporter. Filing of a written statement at the time of giving oral testimony will be helpful and would facilitate the job of the court reporter. Submission of written statements in advance of the hearing would greatly assist OSM officials who will attend the hearing by providing an opportunity to consider appropriate questions which could be asked for clarification or to request more specific information from the person testifying.

B. Public Meetings

Representatives of OSM will be available to meet during the comment period at the request of members of the public to receive their recommendations and comments concerning the proposed cooperative agreement. In order to schedule or attend such meetings, contact the individual listed under **"FOR FURTHER INFORMATION CONTACT".** OSM representatives will be available for these meetings between 9 a.m. and 4 p.m. local time, Monday through Friday, excluding holidays. All such meetings will be open to the public. Notices of such meetings and where they will be held will be posted in advance in the Administrative Record Room, Room 5315, 1100 L Street, NW., Washington, D.C. 20005.

C. Contracts With State Representatives

The Department has previously announced (45 FR 58378, September 3, 1980) its intention to follow the "Guidelines for Contacts with Employees and Officials During Consideration of State Permanent Regulatory Programs" published at 44 FR 54444 (September 19, 1979), during the process of developing cooperative agreements with the States. As written, the guidelines apply only to the State program review and decision process. However, the Department believes that the guidelines should also be applied in the development of State-Federal permanent program cooperative agreements because of the close interrelationship between each cooperative agreement and the approved State program. The need to reserve the ability of the Department and the State to work together through the stages of the cooperative agreement and the right of the public to be informed and to have the opportunity to comment meaningfully on issues raised are principles applicable to permanent program cooperative agreement rulemakings.

This decision requires that minor changes in the guidelines be made to clarify their applicability to cooperative agreement rulemakings.

Accordingly, revised guidelines for contacts with Departmental employees and officials during permanent program cooperative agreement rulemakings are given below. See the notice of September 29, 1979, 44 FR 54444, for a full discussion of the guidelines and supporting principles. The September 19, 1979, guidelines remain fully applicable to the State program review process.

1. Upon request the Department will meet with any member of the public through the end of the public comment period. Notices of scheduled meetings will be posted in a public place. The meetings will be open.

2. The Department will meet with State representatives or have telephone conservations with them, upon the initiative of either party, up to the point of the Secretary's decision to enter into a permanent program cooperative agreement with a State. These meetings will be open to the public unless the Department decides an executive session is appropriate. Advance notice of scheduled meetings will be posted in a public place. Notice of the executive session will be posted in a public place.

3. The Department will keep a summary record of all meetings and discussions, whether in person or by telephone, on a proposed cooperative agreement. This record will include a summary of the discussion and a list of all written information OSM receives. All such records along with all written communications relating to the cooperative agreement shall be made available to the public.

4. In those instances where the Department has conducted meetings or discussions with a State after the close of the public comment period, the Department will include summaries of the meetings in the record and, if necessary to assure an effective opportunity for public participation, provide an opportunity for the public to review the record of such meetings and discussions and to comment on them before a decision is made to enter into a permanent program cooperative agreement.

D. Public Comments

Written and oral comments should be as specific as possible. Although all comments are invited, those most likely to influence decisions on the cooperative agreement will be those which are supported by reasoning.

All written comments must be received by OSM by 5:00 p.m. local time on the date the comment period closes. Comments received after that hour will not necessarily be considered or included in the administrative record of this rulemaking. OSM cannot ensure that written comments received or delivered during the comment period to locations other than those specified above will be considered and included in the administrative record. Notices of meetings, summaries of all meetings and telephone conversations, along with all public comments received and a transcript of the public hearing, will also be made available for public review in the Office of Surface Mining at the address noted above.

II. Background

The purpose of this proposed rulemaking is to adopt a permanent program cooperative agreement between the Department of the Interior

and the State of North Dakota which will give North Dakota primacy in the administration of its approved permanent regulatory program on Federal lands in North Dakota. The State of North Dakota submitted a request for a permanent program cooperative agreement on November 14, 1980. Section 523(c) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act), 30 U.S.C. 1201 *et seq.*, and the implementing regulations at 30 CFR Part 745, allow for the State and the Secretary of the Interior to enter into a permanent program cooperative agreement if the State has an approved State program for the regulation of surface coal mining operations.

Consistent with Congress' intent that implementation of the Act be accomplished in two phases, section 523(c) of the Act provides for two kinds of State-Federal cooperative agreements: initial program cooperative agreements and permanent program cooperative agreements. Initial program cooperative agreements are authorized by the second sentence of section 523(c), which provides that "States with cooperative agreements existing on the date of enactment of this Act, may elect to continue regulation on Federal lands within the State, prior to approval by the Secretary of their State program, or imposition of a Federal program, provided that such existing cooperative agreement is modified to fully comply with the initial regulatory procedures set forth in section 502 of this Act." 30 U.S.C. 1273(c). Six States had cooperative agreements with the Department of the Interior prior to August 3, 1977 (Wyoming, Utah, New Mexico, North Dakota, Montana and Colorado). On January 23, 1980, North Dakota's pre-August 3, 1977, cooperative agreement was modified to comply fully with the initial regulatory program promulgated pursuant to section 502 of the Act. 30 U.S.C. 1252. It was published in the **Federal Register** on January 23, 1980 (45 FR 5534) and codified at 30 CFR 211.77(d).

Permanent program cooperative agreements are authorized by the first sentence of section 523(c) which provides that "[a]ny State *with an approved State program* may elect to enter into a cooperative agreement with the Secretary to provide for State regulation of surface coal mining and reclamation operations on Federal lands within the State, provided the Secretary determines in writing that such State has the necessary personnel and funding to fully implement such a cooperative agreement in accordance with the provision of this Act." 30 U.S.C. 1273(c) (emphasis added).

In entering into a permanent program cooperative agreement with the State of North Dakota, the Secretary will be implementing two other requirements of section 523 of the Act. These statutory requirements are (1) consideration of the diverse and unique characteristics of Federal lands in North Dakota, if any, and (2) incorporation of the requirements of the approved State program into the Federal lands program in North Dakota. *See* 30 U.S.C. 1273(a).

III. The State of North Dakota's Application

The State of North Dakota submitted its request for a permanent program cooperative agreement on November 14, 1980, along with the proposed terms and the information required by the regulations at 30 CFR Part 745. Revisions to those terms were made based on discussions between representatives from the State of North Dakota and OSM. A Notice of Intent to Propose Rulemaking, published in the **Federal Register** on August 7, 1981 (46 FR 40212), included the revised terms. Additional revisions to the proposed terms published on August 7, 1981, have been made based on further discussions with the State. The full text of the proposed permanent program cooperative agreement resulting from those discussions appears at the end of this notice.

The procedures for States to elect to enter into permanent program cooperative agreements are found in 30 CFR Part 745. Section 745.11(b) (1) through (8) of OSM's regulations require that certain information be submitted with a request for a permanent program cooperative agreement, if the information has not previously been submitted in the State program. The State of North Dakota submitted a proposed permanent program cooperative agreement and the supporting information required by 30 CFR 745.11(b) on November 14, 1980. Most of the information relating to the budget, staffing, organization and duties of the State regulatory authority, the North Dakota Public Service Commission (Commission), was described as appearing in volume 1 of North Dakota's Proposed Permanent Coal Program Text. *See* 30 CFR 745.11(b) (1), (2), (3), (4), (5) and (6). In addition, a written certification from the chief legal officer of the Commission concluded that no State statutory, regulatory or other legal constraint exists which would limit the capability of the Commission to fully comply with section 523(c) of the Act, as implemented by 30 CFR Part 745. *See* 30 CFR 745.11(b)(8).

OSM is proposing major revisions to the Federal lands regulations in 30 CFR Subchapter D. If those revisions are adopted before the effective date of the final rule for this cooperative agreement, OSM may make changes in the cooperative agreement in order to conform it to changes adopted for the Federal lands regulations. Comments are specifically requested on the impact of the proposed Federal lands regulations on the provisions of this proposed rule.

IV. The Text of the Proposed Agreement

A summary of the proposed cooperative agreement appears below. OSM emphasizes that the proposed permanent program cooperative agreement is subject to further change because of public comments and/or further discussion with the State of North Dakota.

Article I: Introduction and Purpose

This article would set forth the legal authority for the cooperative agreement which is contained is section 523(c) of the Act. The purposes of the Agreement are also listed.

Article II: Effective Date

This article provides that the cooperative agreement would be effective following signing by the Secretary and the Governor, and upon publication as a final rule in the **Federal Register.** It would remain in effect until terminated as provided in article X.

Article III: Scope

Article III would provide that the laws, rules, terms and conditions of North Dakota's State program are applicable to Federal lands in North Dakota except as otherwise stated in the cooperative agreement, the Act, 30 CFR 745.13, or other applicable laws or regulations. The effect of this provision would be to adopt the North Dakota State program as substantive Federal law enforceable by the State and the United States. This provision would also specifically implement section 523(a) of the Act, which provides that "(w)here Federal lands in a State with an approved State program are involved, the Federal lands program shall, at a minimum, include the requirements of the approved State program." 30 U.S.C. 1273(a). Excluded from the scope of the Agreement are the authorities and responsibilities reserved for the Secretary pursuant to the Act and 30 CFR 745.13.

Article IV: Requirements for Cooperative Agreement

This article would mutually bind the Commission and the Secretary to the provisions of the cooperative agreement and the conditions and requirements contained in article IV. The responsible agency in the State of North Dakota for purposes of administering this cooperative agreement would be the Commission which has and must continue to have authority under State law to carry out this cooperative agreement.

Article IV also would provide that the State may be reimbursed pursuant to section 705(c) of the Act if the cooperative agreement has been implemented and if necessary funds have been appropriated to OSM by Congress. Section 705(c) of the Act provides that a State with a cooperative agreement may receive an increase in its annual grant for the development, administration and enforcement of a State program on Federal lands by an amount which the Secretary determines is approximately equal to the amount the Federal government would have expended to regulate surface coal mining and reclamation operations on the Federal lands within the State. See 30 U.S.C. 1295(c). The reference in section 705(c) to section 523(d) is obviously a typographical error. The correct reference is section 523(c). The regulations implementing section 705(c) appear at 30 CFR 735.16 through 735.26. If adequate funds have not been appropriated, OSM and MLRD will meet to decide on appropriate measures to insure that mining operations are regulated in accordance with the Program. Funds provided to the State are to be adjusted in accordance with Office of Management and Budget (OMB) Circular A–102 (Uniform Requirements For Assistance To State And Local Governments), Attachment E (Program Income).

The article also deals with reports and records, personnel, the use of equipment and laboratories and permit application fees. The provisions are short and self-explanatory.

Article V: Policies and Prodedures for Review of a Permit Application Package or an Application for a Permit Renewal or Revision

Under this article, an operator on Federal lands would be required by the Commission and the Secretary to submit a permit application package in an appropriate number of copies to the Commission and OSM. The term "permit application package" used throughout the cooperative agreement beginning in this article, is a new term. It would include the requirements of the Mineral Leasing Act of 1920 (MLA), implemented by the 30 CFR Part 211 regulations of the Minerals Management Service (MMS), and the requirement of the Act for a surface coal mining permit, implemented by 30 CFR Part 741. Comments are invited on use of the term "permit application package." The permit application package is to be in the form required by the Commission and contain any supplemental information, such as data pertaining to the life of the mine, which may be required by the Department of the Interior. At a minimum, the permit application package must include the necessary information for the Commission and the Department to make a determination of compliance with the State program, applicable terms and conditions of the Federal coal lease, and applicable requirements of other Federal laws and regulations. Comments are invited on whether more specificity is required under subsection 5.A of this article regarding the State program and other Federal laws and regulations which may be applicable.

Paragraphs 1 through 6 of article V.B would describe the procedures for the cooperative review and analysis of permit application packages on Federal lands. The proposed cooperative agreement identifies the Commission as primarily responsible for the analysis, review, and approval of the permit application on Federal lands in North Dakota. In assuming primary responsibility for review, analysis, and approval of permit applications, the Commission would also be the primary point of contact for operators on behalf of both the State and the Department. All joint State-Federal determinations would be channeled to the operator throught the Commission. This, however, would not preclude the Secretary from contacting the operator independently of the State to carry out his statutory responsibilities. The Commission would also prepare with OSM assistance, where requested, the technical analysis, environmental analysis, and proposed written decision document on the permit application package. The Commission would issue the permit.

OSM, at the request of the Commission, would assist as possible in the review of the permit application package and provide technical assistance to the Commission. Copies of any correspondence with the applicant as well as any information OSM receives from the applicant will be provided to the Commission. OSM will coordinate with all appropriate Federal agencies to ensure timely funneling of analyses and conclusions to the Commission.

The Secretary would be required to review and approve the elements of the permit application package relating to the MLA and other elements such as cultural resources, post-mining land use, and compliance with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321, *et seq.*, which are required by Federal law and cannot be delegated to the Commission. Even though the permit is issued by the Commission, mining may not commence until the Secretary approves the mine plan and these other elements of the permit application package. If a permit is issued prior to Secretarial approval, the Commission would be required to reserve the right to modify or rescind the permit to conform with the Secretary's decision.

Paragraph 7 of this article is included in the cooperative agreement pursuant to North Dakota Administrative Code 69–05.2–10–06, which deals with the issuance of permits, permit renewals, and permit revisions for surface disturbances associated with surface coal mining and reclamation operations on lands where the surface estate is non-Federal and non-Indian and the mineral estate is Federal. The Secretary's conditional approval of the State program on December 15, 1980 (45 FR 82214), stated that this provision of the State Act was not included in the conditional approval but would be considered later in the promulgation of a State-Federal cooperative agreement.

Paragraph 7, therefore, would provide that the Commission may approve and issue permits, permit renewals, and permit revisions for surface disturbances associated with surface coal mining and reclamation operations, and disturbance of the surface may commence without need for an approved mine plan on lands where, (a) the surface estate is non-Federal and non-Indian; (b) the mineral estate is Federal; (c) the Commission consults with OSM in order to insure that actions are not taken which would substantially and adversely affect the Federal mineral estate; and (d) the proposed surface disturbances are planned to support surface coal mining and reclamation operations on adjacent non-Federal lands and this is specified in the permit, permit renewal, or permit revision.

OSM believes that, because of the State primacy provision in section 503 of the Act, the definition of Federal lands found in section 701(4) of the Act, should be interpreted as excluding these lands.

Comments are specifically requested on the provisions of this paragraph.

Paragraphs 8 and 9 of this article would deal with the issuance of renewals and revisions of permits issued by the Department prior to the effective date of this cooperative agreement. The paragraphs would specify that the Commission would issue the permit renewal or revision in consultation, where necessary, with OSM. Permit revisions found to be a significant alteration to the existing mine plan would have to be reviewed according to the procedures specified in this article for permit application packages.

Paragraph 10 would deal with the resolution of differences which may develop during the permit application package review. The paragraph would specify that when agreement cannot be reached over the final actions to be taken by the Commission and the Department, the matter would be referred to the Governor and the Secretary for resolution.

Article VI: Inspections

This article would specify that the Commission must conduct inspections on Federal lands and prepare and file inspection reports in accordance with its approved Program.

Administrative provisions of this article include designation of the Commission as the primary point of contact with the operator and a provision for reasonable notice to the State prior to a Federal inspection. However, this article would preserve the right of the Department to conduct inspections of surface coal mining and reclamation operations on Federal lands, without prior notice to the Commission, for the purposes of evaluating the manner in which the cooperative agreement is being carried out and insuring that performance and reclamation standards are being met.

The right of Federal and State agencies to conduct inspections for purposes outside the scope of the proposed cooperative agreement would not be affected. In particular, this article would preserve the Department's obligation and authority to conduct inspections pursuant to 30 CFR Part 743 and 842.

This article would also provide that personnel of the State and the Department would be mutually available to serve as witnesses in enforcement actions taken by either party.

Article VII: Enforcement

Proposed article VII would set forth the enforcement obligations and authorities of OSM and the Commission. The Commission would have primary enforcement authority on Federal lands in accordance with the requirements of the cooperative agreement and the approved State program.

This article also would specify that the parties will consult prior to revoking or suspending a permit. The Secretary's obligation to enforce violations of Federal law other than the Act would be preserved as would OSM's authority to take enforcement action to comply with Parts 843 and 845. In taking such action, OSM would apply the performance standards contained in the approved State program, but would use the Federal procedures and penalty system.

Article VIII: Bonds

Under this article, the Commission would require each operator to submit a single performance bond to meet Federal and State requirements. The bond would be payable to the State and the United States. The Commission would be required to obtain the consent of the Department prior to releasing or forfeiting an operator's performance bond. In addition to a performance bond, an operator still would be required to furnish a lease bond and a lessee protection bond. Bonding requirements of the MLA and other Federal laws appear at 30 CFR Part 742 and 43 CFR Subpart 3474.

Article IX: Designation of Lands as Unsuitable

This article would describe the roles of the Commission and OSM in the review and processing of petitions to designate lands as unsuitable for surface coal mining operations on adjacent Federal and non-Federal lands. The authority to designate Federal lands as unsuitable would be reserved to the Secretary or his designated representative. See 30 CFR 745.13. Petitions for designation on Federal lands must be filed in accordance with 30 CFR Part 769.

Article X: Termination of Cooperative Agreement

Article X would specify the three ways in which the cooperative agreement could be terminated: (1) By the Commission upon written notice to the Secretary; (2) by the Secretary after public notice, a public hearing, and opportunity for remedial action; and (3) by operation of law when no longer authorized by Federal law, State law, or a withdrawal of the Secretary's approval of the State program pursuant to 30 CFR Part 733.

Article XI: Reinstatement of Cooperative Agreement

Article XI would provide for reinstatement of the cooperative agreement upon application by the Commission and the submission of evidence to the Secretary that the Commission can and will comply with all of the provisions of the Agreement.

Article XII: Amendment of Cooperative Agreement

Article XII would provide that the proposed permanent program cooperative agreement may be amended by mutual agreement of the Governor and Secretary in accordance with 30 CFR 745.11.

Article XIII: Change in State or Federal Standards

This article would recognize that the Secretary or the State may, from time to time, promulgate new or revised performance or reclamation requirements, or enforcement and administration procedures. Such changes would be made in accordance with 30 CFR Part 732 for changes to the State program and section 501 of the Act for changes to the Federal lands program.

Article XIV: Changes in Personnel and Organization

As required by 30 CFR 745.12, this article would require the State and the Department to advise each other of changes in the organization, structure, functions, duties and funds of the offices, departments, divisions, and persons within their organizations which could affect administration or enforcement of the cooperative agreement.

Article XV: Reservation of Rights

Article XV would recognize that the Act, 30 CFR 745.13, and other authorities prohibit the Secretary from delegating certain authorities to the State. Article XV would state that the cooperative agreement shall not be construed as waiving or preventing the assertion of any rights not expressly addressed in the cooperative agreement or available to the parties under the authorities cited in Appendix A.

Pursuant to 30 CFR 745.13 and the terms of this article, the Secretary would reserve authority and responsibility for several MLA functions such as the release of Federal lease bonds, the authority to approve mining plans, or significant modifications thereto, on Federal lands, and the designation of Federal lands as unsuitable for surface coal mining operations and the

termination of such designation. Other specific reservations are listed in 30 CFR 745.13.

The Department of the Interior also would reserve the authority and responsibility for several specific functions which are an integral part of the permit application review procedures discussed earlier. These items include, but are not limited to, the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*; compliance with the consultation requirements of the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 *et seq.*; and section 106 of the National Historic Preservation Act of 1966, 16 U.S.C. 470f.

Article XVI: Definitions

This article would specify which definitions would apply. It states that the terms and phrases used in the cooperative Agreement, which are defined in 30 CFR Parts 700, 701, and 740, shall be given the meaning set forth in said definitions. It should be noted that the term "Federal lands" does not include "Indian lands."

Compliance With NEPA

The Department and its member offices and bureaus must comply with NEPA, its implementing regulations, and the Department's own guidelines. See 40 CFR Part 1500 *et seq.* (regulations of the Council on Environmental Quality) and 45 FR 27541 (April 23, 1980) (Department of the Interior Notice of Final Revised Procedures). See also 45 FR 10043 (February 14, 1980) (Notice of Proposed Revised Instructions for the Office of Surface Mining). These authorities require the Department, prior to a decision on a permit application package on Federal lands, to prepare an environmental assessment or environmental impact statement. The current regulations at 30 CFR 745.13(b) do not allow the Secretary to delegate his NEPA duties to the States. However, the Secretary believes that this regulation does allow States to assist in preparation of NEPA documents (see 40 CFR 1506.2), with final action reserved to the Secretary.

The Department invites comment on whether the procedures for compliance with NEPA and its implementing regulations and guidelines are adequately addressed in the proposed cooperative agreement.

The Endangered Species Act (16 U.S.C. 1536)

This Federal law requires that the Department take such steps as are necessary to insure that actions authorized, funded, or carried out by Federal departments and agencies do not jeopardize the continued existence of an endangered species, or result in the destruction or modification of a species' critical habitat. 16 U.S.C. 1536. See 50 CFR Part 402 (regulations on inter-agency cooperation under the Endangered Species Act). OSM's regulations at 30 CFR 745.13(m) provide that the Secretary's obligation to consult under section 7(a) of the Endangered Species Act regarding actions on Federal lands may not be delegated to a State.

The National Historic Preservation Act (16 U.S.C. 470f)

Compliance with section 106 of the National Historic Preservation Act and its implementing regulations (36 CFR Part 800) is mandatory where the approval of mining on Federal lands may adversely affect sites, buildings, objects or districts which are listed on, or eligible for listing on, the National Register of Historic Places. Compliance is achieved through early consultation with and involvement of State Historic Preservation Officers and, in some cases, consultation with the Advisory Council on Historic Preservation.

OSM and the Department must also comply with Executive Order 11593, "Protection and Enhancement of the Cultural Environment" (May 13, 1971). Executive Order 11593 contains two principal requirements. First, with respect to properties not owned by the Federal government, agencies and departments must establish procedures for consultation with the Advisory Council on Federal plans and programs affecting such properties.

Second, the Order requires all Federal agencies and departments to inventory and nominate historic sites, buildings, districts and objects that are on Federal property and that may be eligible for inclusion on the National Register of Historic Places.

Federal agencies must take measures to insure that proposed undertakings fulfill their responsibilities to section 106 of the National Historic Preservation Act of 1974, and that the Advisory Council on Historic Preservation is given an appropriate opportunity to comment on proposed treatment plans.

These responsibilities would be reserved to the Secretary under the proposed cooperative agreement since they are not "expressly addressed" (article XV).

Floodplain Management and Wetland Protection

The Office of Surface Mining has published a general statement of policy which describes the existing procedural mechanisms for compliance with Executive Order 11988, Floodplain Management (May 24, 1977) and Executive Order 11990, Protection of Wetlands (May 24, 1977). See 45 FR 49872 (July 25, 1980). Secretarial approval of surface coal mining operations on Federal lands is discussed in that **Federal Register** notice at 45 FR 49872–73. As noted therein, the method and responsibility for compliance with these two Orders is to be a subject of the permanent program cooperative agreements under 30 CFR Part 745.

Since the proposed cooperative agreement with North Dakota does not directly discuss compliance with these Orders, the obligation for compliance with them would remain with the Secretary and would not be delegated to North Dakota.

V. Administration and Procedural Matters

1. *E.O. 12291 and Regulatory Flexibility Act.* In a "Determination of Significance" document prepared on December 31, 1979, and approved by the Assistant Secretary, Energy and Minerals, on January 7, 1980, the Department determined that the "promulgation of proposed or final rules for entering into a cooperative agreement with a State pursuant to 30 U.S.C. 1273 for State regulation of surface coal mining and reclamation operations on Federal lands was not a significant action and would not require a regulatory analysis." A copy of this determination was filed with the Department's Office of Policy Analysis and the Division of General Law.

The Department has reviewed this determination in light of recent changes in the regulatory process brought about by Executive Order 12291, February 17, 1981; the Regulatory Flexibility Act (Pub. L. 96–354); and the Paperwork Reduction Act of 1980 (Pub. L. 96–511). Having conducted this review, the Department has determined that this document is not a major rule and does not require a regulatory impact analysis under Executive Order 12291. The 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 the Regulatory Flexibility Act, 5 U.S.C. 605(b). This determination was made by the Director, OSM and approved by the Assistant Secretary, Energy and Minerals. A copy is on file in the OSM Administrative Record Room, Room 5315, 1100 L Street, N.W. Washington, D.C. 20005.

2. *Recordkeeping and Reporting Requirements.* The proposed rule was

listed in the Department's April 20, 1982, Semiannual Agenda of rules scheduled for review and development (47 FR 13936).

There are recordkeeping and reporting requirements in the proposed rules which are the same as and required by the permanent regulations. Those regulations required clearance from the Office of Management and Budget under 44 U.S.C. 3507 and were assigned the following clearance numbers:

Location of requirement	OMB clearance No.
Article IV.G (Required by 30 CFR Part 735)	1029-0013
Article V.A (Required by 30 CFR Part 741)	1029-0026
Article V.B (Required by 30 CFR Part 786)	1029-0041
Article VI.A (Required by 30 CFR Part 840)	1029-0051
Article VIII.A (Required by 30 CFR Part 800)	1029-0043

3. *National Environmental Policy Act.* Proceedings relating to adoption of a permanent program cooperative agreement are part of the Secretary's implementation of the Federal lands program pursuant to section 523 of the Act. Such proceedings are, therefore, exempt under section 702(d) of the Act from the requirements to prepare a detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

4. *Indexing Requirements.*

List of Subjects in 30 CFR Part 934

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

For the reasons set forth herein, it is proposed to amend 30 CFR Part 934.

Dated: June 4, 1982.

Daniel N. Miller, Jr.,

Assistant Secretary, Energy and Minerals.

PART 934—NORTH DAKOTA

1. Section 934.30 is added to read as follows:

§ 934.30 State-Federal Cooperative Agreement.

Cooperative Agreement

This is a Cooperative Agreement (Agreement) between North Dakota (State) acting by and through the North Dakota Public Service Commission (Commission) and the Governor, and the United States Department of the Interior (Interior), acting by and through the Secretary of the Interior (Secretary) and the Office of Surface Mining (OSM).

Article I: Introduction and Purpose

A. *Authority:* This Agreement is authorized by section 523(c) of the Surface Mining Control and Reclamation Act (Federal Act), Pub. L. 95–87, 30 U.S.C. 1273, which allows a State with a permanent regulatory program approved under 30 U.S.C. 1253 to elect to enter into an agreement for the regulation and control of surface coal mining on Federal lands, and by Chapter 38–14.1 of the North Dakota Century Code, Reclamation of Surface-Mined Lands (State Act). This Agreement provides for State regulation of surface coal mining and reclamation operations on Federal lands within North Dakota consistent with the State and Federal Acts and the Federal lands program (section 523(a) of the Federal Act and 30 CFR Parts 740–745).

B. *Purpose:* The purpose of the Agreement is to (1) foster State-Federal cooperation in the regulation of surface coal mining and reclamation operations; (2) eliminate unnecessary intergovernmental overlap and duplication; and (3) provide uniform and effective application of the State and Federal lands program on all non-Indian lands in North Dakota.

Article II: Effective Date

Following signing by the Secretary, the Governor, and the Commission, the Agreement shall take effect upon publication in the **Federal Register** as a final rule. This Agreement shall remain in effect until terminated as approved in article X.

Article III: Scope

This Agreement makes the laws, rules, terms, and conditions of North Dakota's Permanent State Program (Program) (approved effective December 15, 1980, 30 CFR 934.11 or as hereinafter amended in accordance with 30 CFR 732.17) applicable to Federal lands within North Dakota except as otherwise stated in this Agreement, the Federal Act, 30 CFR 745.13, or other applicable laws or rules and regulations.

Article IV: Requirements for Cooperative Agreement

The Commission and the Secretary affirm that they will comply with all of the provisions of this Agreement and will continue to meet all the conditions and requirements specified in this article.

A. *Responsible Administrative Agency:* The Commission is, and shall continue to be, the sole agency responsible for administering this Agreement on behalf of North Dakota on Federal lands throughout the State. OSM shall administer this agreement on behalf of the Secretary, in accordance with the regulations in 30 CFR Chapter VII.

B. *Authority of State Agency:* The Commission has and shall continue to have authority under State law to carry out this Agreement.

C. *Funds:* The State will devote adequate funds to the administration and enforcement on Federal lands in North Dakota of the requirements contained in the State program. If the State complies with the terms of this Agreement, and if necessary funds have been appropriated, OSM shall reimburse the State as provided in section 705(c) of the Federal Act and 30 CFR 735.16, subject to the availability of appropriations, for costs associated with carrying out responsibilities under this agreement. Reimbursement shall be in the form of annual grants, and applications for grants shall be promptly processed and awarded.

Funds provided to the State shall be adjusted in accordance with Office of Management and Budget (OMB) Circular No. A–102, Attachment E. If sufficient funds have not been appropriated, OSM and the Commission shall promptly meet to decide on appropriate measures that will insure that mining operations are regulated in accordance with the Program.

D. *Reports and Records:* The Commission shall make annual reports to OSM pursuant to 30 CFR 745.12(c) containing information respecting its compliance with the terms of this Agreement. The Commission and OSM shall exchange, upon request, information developed under this Agreement except where prohibited by Federal law. OSM shall provide the Commission with a copy of any approved evaluation report concerning State administration and enforcement of this Agreement.

E. *Personnel:* The Commission shall provide the necessary personnel to fully implement this Agreement in accordance with the provisions of the Federal and State Acts and the State Program.

F. *Equipment and Laboratories:* The Commission shall assure itself access to equipment, laboratories, and facilities with which all inspections, investigations, studies, tests, and analyses can be performed and which are necessary to carry out the requirements of this Agreement.

G. *Permit Application Fees:* The amount of the fee accompanying an application for a permit shall be determined in accordance with section 38–14.1–13 of the State Act. All permit fees shall be retained by the State and deposited with the State Treasurer. The financial status report submitted pursuant to 30 CFR 735.26 shall include a report of the amount of permit application fees collected and

attributable to Federal lands during the prior Federal fiscal year. This amount shall be disposed of in accordance with Federal regulations, and OMB Circular No. A–102, Attachment E.

Article V: Policies and Procedures: Review of a Permit Application Package or an Application for a Permit Renewal or Revision.

A. *Contents of Permit Application Package:* The Commission and the Secretary will require that an operator proposing to mine on Federal land shall submit an identical permit application package in an appropriate number of copies to the Commission and OSM. Any documentation or information submitted by the operator for the sole purpose of complying with the 3-year requirements of section 7(c) of the Mineral Leasing Act (30 U.S.C. 181 *et seq.*) will be submitted directly to the Minerals Management Service, Department of the Interior. The permit application package shall be in the form required by the Commission and include any supplemental information required by the Secretary. The permit application package shall satisfy the requirements of 30 CFR Part 741 and shall include the information required by, or necessary for, the Commission and the Secretary to make a determination of compliance with:

(1) Chapter 38–14.1 and Chapter 38–18 of the North Dakota Century Code;

(2) Article 69–05.2 of the North Dakota Administrative Code (NDAC);

(3) Applicable terms and conditions of the Federal coal lease;

(4) Applicable requirements of the Minerals Management Service's 30 CFR Part 211 regulations pertaining to the Mineral Leasing Act; and

(5) Applicable requirements of other Federal laws and the Program including but not limited to those in Appendix A.

B. *Review Procedures:* 1. The Commission shall assume primary resposibility for the analysis, review and approval of applications required by 30 CFR Part 741 for surface coal mining on Federal lands in North Dakota. OSM shall, as requested, assist the Commission in this analysis and review.

2. The Commission shall be the primary point of contact for operators regarding the approval of the permit application package except on matters concerned exclusively with the 30 CFR Part 211 regulations administered by the Minerals Management Service (MMS). The Commission will be responsible for informing the applicant of all joint State-Federal or Federal determinations. The Commission shall send to MMS all correspondence with the applicant which may have a bearing on decisions regarding Mineral Leasing Act requirements. Except in exigent circumstances, OSM shall generally not independently initiate contacts with applicants regarding completeness or deficiencies of the permit application package with respect to matters which are properly within the jurisdiction of the Commission. If requested by the Commission, an operator shall send written communications and documents regarding a permit application package directly to OSM. At any time, the Secretary reserves the right to act independently of the Commission to carry out his responsibilities under laws other than the Federal Act and a copy of all such independent correspondence with the applicant that may have a bearing on decisions regarding the permit application package shall be sent to the State.

3. OSM is responsible for ensuring that any information OSM receives from an applicant is sent to the Commission and the Commission will send any information received from the applicant to OSM. OSM shall have access to Commission files for mines on Federal lands. OSM and the Commission shall regularly coordinate with each other during the permit application package review process.

4. OSM shall be responsible for obtaining, in a timely manner, the views of all Federal agencies with jurisdiction or responsibility over a permit application package on Federal lands in North Dakota and for making these views known to the Commission within 90 days of the receipt of the application by OSM. The Commission shall keep OSM informed of findings during the review which bear on the responsibilities of other Federal agencies. OSM shall take appropriate steps to facilitate discussions between the Commission and the concerned agencies wherever desirable to resolve issues or problems identified in the review.

5. Upon receipt of a permit application package, both OSM and the Commission shall identify a person as its application manager. The application managers shall serve as the primary point of contact between OSM and the Commission throughout the review process and shall be responsible for identifying areas of avoidable duplication of review and analysis, which shall be eliminated where possible. Not later than 15 days after an application has been received, OSM and the Commission shall discuss the application and agree upon a work plan and schedule for the review of the application. OSM shall thereafter inform the Commission of any specific or general areas of concern, including the scope of required environmental analyses under the National Environmental Policy Act, which require special handling or analysis. The Commission shall likewise inform OSM where OSM assistance will be needed to perform any specific or general analysis or prepare any studies or similar work.

6. Unless the work plan provides otherwise, the Commission shall prepare a technical analysis, environmental analysis, and proposed written decision on the permit application package. Copies of drafts of these documents shall be sent to OSM for review and comment. OSM shall independently evaluate the documents and inform the Commission within 30 days of any changes that should be made. The Commission shall consider the comments of OSM and send a final technical analysis, environmental analysis, and proposed decision document to OSM. The Secretary's decision on the mine plan and those other Federal responsibilities which cannot be delegated, including but not limited to those listed in Appendix A, shall be made as soon as possible after the final decision of the Commission on the permit. The permit issued by the Commission shall condition the initiation of surface coal mining operations on Federal lands within the permit area on obtaining mine plan approval from the Secretary. The Commission, shall in the approved permit, reserve the right to amend or rescind its action to conform with action taken by, or with terms or conditions imposed by, the Secretary when approving the mine plan. After the Commission makes its decision on the permit, it shall send a notice to the applicant and OSM with a statement of findings and conclusions in support of the action.

7. The Commission may approve and issue permits, permit renewals, and permit revisions for surface disturbances associated with surface coal mining and reclamation operations, and disturbance of the surface may commence without need for an approved mine plan on lands where:

(a) The surface estate is non-Federal and non-Indian;

(b) The mineral estate is Federal;

(c) The Commission consults with OSM in order to insure that actions are not taken which would substantially and adversely affect the Federal mineral estate.

(d) The proposed surface disturbances are planned to support surface coal mining and reclamation operations on

adjacent non-Federal lands and this is specified in the permit, permit renewal, or permit revision.

The provisions of this paragraph apply because non-Federal and non-Indian surface overlying Federally owned coal deposits are not considered Federal lands under these conditions.

8. Any permit renewal requested pursuant to applicable State law and regulations for a mining operation on Federal lands, the permit for which has been approved by the Secretary prior to the effective date of this Agreement, shall be reviewed and approved or disapproved by the Commission in consultation with OSM for Federal responsibility under other laws. The Commission shall inform OSM of the renewal or disapproval and provide OSM with copies of the application documents.

9. Any permit revision requested pursuant to applicable State law and regulations for a mining operation on Federal lands, the permit for which has been approved by the Secretary prior to the effective date of this Agreement, shall be reviewed by the Commission pursuant to section 69–05.2–11–02(5), NDAC, in consultation, where necessary, with OSM to determine whether the proposed revision is a significant alteration or addition to the approved mine plan. Permit revisions that are found to be an insignificant alteration to the existing mine plan shall be reviewed and approved or disapproved by the Commission. Permit revisions that are found to be a significant alteration to the existing mine plan shall be reviewed according to the procedures for review of permit application packages specified in this article.

10. When the Commission and OSM cannot resolve differences that develop during permit application package review or cannot agree on the final actions to be taken by the Commission and Interior the matter shall be referred to the Governor and the Secretary for resolution.

Article VI: Inspections

The Commission shall conduct inspections on Federal lands and prepare and file inspection reports in accordance with the approved Program. Such inspections shall satisfy the Secretary's obligations under 30 CFR 842.11(c).

A. *Inspection Reports:* The Commission shall, within 15 days of conducting any inspection on Federal lands, file with OSM an inspection report describing (1) the general conditions of the lands under the permit; (2) whether the operator is complying with applicable performance and reclamation requirements; and (3) the manner in which specific operations are being conducted.

B. *Commission Authority:* The Commission shall be the point of contact and primary inspection authority in dealing with the operator concerning operations and compliance with the requirements covered by this agreement, except as described in this Agreement and the Secretary's regulations. Nothing in this Agreement shall prevent inspections by authorized Federal or State agencies for purposes other than those covered by this Agreement.

C. *OSM Authority:* For the purpose of evaluating the manner in which this Agreement is being carried out and to insure that performance and reclamation standards are being met, OSM may conduct inspections of surface coal mining and reclamation operations on Federal lands, without prior notice to the Commission. In order to facilitate a joint Federal-State inspection, when OSM is responding to a citizen complaint of an imminent danger to the health or safety of the public or of a significant, imminent environmental harm pursuant to 30 CFR 842.11(b)(1)(i), it will contact the Commission if circumstances and time permit, prior to the Federal inspection. The Department may conduct any inspections necessary to comply with 30 CFR Parts 842 and 743 (as Part 743 relates to obligations under laws other than the Federal Act). If an inspection is made without Commission inspectors, OSM shall provide the Commission with a copy of the inspection report within 15 days after inspection.

D. *Witness Availability:* Personnel of the State and Interior shall be mutually available to serve as witnesses in enforcement actions taken by either party.

Article VII: Enforcement

A. *Commission Enforcement:* The Commission shall have primary enforcement authority on Federal lands in accordance with the Program and this Agreement. During any joint inspection by OSM and the Commission, the Commission shall take appropriate enforcement action, including issuance of orders of cessation and notices of violation. OSM and the Commission shall consult prior to issuance of any decision to suspend or revoke a permit.

B. *Notification:* The Commission and OSM shall promptly notify each other of all violations of applicable laws, regulations, orders, approved mining and reclamation plans and permits subject to this Agreement and of all actions taken with respect to such violations.

C. *Secretary's Authority:* (1) This Agreement does not affect or limit the Secretary's authority to enforce violations of laws other than the Federal Act. (2) During an inspection made solely by OSM or any joint inspection where the Commission and OSM fail to agree regarding the propriety of any particular enforcement action, OSM may take any enforcement action necessary to comply with 30 CFR Parts 843 and 845. Such enforcement action shall be based on the performance standards included in the regulations of the approved Program and shall be taken using the procedures and penalty system contained in 30 CFR Parts 843 and 845.

Article VIII: Bonds

A. *Bond Coverage and Terms:* The Commission and OSM shall require all operators on Federal lands to submit a single performance bond to cover the operator's responsibilities under the Federal Act and the Program, payable to both the United States and North Dakota. The performance bond shall be of sufficient amount to comply with the requirements of both State and Federal law and release of the performance bond shall be conditioned upon compliance with all applicable requirements.

Submission of a performance bond does not satisfy the requirements for a Federal lease bond required by 43 CFR Subpart 3474 or a lessee protection bond required in addition to a performance bond, in certain circumstances, by section 715 of the Federal Act.

B. *Bond Release:* Prior to releasing the operator from any bonding obligation required under the Program for any Federal lands, the Commission shall obtain the consent of OSM. The Commission shall also advise OSM of adjustments to the performance bond.

C. *Forfeiture:* The operator's performance bond shall be subject to forfeiture with the consent of OSM, in accordance with the procedures and requirements of the Program.

Article IX: Designation of Lands as Unsuitable

The Commission and OSM shall cooperate in the review and processing of petitions to designate lands as unsuitable for surface coal mining operations. When either agency receives a petition which could impact lands the designation of which as unsuitable for mining would be the responsibility of the other agency, the agency shall (1) notify the other of its receipt of the petition and of the anticipated schedule

for reaching a decision; and (2) request and fully consider data, information and views of the other. The authority to designate Federal lands as unsuitable for mining is reserved to the Secretary or his designated representative.

Article X: Termination of Cooperative Agreement

This Cooperative Agreement may be terminated as follows:

A. *Termination by the State:* The Cooperative Agreement may be terminated by the Commission upon written notice to the Secretary, specifying the date upon which the Agreement shall be terminated. The date of termination shall not be less than 90 days from the date of the notice.

B. *Termination by the Secretary:* This Agreement may be terminated by the Secretary according to the following procedures:

1. A written notice from the Secretary to the Commission shall specify the grounds upon which he proposes to terminate the Agreement. In addition, a written notice containing the grounds for termination shall be published in the **Federal Register**, affording the Commission and the public a minimum of 30 days for comment.

2. A written notice in the **Federal Register** and a local newspaper of general circulation shall also specify the date and place within the State of North Dakota where the Commission and the public shall be afforded the opportunity for a hearing. The date of such hearing shall not be less than 30 days from the date of publication in the **Federal Register**. Prior to the time fixed for public hearing, representatives of the Commission may be permitted to appear and confer in person with representatives of the Secretary and present oral or written statements, and any other documents relative to the proposed termination.

3. The proposed termination hearing shall be conducted by OSM and a record shall be made of the hearing. The Commission shall be entitled to have legal and technical and other representatives present at the hearing, and may present, either orally or in writing, evidence, information, testimony, documents, records or materials as may be relevant to the issues involved.

4. The Secretary's decision shall be made after the hearing and close of the comment period.

5. The decision to terminate the Agreement may be made if the Secretary finds in writing that:

(a) The Commission has substantially failed to comply with the requirements of the Federal Act, 30 CFR Part 745, the Program, or provisions of this Agreement; or

(b) The Commission has failed to comply with any undertaking by the Commission in this Agreement upon which the approval of the Program, this Agreement, or grants by OSM for administration or enforcement of the Program or this Agreement were based.

6. The Secretary shall send written notice of the decision and findings to the Commission and publish notice of it in the **Federal Register**.

7. This Agreement shall terminate not less than 60 days after publication of the decision to terminate in the **Federal Register**. The Commission may remedy any failure during the 60 day period. If the Secretary determines that the State has taken effective remedial action, the Agreement will not terminate.

C. *Termination by Operation of law:* This Agreement shall terminate by operation of law under any of the following circumstances:

1. When no longer authorized by Federal law or North Dakota laws and regulations;

2. Upon termination or withdrawal of the Secretary's approval of the Program pursuant to 30 CFR Part 733.

Article XI: Reinstatement of Cooperative Agreement

If this Agreement has been terminated as provided in Article X, it may be reinstated upon application by the Commission and upon giving evidence satisfactory to the Secretary that the Commission can and will comply with all the provisions of the Agreement, and has remedied all defects in administration for which this Agreement was terminated.

Article XII: Amendments to Cooperative Agreement

This Agreement may be amended by mutual agreement of the Commission and the Secretary. An amendment proposed by one party shall be submitted to the other with a statement of the reasons for such proposed amendment. The amendment shall be adopted in accordance with the requirements of 30 CFR 745.11. The party to whom the proposed amendment is submitted shall signify its acceptance or rejection of the proposed amendment and if rejected shall state the reason for rejection.

Article XIII: Changes in State or Federal Standards

A. *Time for Changes:* The Secretary or the State may from time to time promulgate new Federal or State regulations, including new or revised performance or reclamation requirements or enforcement and administration procedures. OSM and the Commission shall immediately inform each other of any final changes in their respective laws or regulations as provided in 30 CFR Part 732. Each party shall, if it is determined to be necessary to keep this Agreement in force, change or revise its respective laws or regulations. Such changes shall be made under the procedures of 30 CFR Part 732 for changes to the Program and section 501 of the Federal Act for changes to the Federal lands program.

B. *Copies of Changes:* The State and OSM shall provide each other with copies of any changes to their respective laws, rules, regulations, and standards pertaining to the enforcement and administration of this Agreement.

Article XIV: Changes in Personnel and Organization

The Commission and the Secretary shall, consistent with 30 CFR Part 745, advise each other of changes in the organization, structure, functions, duties, and funds of the offices, departments, divisions, and persons within their organizations which could affect administration and enforcement of this Agreement. Each shall promptly advise the other in writing of changes in key personnel, including the head of a department or division, or changes in the functions or duties of persons occupying the principal offices within the structure of the program. The Commission and OSM shall advise each other in writing of changes in the location of offices, addresses, telephone numbers, and changes in the names, location and telephone numbers of their respective mine inspectors and the area within the State for which such inspectors are responsible.

Article XV: Reservation of Rights

In accordance with 30 CFR 745.13, this Agreement shall not be construed as waiving or preventing the assertion of any rights that have not been expressly addressed in this Agreement that the State or the Secretary may have under other laws or regulations, including but not limited to those listed in Appendix A.

Article XVI: Definitions

Terms and phrases used in this Agreement which are defined in 30 CFR Parts 700, 701 and 740 shall be given the meanings set forth in said definitions.

Approved
Dates _____

Secretary of the Interior
Dates _____

Governor, State of North Dakota
Dates

President, North Dakota Public Service Commission
Dates

Commissioner, North Dakota Public Service Commission
Dates

Commissioner, North Dakota Public Service Commission

Appendix A

1. The Federal Land Policy and Management Act, 43 U.S.C. 1701, *et seq.*, and implementing regulations.
2. The Mineral Leasing Act of 1920, 30 U.S.C. 181, *et seq.*, and implementing regulations including 30 CFR Part 211 *et seq.*
3. The National Environmental Policy Act of 1969, 42 U.S.C. 4321, *et seq.*, and implementing regulations including 40 CFR 1500 *et seq.*
4. The Endangered Species Act, 16 U.S.C. 1531 *et seq.*, and implementing regulations including 50 CFR Part 402.
5. The National Historic Preservation Act of 1966, 16 U.S.C. 470, *et seq.*, and implementing regulations, including 36 CFR Part 800.
6. The Clean Air Act, 42 U.S.C. 7401, *et seq.*, and implementing regulations.
7. The Federal Water Pollution Control Act, 33 U.S.C. 1251, *et seq.*, and implementing regulations.
8. The Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6901 *et seq.*, and implementing regulations.
9. The Reservoir Salvage Act of 1960, amended by the Preservation of Historical and Archaeological Data Act of 1974, 16 U.S.C. 469, *et seq.*
10. Executive Order 11593, Cultural Resource Inventories on Federal Lands.
11. Executive Order 11988 (May 24, 1977), for flood plain protection. Executive Order 11990 (May 24, 1977), for wetlands protections.
12. The Mineral Leasing Act for Acquired Lands, 30 U.S.C. 351, *et seq.*, and the implementing regulations.
13. The Stock Raising Homestead Act of 1916, 43 U.S.C. 291, *et seq.*
14. The Constitution of the United States.
15. The Constitution of the State and State Law.

[FR Doc. 82-16727 Filed 6-18-82; 8:45 am]
BILLING CODE 4310-05-M

30 CFR Part 922

Surface Mining and Reclamation Operations Under a Federal Program for the State of Michigan

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

ACTION: Proposed rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) of the Department of the Interior proposes a Federal program for regulation of coal exploration and surface coal mining and reclamation operations on non-Federal and non-Indian lands in Michigan. This includes surface effects of underground coal mining. This proposed program is necessary in order to regulate surface coal mining activities in the absence of a State program.

DATES: Written comments must be received not later than 5:00 p.m. on July 28, 1982 at the address below. A public hearing will be held on July 23, 1982. Requests to testify at the hearing should be received by July 19, 1982. If commenters request a hearing date later than that set, the hearing will be rescheduled and the new date announced by a notice in the **Federal Register.**

ADDRESSES: Written comments must be mailed or hand-delivered to: Administrative Record Room (R&I–22), Office of Surface Mining, 2242 S. Hamelton Rd., Rm. 202, Columbus, Ohio 43227.

The public hearing on the proposed program will be held at The Stevens T. Mason Bldg., Allegon and Pine Sts., 4th floor, Geological Survey Division Conference Room, Lansing, Michigan 48909 beginning at 10:00 a.m.

FOR FURTHER INFORMATION CONTACT: James M. Kress, Office of Surface Mining, Branch of Regulatory Programs, Room 222, 1951 Constitution Avenue, NW, Washington, D.C. 20240. Telephone: (202) 343–5866.

SUPPLEMENTARY INFORMATION:

Availability of Copies

Copies of the proposed program are available for inspection and may be obtained at the OSM office listed above in "ADDRESSES."

Public Comment Period

The comment period on the proposed program will extend until July 28, 1982. All written comments must be received at the location above under "**ADDRESSES**" by close of business on that date.

All written comments received, a transcript of the public hearing, summaries of meetings held at the request of any person or organization to receive advice or recommendations concerning the proposed program with representatives of OSM, and other documents comprising the administrative record on the Federal program for Michigan will be made available for public review during regular business hours at the location listed above.

OSM appreciates any and all comments on the proposal, but those that would be most useful should be as specific as possible, focus on the issues of this proposed rulemaking, and provide reasons for any recommendations. OSM will not consider comments that do not pertain to the issues in this proposal. Nor can OSM ensure consideration of written comments received after the comment period ends or those delivered to an address other than that specified.

Public Hearing

A public hearing on the proposed program will be held at the time and location listed above to hear all those who wish to testify. The hearing may be cancelled if, by July 19, 1982, no person has expressed interest in presenting testimony.

Individual testimony at the hearing will be limited to 15 minutes. The hearing will be transcribed. Filing of a written statement at the time of giving oral testimony would be helpful and would facilitate the job of the court reporter. Submission of written statements in advance of the hearing would greatly assist OSM officials who will attend the hearing. Advance submissions will give these officials an opportunity to consider appropriate questions which could be asked for clarification or to request more specific information from the person testifying. The public hearing will continue until all persons scheduled to speak have been heard. Persons in the audience who have not been scheduled to speak and wish to do so will be heard following the scheduled speakers. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to speak have been heard. Persons not scheduled to testify, but wishing to do so, assume the risk of having the public hearing adjourned unless they are present in the audience at the time all scheduled speakers have been heard.

The hearing date is set for approximately 30 days after publication of the proposed program in order to give the public ample opportunity to review the hearing transcript before the close of the comment period. The hearing date is being advanced from that required by 30 CFR 736.12 because, although surface mining operations are imminent in Michigan, the State does not have an approved permanent regulatory program to control such activities.

Allowing 60 days to elapse after publication of today's notice before holding the public hearing (as specified by 30 CFR 736.12) would delay final promulgation of a program and thereby prolong the period during which unpermitted surface coal mining might

continue in Michigan. OSM will consider requests for a later hearing date which are supported by valid reasons for postponement.

Background

Under Section 504(a) of the Surface Mining Contrtol and Reclamation Act of 1977 (the Act), Pub. L. 95–87, 30 U.S.C. 1201 *et seq.*, the Secretary of the Interior (the Secretary) is required to promulgate a Federal program within 34 months after passage of the Act if a State fails to submit a program to assume responsibility for regulating surface mining activities, fails to resubmit a program within 60 days of disapproval, or fails at any time to implement, enforce or maintain an approved State program. The time for submitting State programs was extended by seven months to March 3, 1980 as the result of litigation, *In re: Permanent Surface Mining Regulation Litigation*, 13 ERC 1447 (July 25, 1979). The date for submission of State programs has now passed.

An additional standard for the promulgation of a Federal program is found in 30 CFR Part 736, which requires the implementation of a Federal program for a State where the Director of OSM (the Director) "reasonably expects coal exploration or surface coal mining and reclamation operations to exist on non-Federal and non-Indian lands * * * at any time before June 1985 * * *" 30 CFR 736.11(a)(1).

The Director has determined that there is a reasonable expectation that coal exploration or surface coal mining operations will occur in the State of Michigan before June 1985. The State has failed to submit a program to the Secretary to obtain primary regulatory responsibility. Therefore, pursuant to 30 CFR 736.11, the Director must promulgate and implement a Federal program.

Once a decision is made that a Federal program is necessary for a State, the Secretary must make several determinations before promulgating a program. Section 504(a) of the Act requires that in implementing a Federal program the Secretary take into consideration the nature of the State's terrain, climate, biological, chemical, and other relevant physical conditions. This requirement is also found in the regulations, 30 CFR 736.22(a)(1). The Act (Section 505 (b)) and the regulations (Section 736.23(b)) also provide that if a State has more stringent land use and environmental laws or regulations, they shall not be construed to be inconsistent with the Act or the Secretary's regulations. The Secretary believes that the requirements of Section 505(b) can best be met by identifying State laws and regulations which impose equivalent or more stringent environmental controls and incorporating the requirements of those laws in the Federal program. If the State's laws or regulations establish more stringent standards regulating surface mining control and reclamation procedures than those found in the Act or the Secretary's regulations or if the State regulates or protects an aspect of the environment affected by surface mining operations which neither the Act nor the Secretary's regulations protect, OSM would then specifically preserve those State standards in the Federal program.

Also, in promulgating a program for a State, Section 504(g) specifies that any State statutes or regulations which regulate surface mining and reclamation operations subject to the Act will be superseded and preempted by the Federal program to the extent that they interfere with the achievement of the purposes and requirements of the Act and the Federal program. This provision is reinforced by Section 505(a) of the Act, which states that only those State laws and regulations which are inconsistent with the Act and its implementing regulations shall be superseded by the Federal program. Thus, State statutes and rules regulating the same activities as those covered by the Federal law and regulations and which interfere with achievement of the purposes of the Act must be identified and preempted by OSM.

Finally, a Federal program, according to Section 504(h) of the Act, must include a process for coordinating the review and issuance of surface mining permits with other Federal or State permits applicable to the proposed operation. The Federal statutes with which the surface mining permitting process must be coordinated are set out in 30 CFR 736.22(c). State statutes for which a permit is required must be identified in the process of promulgating a Federal program, and the Federal program must provide for coordination with the review and issuance procedures required by those statutes.

Federal programs are based on the Secretary's permanent program regulations: 30 CFR Subchapters A, F, G, J, K, L and M. The permanent program regulations establish procedures and performance standards under the Act and form the benchmark for State programs. In order for a State to have a program approved by the Secretary, Section 503(a)(7) requires that the State's rules and regulations be consistent with the Secretary's regulations.

The parts of the permanent program regulations that must be included in a Federal program are listed at 30 CFR 736.22(b). They include general requirements and definitions (Parts 700 and 701), the exemption for coal extraction incident to government-financed highway or other construction (Part 707), the designation of lands unsuitable for surface mining (Parts 760, 761 and 765), permits and permit applications (Subchapter G), reclamation bonding (Subchapter J), performance standards (Subchapter K), inspection and enforcement (Parts 842, 843 and 845), and blaster training and certification (Subchapter M). In addition, the provision in the permanent regulations on protection of employees (Subchapter P) and restrictions on financial interests (Part 706) are applicable to Federal employees who perform functions or duties under the Act.

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 15323–15393 (March 13, 1979). Subchapter M was published on December 12, 1980 (45 FR 82098). Corrections were published at 44 FR 15485 (March 14, 1979); 44 FR 53507–53509 (September 14, 1979); 44 FR 66195 (November 19, 1979); 45 FR 26001 (April 16, 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 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); and 45 FR 76932 (November 20, 1980); 46 FR 37232 (July 17, 1981); 46 FR 41702 (August 17, 1981); 46 FR 47720 (September 29, 1981); 46 FR 53376 (October 28, 1981); 46 FR 52287 (December 7, 1981). 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* (Civil Action No. 79–1144). In response to the 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); January 30, 1980 (45 FR 6913); and August 4, 1980 (45 FR 51547–51550). In two opinions the court remanded certain other regulations which had been challenged in the lawsuit. These opinions were issued on February 26, 1980, and May 16, 1980. Many of the issues decided by the District Court have been appealed to the Court of Appeals for the District of Columbia Circuit. *In Re: Permanent Surface Mining Regulation Litigation,* Nos. 80–1810, 80–1811, 80–1812, 80–1813 and 80–1823. The Court has granted a stay of the proceeding pending the revision of regulations as noted below. However, the stay does not apply to Federal programs such as this one.

Michigan Federal Program

As mentioned above, when promulating a Federal program for a State, OSM is required by Section 504(a) of the Act to take into consideration the nature of the terrain, climate, biological, chemical, and other relevant physical conditions of that State. OSM has reviewed Michigan's laws and regulations to determine whether they suggest that special provisions may be necessary or appropriate based on special terrain or other physical conditions in the State. To date no special environmental conditions have been identified. OSM solicits comments on special provisions that should be promulgated and the basis for those provisions.

Pursuant to Section 504(a), the Secretary becomes the regulatory authority when a Federal program is implemented for a State. OSM's permanent program regulations contain references to "the regulatory authority" or "the State regulatory authority," which means the Secretary when a Federal program for a State is involved. Section 701(22) of the Act. The Office of Surface Mining is delegated all of the Secretary's authority for implementing, maintaining and enforcing a Federal program. This proposed program for Michigan would not change these responsibilites.

Explanation of Cross-Referencing

In the general notice of intent to promulgate Federal programs of May 16, 1980 (45 FR 32228), OSM stated that each Federal program would be specific to the particular State and would implement the permanent program procedures and environmental protection provisions of the Act (45 FR 32229). However, except for changes to incorporate more stringent State environmental protection standards and to list other State laws requiring permits for which coordination is required, OSM believes that few changes are needed in the permanent program regulations for any particular State for which a Federal program must be promulgated.

In January 1981 the Secretary directed that the Department review all existing regulations in order to eliminate those which are burdensome, excessive and unnecessary. Review of the permanent program regulations was initiated and may result in a large scale revision of them. See semi-annual Calendar of Federal Regulations notice of rule review and revision, 47 FR 1709 (January 13, 1982). See also, e.g., revisions of OSM's bonding regulations, 30 CFR Subchapter J, 46 FR 45082 (September 9, 1981) and OSM's inspection and enforcement regulations, 30 CFR Parts 842, 843, and 845, 46 FR 58464 (December 1, 1981).

In order to take advantage of the results which revision of the permanent program regulations will achieve, OSM proposes to develop and promulgate this Federal program in the following manner. Rather than repeating the full text of the permanent regulations which are being revised, there would be a cross-reference to the permanent program regulations. For example, criteria for the designation of lands unsuitable for surface coal mining would be provided by the statement that "the Secretary shall designate lands unsuitable * * * pursuant to the criteria in 30 CFR Part 762" (see proposed § 922.762). One effect of the proposed cross-referencing to the permanent program regulations would be that as the permanent program regulations are revised, this Federal program would be similarly revised. Over time, all of the permanent program regulations will undergo review and many will be revised. No separate rulemaking would be undertaken or necessary for revision of this program if the cross-referencing alternative becomes effective, unless OSM determined that special conditions were necessary for a particular State. A statement would appear in both the proposed and final permanent program rulemaking notices advising the public that the change in the permanent program rule would also result in a change in this program absent special conditions. The statement for the permanent program proposed rule would invite comments on necessary modifications to accommodate unique or unusual aspects of surface mining in any State and the final rule would be tailored for each State as necessary.

The promulgation of this cross-referencing program would not result in any modification of the substance of OSM's permanent program rules. Where specific provisions are needed for an individual State's Federal program which are different from the permanent program regulations, a separate paragraph is proposed to be added to the appropriate section of that State's Federal program. Cross-referencing to the permanent program rules may also be used in the promulgation of other Federal programs. Public comment on the cross-referencing method as it affects other Federal programs, however, should be directed to each of those rulemaking notices.

Several provisions of the permanent program regulations are already applicable to a particular State Federal program and need not be cross-referenced here because they were fully promulgated for application to all regulatory programs. Those provisions are 30 CFR Chapter VII, Subchapter P—Protection of Employees; Part 706—Restrictions on Financial Interests of Federal Employees; and Part 769—Petition Process for Designation of Federal Lands Unsuitable for Surface Coal Mining. However, 30 CFR Part 764—Designating Lands Unsuitable for Surface Coal Mining would be included in a State program by a cross-reference under Section 922.764, to provide a petition process on non-Federal lands in that State.

With regard is bonding regulations (Subchapter J), only Part 800 is proposed to be cross-referenced because OSM has proposed to revise Subchapter J to include just one part, Part 800. 46 FR 45082 (September 9, 1981) (proposed).

Content and Organization of the Program

The content and organization of the Michigan Federal program would generally follow the permanent program regulations. But, as discussed above, instead of the full text appearing, each section of the Michigan program would only include reference to the pertinent permanent program regulations.

Section 922.700–3 sets out both inconsistent State statutes and regulations and more stringent State statutes and regulations. A separate paragraph is proposed to be added under each section where there are deviations from the Federal permanent program regulation for the Michigan Federal program. These paragraphs will generally be found in a subsection (b).

Under Section 504(g) of the Act, any statutes or regulations of the State which are in effect to regulate surface

coal mining and reclamation operations subject to the Act, are preempted and superseded by the Federal program to the extent they interfere with the achievement of the purposes and the requirements of the Act and the Federal program. In accordance with 30 CFR 736.23, the Director tentatively has identified the following Michigan statutes and regulations as required partial Federal supersession:

(a) Reclamation of Mining Lands, Act 92 (1970), MCL Section 415.181 *et seq.*

(b) Rules for Reclamation of Mining Lands, MCL Section 425.181 *et seq.*

The reclamation of Mining Lands Act of 1970 regulates, to a degree, surface mining in Michigan. This statute was enacted to "provide for reclamation of lands subjected to the mining of minerals; to control possible adverse environmental effects of mining; to preserve the natural resources; to encourage the planning of future land use; and to promote the orderly development of mining, the ecouragement of good mining practices and the recognition and identification of the beneficial aspects of mining." Open pit or surface mining is defined in the Act as "the mining of a mineral in the regular operation of a business by removing the overburden lying above natural deposits thereof and mining directly from the natural deposits thereby exposed or by mining directly from deposits lying exposed in their natural state * * *." The Act, therefore, regulates the mining of other minerals as well as coal. The following is a short summary of those provisions of the statute which are preempted insofar as they relate to surface coal mining operations subject to the Act.

Section 425.183 authorizes the Chief (Supervisor) of the Geologic Survey, Division of the Michigan Department of Natural Resources, to promulgate rules pertaining to: a) the sloping, terracing or other practical treatment of stockpiles; b) the vegetation or other practical treatment of tailings basins and stockpiles; c) the stabilization of the surface overburden banks of open pits in rock, and d) the cleanup of plantsite and mining areas and the removal of debris.

Section 425.184 allows the Supervisor, on application by the landowner or operator, to modify or permit variances from the rules promulgated by the Department if such modification is not contrary to the public interest.

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 is 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 is conducted for a restraining order or injuction or other appropriate remedy.

Having reviewed these statutory provisions, OSM tentatively concludes that they lack the specificity of the comparable Federal provisions and fail to establish permitting, design and reclamation criteria and performance standards as detailed as those in the Federal Act. OSM tentatively concludes that without these requirements, the Michigan statute, insofar as it relates to surface coal mining operators subject to the Act, fails to provide as stringent or more stringent land use or environmental control and interferes with the achievement of the purposes and requirements of the Act and the Federal program where both the Federal and State programs apply to the same surface mining operations.

The Michigan Federal program proposed herein for the regulation of surface mining would be pervasive with regard to surface coal mining. OSM proposes to preempt and supersede the Michigan Reclamation of Mining Lands Act of 1970, as amended, except to the extent that it regulates commercial surface coal mining operations which affect two acres or less; or where less than 250 tons of coal are removed or intended to be removed for commercial use in any one location; or where the extraction of coal is incidental to the extraction of other minerals and does not exceed 16⅔ per centum of the tonnage of minerals removed for purposes of commercial use or sale; or coal explorations subject to Section 512 of the Act (30 U.S.C. 1262); or where the extraction of coal is an incidental part of Federal, State, or local government financed highway or other construction; or the coal removed is extracted by a landowner for his own non-commercial use from land owned or leased by him. Except as noted, there is no instance in which the Michigan statute is more stringent than the Federal Act or regulations.

Similarly, the rules and regulations of the Michigan Department of Natural Resources issued pursuant to the preempted provisions of the Reclamation of Mining Lands Act of 1970 would themselves be preempted and superseded by the program promulgated herein, to the same extent that those statutory provisions have been preempted. Like the Michigan Act, these regulations apply to the mining of other minerals in addition to coal. Except as noted, there is no instance where these regulations are more stringent than the Federal Act or regulations. Accordingly, these rules and regulations would no longer be applicable, except as outlined above, to coal exploration or surface coal mining operations in Michigan.

Copies of the Michigan Reclamation of Mining Lands Act of 1970 and the rules and regulations of the Michigan Department of Natural Resources are in the Administrative Record and are available for review at the place listed under "ADDRESSES."

Section 504(h) of the Federal Act also requires that each Federal program include a process for coordinating the review and issuance of permits for surface mining and reclamation operations with any other Federal or State permit process applicable to the proposed operation. OSM proposes to accomplish this by listing relevant Michigan statutes and regulations in Section 922.770.

Public comment is invited on this method of effecting these requirements of Sections 504(a), (g), and (h) and 505 of the Act.

OMB Review

The recordkeeping and reporting requirements of the proposed rule are the same as the national permanent program regulations which have been approved by the Office of Management and Budget under 44 U.S.C. 3507.

Although this rule would contain information and recordkeeping requirements, OMB anticipates less than ten respondents. Under the Paperwork Reduction Act, clearance of information collection forms is required only if ten or more respondents are expected. If in the future the number of respondents appears to be increasing, the proper forms, if they differ from those already approved, will be submitted to 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.

Other Information

OSM has examined this proposed rule according to the criteria of Executive Order 12291 (46 FR 13193, February 19, 1981) and determined that it does not constitute a major rule. There would be

no major economic impact through adoption of this rule because it would affect only a small number of mining operations.

OSM has examined this proposed rule pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, and determine that it will not have a significant impact on a substantial number of small entities. Separate determinations of effect will be prepared for all revisions of the permanent program rules and would consider the effects on small entities in the State of Michigan.

Section 702(d) of the Act provides that promulgation of a Federal program shall not constitute a major Federal action under the National Environmental Policy Act, 42 U.S.C. 4332. Thus, no Environmental Assessment is required for this rulemaking.

List of Subjects in 30 CFR Part 922

Coal mining, Intergovernmental relations, Reporting requirements, Surface mining and Underground mining.

Drafting Information

These regulations were drafted by Christopher Warner, Office of the Solicitor and James M. Kress, Branch of Regulatory Programs, Office of Surface Mining.

May 24, 1982.

William P. Pendley,

Acting Assistant Secretary, Energy and Minerals.

OSM proposes to revise 30 CFR Part 922 to read as follows:

PART 922—MICHIGAN

Sec.

922.700 General.
922.701 General.
922.707 Exemption for coal extraction incident to Government-financed highway or other construction.
922.761 Areas designated unsuitable for surface coal mining by Act of Congress.
922.762 Criteria for designating areas as unsuitable for surface coal mining operations.
922.764 Process for designating areas unsuitable for surface coal mining operations.
922.770 General requirements for permit and exploration procedures.
922.771 General requirements for permits and permit applications.
922.776 General requirements for coal exploration.
922.778 Surface mining permit applications—minimum requirements for legal, financial, compliance, and related information.
922.779 Surface mining permit applications—minimum requirements for information on environmental resources.
922.780 Surface mining permit applications—minimum requirements for reclamation and operations plan.
922.782 Underground mining permit applications—minimum requirements for legal, financial, compliance, and related information.
922.783 Underground mining permit applications—minimum requirements for information on environmental resources.
922.784 Underground mining permit applications—minimum requirements for reclamation and operation plan.
922.785 Requirements for permits for special categories of mining.
922.786 Reviews, public participation, and approval or disapproval of permit applications and permit terms and conditions.
922.787 Administrative and judicial review of decisions on permit applications.
922.788 Permit review, revisions, and renewals, and transfer, sale, and assignment of rights granted under permits.
922.795 Small operator assistance.
922.800 General requirements for bonding of surface coal mining and reclamation operations.
922.815 Performance standards—coal exploration.
922.816 Performance standards—surface mining activities.
922.817 Performance standards—underground mining activities.
922.818 Special performance standards—concurrent surface and underground mining.
922.819 Special performance standards—auger mining.
922.823 Special performance standards—operations on prime farmland.
922.824 Special performance standards—mountaintop removal.
922.826 Special performance standards—operations on steep slopes.
922.827 Special performance standards—coal processing plants and support facilities not located at or near the minesite or not within the permit area for a mine.
922.828 Special performance standards—in situ processing.
922.842 Federal inspections.
922.843 Federal enforcement.
922.845 Civil penalties.

Authority: Pub. L. 95-87, The Surface Mining Control and Reclamation Act of 1977, 130 U.S.C. 1201 *et seq.*

§ 922.700 General.

(a) This Part contains all rules that are applicable to surface coal mining operations in Michigan which have been adopted under the Surface Mining Control and Reclamation Act of 1977.

(b) The rules in this part cross-reference pertinent parts of the permanent program regulations in this chapter. The full text of a rule is in the permanent program rule cited under the relevant section of the Michigan Federal program.

(c) The rules in this part apply to all surface coal mining operations in Michigan conducted on non-Federal and non-Indian lands. The rules in Subchapter D of this chapter apply to operations on Federal lands in Michigan.

(d) The information collection requirements contained in this part do not require approval by the Office of Management and Budget under 44 U.S.C. 3507 because there are fewer than ten respondents annually.

(e) The following provisions of Michigan laws provide, where applicable, for more stringent environmental control and regulation of surface coal mining operations than do the provisions of the Act and the regulations in this chapter. Therefore, pursuant to Section 505(b) of the Act, they shall not be construed to be inconsistent with the Act:

(1) The Michigan Reclamation of Mining Lands, Act 92 (1970), MCL Section 415.181 *et seq.* as amended, to the extent that it regulates commercial surface coal mining operations which affect two acres or less; or where less than 250 tons of coal are removed or intended to be removed for commercial use or sale in one location or; or where the extraction of coal is incidental to the extraction of other minerals and where coal does not exceed 16⅔ per centum of the tonnage of minerals removed for purposes of commercial use or sale; or coal explorations subject to Section 512 of the Act (30 U.S.C. 1262) or; where the extraction of coal is an incidental part of Federal, State, or local government-financed highway or other construction.

(2) Michigan Farmland and Open Space Preservation Act, MCL Section 554.701, pertaining to land use restrictions including mineral extraction.

(3) Michigan Solid Waste Regulations pertaining to solid waste management, MCL Section 299.401, R-325.3231.

(4) Michigan noxious weed statute and regulations containing the noxious weed list, MCL Section 243.61.

(f) The following are Michigan laws that interfere with the achievement of the purposes and requirements of the Act and are, in accordance with Section 504(g) of the Act, preempted and superseded:

(1) The Michigan Reclamation of Mining Lands Act, MCL Section 425.181 *et seq.* as amended, but not to the extent that it regulates surface coal mining operations which affect two acres or less; or where less than 250 tons of coal are removed or intended to be removed for commercial use in one location; or where the extraction of coal is incidental to the extraction of other minerals and where coal does not exceed 16⅔ per centum of the tonnage of

minerals removed for purposes of commercial use or sale; or coal explorations subject to Section 512 of the Act (30 U.S.C. 1262); or where the extraction of coal is an incidental part of Federal, State, or local government-financed highway or other construction.

§ 922.701 General.

Sections 700.5, 700.11, 700.12, 700.13, 700.14, 700.15, and Part 701 of this chapter shall apply to surface coal mining operations in Michigan.

§ 922.707 Exemption for coal extraction incidental to Government-financed highway or other construction.

Part 707 of this chapter, Exemption for Coal Extraction Incident to Government-Financed Highway or Other Construction, shall apply to surface coal mining and reclamation operations.

§ 922.761 Areas designated unsuitable for surface coal mining by Act of Congress.

Part 761 of this chapter, Areas Designated by Act of Congress, shall apply to surface coal mining and reclamation operations.

§ 922.762 Criteria for designating areas as unsuitable for surface coal mining operations.

Part 762 of this chapter, Criteria for Designating Areas Unsuitable for Surface Coal Mining Operations, shall apply to surface coal mine operations beginning one year after May 14, 1982.

§ 922.764 Process for designating areas unsuitable for surface coal mining operations.

Part 764 of this chapter, State Processes for Designating Areas Unsuitable for Surface Coal Mining Operations, pertaining to petitioning, initial processing, hearing requirements, decisions, data base and inventory systems, public information, and regulatory responsibilities shall apply to surface coal mine operations beginning one year after May 14, 1982.

§ 922.770 General requirements for permit and exploration procedures.

(a) Part 770 of this chapter, General Requirements for Permit Systems Under State Programs, shall apply to surface coal mining and exploration operations.

(b) Where applicable, no person shall conduct surface coal exploration operations which result in the removal of more than 250 tons in one location, or surface coal mining operations without permits issued pursuant to the: Michigan Construction and Maintenance Act, MCL Section 254.25, pertaining to the alteration of watercourses; Michigan Dams in Streams or Rivers Act of 1963, MCL Section 281.131; Michigan Explosives Act of 1970, MCL Section 29.41, pertaining to the use of explosives (permit is issued by an officer of a local police or sheriff's department or a designated officer of the State police); Michigan Hazardous Waste Management Act of 1980, MCL Section 299.501; Michigan Inland Lake and Streams Act of 1972, MCL Section 281.951; Michigan Mineral Wells Act of 1969, MCL Section 319.211; Michigan Sand Dune Protection and Management Act of 1976, MCL Section 281.651; Michigan Solid Waste Management Act of 1978, MCL Section 299.401; Michigan Water Resources Commission Act, MCL Section 323.1; Michigan Water Resources Commission General Rules, R-323.1001 *et seq.;* Michigan Water Quality Standards, R-323.1041; the Michigan Wetland Protection Act of 1969, MCL Section 281.701; Michigan Aboriginal Records and Antiquities Act, MCL Section 299.51; Michigan Great Lakes Submerged Lands Act, MCL Section 322.701 and the Michigan Historical Activities Act, MCL Section 399.201.

(c) The Secretary shall incorporate in the permit, applicable requirements of the Michigan Air Pollution Act of 1965, MCL Section 336.11 and the Michigan Administrative Rules for Air Pollution Control, R-336.1101 *et seq.*; The Michigan Control and Eradication of Noxious Weeds Act, MCL Section 247.61; the Michigan Endangered Species Act of 1974, MCL Section 299.221 and the Michigan Hazardous Waste Management Act of 1980. The Secretary shall further coordinate review of permits, where applicable, with the appropriate State agencies concerning compliance with the Michigan Farmland and Open Space Preservation Act, MCL Section 554.71.

§ 922.771 General requirements for permits and permit applications.

(a) Part 771 of this chapter, General Requirements for Permits and Permit Applications, shall apply to any person who makes application for a permit to conduct surface coal mine operations on non-Federal and non-Indian lands.

(b) A person who wishes to conduct new surface coal mining and reclamation operations or who wishes a revision of his permit shall file a complete application at least 12 months prior to the date upon which permit issuance or revision is desired, and shall pay to the Secretary a permit fee in accordance with § 736.25 of this chapter.

§ 922.776 General requirements for coal exploration.

(a) Part 776 of this chapter, General Requirements for Coal Exploration, shall apply to any person who conducts or seeks to conduct coal exploration operations on non-Federal and non-Indian lands.

(b) The Office shall make every effort to act on an exploration application within 60 days of receipt or such longer time as may be reasonable under the circumstances. If additional time is needed, OSM shall notify the applicant that the application is being reviewed, but more time is necessary to complete such review, setting forth the reasons and the additional time that is needed.

§ 922.778 Surface mining permit application—minimum requirements for legal, financial, complicance and related information.

Part 778 of this chapter, Surface Mining Permit Applications—Minimum Requirements for Legal, Financial, Compliance, and Related Information, shall apply to any person who makes application for a permit to conduct surface mining and reclamation operations.

§ 922.779 Surface mining permit applications—minimum requirements for information on environmental resources.

Part 779 of this chapter, Surface Mining Permit Applications—Minimum Requirements for Information on Environmental Resources, shall apply to any person who makes application to conduct surface mining and reclamation operations.

§ 922.780 Surface mining permit applications—minimum requirements for reclamation and operation plan.

Part 780 of this chapter, Surface Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plan, shall apply to any person who makes application to conduct surface coal mining and reclamation operations on non-Federal and non-Indian lands.

§ 922.782 Underground mining permit applications—minimum requirements for legal, financial, compliance, and related information.

Part 782 of this chapter, Underground Mining Permit Applications—Minimum requirements for Legal, Financial, Compliance, and Related Information, shall apply to any person who makes application for a permit to conduct underground mining operations.

§ 922.783 Underground mining permit applications—minimum requirements for information on environmental resources.

Part 783 of this chapter, Underground Mining Permit Applications—Minimum Requirements for Information on Environmental Resources, shall apply to any person who submits an application

to conduct underground mining operations.

§ 922.784 Underground mining permit applications—minimum requirements for reclamation and operation plan.

Part 784 of this chapter, Underground Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plan, shall apply to any person who makes application to conduct underground mining.

§ 922.785 Requirements for permits for special categories of mining.

Part 785 of this chapter, Requirements for Permits for Special Categories of Mining, shall apply to each person who makes application for a permit to conduct certain categories of surface coal mining and reclamation operations.

§ 922.786 Review, public participation, and approval or disapproval of permit applications and permit terms and conditions.

Part 786 of this chapter, Review, Public Participation, and Approval or Disapproval of Permit Applications and Permit Terms and Conditions, shall apply to the review of applications made by any person for surface coal mining and reclamation operations.

§ 922.787 Administrative and judicial review of decisions on permit applications.

Decisions on permit applications shall be subject to administrative and judicial review in accordance with Part 787 of this chapter and Sections 520, 525, and 526 of the Act.

§ 922.788 Permit reviews, revisions, and renewals, and transfer, sale, and assignment of rights granted under permits.

Part 788 of this chapter, Permit Reviews, Revisions, and Renewals, and Transfer, Sale, and Assignment of Rights Granted Under Permits, shall apply to review, revision, and renewal of permits for surface coal mine operations, and to transfer, sale, and assignment of rights granted under permits.

§ 922.795 Small operator assistance.

Part 795 of this chapter, Small Operator Assistance, shall apply to any person making applications for assistance under the small operator assistance program.

§ 922.800 General requirements for bonding of surface coal mining and reclamation operations.

Part 800 of this chapter, General Requirements for Bonding of Surface Coal Mining and Reclamation Operations Under Regulatory Programs, shall apply to all surface coal mining and reclamation operations.

§ 922.815 Performance standards—coal exploration.

Part 815 of this chapter, Permanent Program Performance Standards—Coal Exploration, shall apply to any person conducting coal exploration operations.

§ 922.816 Performance standards—surface mining activities.

(a) Part 816 of this chapter, Permanent Program Performance Standards—Surface Mining Activities, shall apply to any person who conducts surface coal mining and reclamation operations.

(b) No person shall conduct surface coal mining operations except in compliance with the Michigan Dams in Streams or Rivers Act of 1963, MCL Section 281.131, and applicable Rules of the Department of Natural Resources as provided in 30 CFR 816.49(a), the Solid Waste Management Rules of the Michigan Department of Natural Resources, Environmental Protection Division, R-325.2701 *et seq.*, Solid Waste Management Rules, as provided in Paragraph 817.89(b) of this chapter and the Michigan Control and Eradication of Noxious Weeds Act, MCL 247.61, as provided in Paragraph 817.112(d) of this chapter.

§ 922.817 Performance standards—underground mining activities.

(a) Part 817 of this chapter, Permanent Program Performance Standards—Underground Mining Activities, shall apply to any person who conducts underground mining operations.

(b) No person shall conduct underground coal mining operations except in compliance with Michigan Dams in Streams or Rivers Act of 1963, MCL Section 281.31, and applicable rules of the Department of Natural Resources, as provided in § 817.49(a)(1) of this chapter; the Michigan Department of Natural Resources, Environmental Protection Division, Solid Waste Rules, R-325.1101 as provided in Paragraph 817.89(b) of this chapter, and the Michigan Control and Eradication of Noxious Weeds Act, MCL Section 247.61, as provided in § 817.112(d) of this chapter.

§ 922.818 Special performance standards—concurrent surface and underground mining

Part 818 of this chapter, Special Permanent Program Performance Standards—Concurrent Surface and Underground Mining, shall apply to any person who conducts combined surface and underground mining operations.

§ 922.819 Special performance standards—auger mining

Part 819 of this chapter, Special Permanent Program Performance Standards—Auger Mining, shall apply to any person who conducts surface coal mining operations which include auger mining.

§ 922.823 Special performance standards—operations on prime farmland

Part 823 of this chapter, Special Permanent Program Performance Standards—Operations on Prime Farmland, shall apply to any person who conducts surface coal mining and reclamation operations on prime farmlands.

§ 922.824 Special performance standards—mountaintop removal

Part 824 of this chapter, Special Permanent Program Performance Standards—Mountaintop Removal, shall apply to any person who conducts surface coal mining operations constituting mountaintop removal mining.

§ 922.826 Special performance standards—operations on steep slopes

Part 826 of this chapter, Special Permanent Program Performance Standards—Operations on Steep Slopes, shall apply to any person who conducts surface coal mining and reclamation operations on steep slopes.

§ 922.827 Special performance standards—coal processing plants and support facilities not located at or near the minesite and not within the permit area for a mine.

Part 827 of this chapter, Special Permanent Program Performance Standards—Coal Processing Plants and Support Facilities Not Located at or Near the Minesite or Not Within the Permit Area for a Mine, shall apply to any person who conducts surface coal mining and reclamation operations which include the operation of coal processing plants and support facilities not located at or near the minesite and not within the permit area for a mine.

§ 922.828 Special performance standards—in situ processing.

Part 828 of this chapter, Special Permanent Program Performance Standards—In Situ Processing, shall apply to any person who conducts in situ processing activities.

§ 922.842 Federal inspections.

(a) Part 842 of this chapter, Federal Inspections, shall apply to all exploration and surface coal mining and reclamation operations.

(b) In addition to the requirements of Part 842, the Secretary will furnish a copy of each inspection report regarding inspections conducted pursuant to this

subpart to the Michigan Department of Natural Resources upon request.

§ 922.843 Federal enforcement.

(a) Part 843 of this chapter, Federal Enforcement, shall apply when enforcement action is required for violations on surface coal mining and reclamation operations.

(b) The Office will furnish a copy of each enforcement action document and order to show issued pursuant to this subpart to the Michigan Department of Natural Resources, Geological Survey Division upon request.

§ 922.845 Civil penalties.

Part 845 of this chapter, Civil Penalties, shall apply when civil penalties are assessed for violations on surface coal mining and reclamation operations.

[FR Doc.82-16724 Filed 6-18-82; 8:45 am]
BILLING CODE 4310-05-M

---

30 CFR Part 937

Surface Mining and Reclamation Operation Under a Federal Program for Oregon.

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

ACTION: Proposed rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) of the Department of the Interior proposes a Federal program for regulation of coal exploration and surface coal mining and reclamation operations on non-Federal and non-Indian lands in Oregon. This includes surface effects of underground coal mining. This proposed program is necessary in order to regulate surface coal mining activities in the absence of a State program.

DATES: Written comments must be received not later than 5:00 p.m. on August 2, 1982, at the address below. A public hearing will be held on July 26, 1982. Requests to testify at the hearing should be received by July 21, 1982. If commenters request a hearing date later than that set, the hearing will be rescheduled and the new date announced by a notice in the Federal Register.

ADDRESSES: Written comments must be mailed to: Administrative Record Room (R & I–20), Office of Surface Mining, Wyoming State Office, P.O. Box 1420, Mills, Wyoming 82644, or hand delivered to Office of Surface Mining, Wyoming State Office, Freden Bldg. 935 Pendell Blvd., Mills, Wyoming 82244.

The public hearing on the proposed program will be held at the Federal Building, Room 335, 1220 S.W. 3rd St., Portland, Oregon 97204. Use the Madison Street entrance. The hearing will begin at 7:00 p.m.

FOR FURTHER INFORMATION CONTACT: James M. Kress, Office of Surface Mining, Branch of Regulatory Programs, Room 222, 1951 Constitution Avenue, N.W., Washington, D.C. 20240. Telephone: (202) 343–5866.

SUPPLEMENTARY INFORMATION:

Availability of Copies

Copies of the proposed program are available for inspection and may be obtained at the OSM office listed above under "ADDRESSES."

Public Comment Period

The comment period on the proposed program will extend until August 2, 1982. All comments must be received at the location listed above under **"ADDRESSES"** by the close of business on that date.

All written comments receive, a transcript of the public hearing, summaries of public meetings held at the request of any person or organization to receive advice and recommendations concerning the proposed program with representatives of OSM, and other documents comprising the administrative record on the Oregon Federal program will be made available for public review during regular business hours at the location listed above under **"ADDRESSES."**

OSM appreciates any and all comments on the proposal, but those that would be most useful should be as specific as possible, focus on the issues of this proposed rulemaking, and provide reasons for any recommendations. OSM will not consider comments that do not pertain to the issues in this proposal. Nor can OSM ensure consideration of comments received after the comment period ends or those delivered to an address other than those specified.

Public Hearing

A public hearing on the proposed program will be held at the time and location listed above to hear all those who wish to testify. The hearing may be cancelled if, by July 21, 1982, no person has expressed interest in presenting testimony. Those interested in testifying should contact OSM at the location under "ADDRESSES" above.

Individual testimony at the hearing will be limited to 15 minutes. The hearing will be transcribed. Filing of a written statement at the time of giving oral testimony would be helpful and would facilitate the job of the court reporter. Submission of written statements in advance of the hearing would greatly assist OSM officials who will attend the hearing. Advance submissions will give these officials an opportunity to consider appropriate questions which could be asked for clarification or to request more specific information from the person testifying. The public hearing will continue until all persons scheduled to speak have been heard. Persons in the audience who have not been scheduled to speak and wish to do so will be heard following the schedule speakers. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to speak have been heard. Persons not scheduled to testify, but wishing to do so, assume the risk of having the public hearing adjourned unless they are present in the audience at the time all scheduled speakers have been heard.

The hearing date is set for approximately 30 days after publication of the proposed program in order to give the public ample opportunity to review the hearing transcript before the close of the comment period. The hearing date is being advanced from that required by 30 CFR 736.12 because, surface mining operations are imminent in Oregon, and the State does not have an approved permanent regulatory program to control such activities. Allowing 60 days to elapse after publication of today's notice before holding the public hearing (as specified by 30 CFR 736.12) would delay promulgation of this program. OSM will consider requests for a later hearing date which are supported by valid reasons for postponement.

Background

Under Section 504(a) of the Surface Mining Control and Reclamation Act of 1977 (the Act), Pub. L. 95–87, 30 U.S.C. 1201 *et seq.*, the Secretary is required to promulgate a Federal program within 34 months after passage of the Act if a State fails to submit a program to assume responsibility for regulating surface mining activities, fails to resubmit a program within 60 days of disapproval, or fails at any time to implement, enforce or maintain an approved State program. The time for submitting State programs was extended by seven months to March 3, 1980 as the result of litigation, *In re: Permanent Surface Mining Regulation Litigation*, 13 ERC 1447 (July 25, 1979). The date for submission of State programs has now passed.

An additional standard for the promulgation of a Federal program is found in 30 CFR Part 736, which requires the implementation of a Federal program for a State where the Director of OSM (the Director) "reasonably

expects coal exploration or surface coal mining and reclamation operations to exist on non-Federal and non-Indian lands * * * at any time before June 1985 * * *" 30 CFR 736.11(a)(1).

Once a decision is made that a Federal program is necessary for a State, the Secretary must make several determinations before promulgating a program. Section 504(a) of the Act requires that in implementing a Federal program the Secretary take into consideration the nature of the State's terrain, climate, biological, chemical, and other relevant physical conditions. This requirement is also found in the regulations, 30 CFR 736.22(a)(1). The Act (Section 505(b)) and the regulations (§ 736.23(b)). also provide that if a State has more stringent land use and environmental laws or regulations, they shall not be construed to be inconsistent with the Act or the Secretary's regulations. The Secretary believes that the requirements of section 505(b) can best be met by identifying State laws and regulations which impose equivalent or more stringent environmental controls and incorporating the requirements of those laws in the Federal program. If the State's laws or regulations establish more stringent standards regulating surface mining control and reclamation procedures than those found in the Act or the Secretary's regulations or if the State regulates or protects an aspect of the environment affected by surface mining and reclamation operations which neither the Act nor the Secretary's regulations protect, OSM would then specifically preserve those States standards in the Federal program.

Also, in promulgating a program for a State, Section 504(g) specifies that any State statutes or regulations which regulate surface mining and reclamation operations subject to the Act will be superseded and preempted by the Federal program to the extent that they interface with the achievement of the purposes and requirements of the Act and the Federal program. This provision is reinforced by Section 505(a) of the Act, which states that only those State laws and regulations which are inconsistent with the Act and its implementing regulations shall be superseded by the Federal program. Thus, State statutes and rules regulating the same activities as those covered by the Federal law and regulations and which interfere with achievement of the purposes of the Act must be identified and preempted by OSM.

Oregon State laws have been reviewed to fulfill the Secretary's obligation under Section (504(a) of the Act. OSM believes that there are statutes which, in certain circumstances, impose stricter environmental controls than are provided for under the Act or the Federal regulations. Section 700.937(a) of the proposed Federal program for Oregon lists the Oregon laws which OSM has tentatively identified as setting more stringent land use and environmental controls for surface mining. Those more stringent Oregon statutes are summarized as follows:

(a) ORS 468.700 to 468.997 (statutes controlling the pollution of State waters) prohibit, *inter alia*, the discharge of waste into State waters without an approved permit issued by the Director of the Department of Environmental Quality. These statutes impose strict liability for injury to fish or wildlife and allow the State to collect damages to recover wildlife habitat restoration costs. ORS 468.745. Willful or negligent violation of these statutes constitutes a criminal offense punishable by a maximum fine of $25,000 or one year in jail, or both. ORS 468.999, ORS 468.992.

(b) ORS 498.002 provides that game fish and wildlife are considered State property and ORS 498.705 imposes strict liability for injuring fish or wildlife in violation of the Oregon Fish and Wildlife statutes. Moreover, ORS 498.705 established a schedule of civil damages and includes, as recoverable damages, the cost to restore fish and wildlife habitats.

(c) ORS 509.600 makes it unlawful to knowingly injure or destroy fish within 600 feet of any fishway. It is unlawful to construct or maintain a dam or obstruction across any stream without providing for a food fish passageway and construction of such a facility must first be approved by the Director of the Department of Fish and Wildlife. Artificial watercourses must be screened to protect food fish. ORS 509.615. The Oregon statutes prohibit the waste, injury or destruction of food fish and shellfish and prohibit deleterious substances from being introduced into State waters. ORS 509.125. An approved permit from The Fish and Wildlife Commission is required before any explosive may used to construct a dam or similar structure in order to prevent the wanton waste or destruction of food fish. ORS 509.140.

Comment is invited on whether laws identified in Section 937.700(e) of the proposed Federal Program, which reflect more stringent Oregon environmental controls, adequately take into consideration the nature of the relevant physical conditions. Comment is also invited concerning any other Oregon laws which establish more stringent land use and environmental controls.

In accordance with 30 CFR 736.23, OSM believes that those Oregon statutes and rules, listed in Section 937.700(f) of the proposed Federal Program, would interfere with the attainment of the goals and purposes of the Act and the Permanent Program Rules thereunder. Thus OSM proposes that the following Oregon statutes and rules be preempted and superseded to the extent that they regulate coal exploration and surface mining subject to regulation under the Act:

(a) Oregon Surface Mining and Mine Land Reclamation Acts, as amended, Oregon Revised Statutes (ORS) 517.750 to 517.990.

(b) Oregon Administrative Rules Department of Geology and Mineral Industries, Division 30, Rules and Regulations, Oregon Mined Land Reclamation Act, OAR 632-30-005 to 632-30-060.

(c) ORS 273.551 and ORS 273.775-ORS 273.790—Authorizes The State Division of Lands to issue mineral drilling leases and exploration and mining permits with respect to lands and minerals owned by the State. OSM proposes that it be the permitting authority for surface mining and exploration. Insofar as the Oregon statutes provide that the permitting authority is the Division of Lands, these Oregon statutes would be preempted. The contractual leasing authority of the Division of Lands is not disturbed under the proposed Federal Program.

(d) ORS 275-340—Authorizes the Counties to lease county-designated forest lands for mineral prospecting and mineral excavation. To the extent that the State of Oregon interprets this statute as creating County authority to issue mining or prospecting permits, OSM proposes to preempt the County permitting authority. The proposed Federal Program and Section 504 of the Act provide that the regulatory and permitting authority is the Office of Surface Mining.

(e) ORS 517-780—Exempts surface mining operations 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 mine operations 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. OSM proposes to preempt this Oregon statute to the extent that it delegates permitting responsibility to cities and counties.

These Oregon laws and rules represent the main body of Oregon law relating to the exploration and surface mining of minerals and mined land reclamation. The Oregon Department of Geology and Mineral Industries has statutory responsibility for administering and enforcing the laws and rules pertaining to surface mining. To a limited extent, Oregon requires the reclamation of surface mined lands. OSM tentatively concludes that these Oregon statutes and rules indicate that they are not consistent with the Act or the Federal Permanent Program Rules and interfere with the attainment of the reclamation goals and purposes expressed in the Act. Thus, OSM proposes that the Oregon statutes and rules, described above, no longer be applicable to the regulation of coal exploration, surface coal mining operations or the reclamation of surface coal mined lands in the State of Oregon, except as they pertain to operations affecting two acres or less or which otherwise are not regulated by the Surface Mining Control and Reclamation Act.

Finally, Section 504(h) of the Act requires that each Federal program include a process for coordinating the review and issuance of surface mining permits with other Federal or State permits applicable to the proposed operation. The Federal statutes with which the surface mining permitting process must be coordinated are set out in 30 CFR 736.22(c). State statutes for which a permit is required must be identified in the process of promulgating a Federal program, and the Federal program must provide for coordination with the review and issuance procedures required by those statutes. § 937.770(b) of the proposed Federal Program tentatively identifies the various permits, statutes and rules which may, expressly or impliedly, impact on surface coal mining and coal exploration and coal reclamation under the proposed Federal Program. The pertinent permits, statutes and rules are:

(a) ORS 197.005 through ORS 197.775 authorize the use of Comprehensive Land Use Plans adopted by a county or a city and found by The Oregon Land Conservation and Development Commission to be in compliance with the Oregon Statewide Planning Goals. ORS 197.180.

(b) Licenses for the lease of State lands are issued by the Division of State Lands. ORS 273.005–ORS 273.815.

(c) Counties have authority to sell or lease rights to prospect or extract minerals located on county forest lands. ORS 275.340.

(d) Solid Waste Disposal Permits, Hazardous Waste Transportation and Disposal Permits, Industrial Waste Disposal Permits are issued by The Department of Environmental Quality. ORS 459.005–ORS 850.

(e) Surface mining or exploration operations must comply with the Noise Control Laws enforced by The Department of Environmental Quality. ORS 467.010–ORS 467.990.

(f) Oregon statutes seeking to minimize pollution generally found in ORS 468.005–ORS 468.997. The Oregon air pollution control laws are contained in ORS 468.275–ORS 468.350 and ORS 468.500–ORS 468.580. Oregon water pollution control statutes reside in ORS 468.700–468.775. Oregon prohibits the discharge of waste into state waters when in violation of an approved permit issued by the Director of the Department of Environmental Quality and imposes strict civil liability on polluters and those who injure game fish and wildlife or their habitat (ORS 468.745). Willful or negligent violation of the Oregon fish wildlife statutes constitutes a misdemeanor. ORS 468.990, ORS 468.992.

(g) A waste Discharge Permit (National Pollution Discharge Elimination System—NPDES) is required before waste may be deposited into State waters. A Water Pollution Control Facilities Permit may also be required. The permitting authority for these permits is The Department of Environmental Quality. ORS 468.775, ORS 468.990–ORS 468.997.

(h) The Department of Environmental Quality also issues Air Contaminant Discharge Permits. ORS 468.275–ORS 468.350.

(i) The Oregon Department of Energy administers the allocation of energy and the energy conservation programs. ORS 469.010–469.992. That Department also issues Energy Facility Site Certificates. ORS 469.300–ORS 469.570, ORS 469.990 and ORS 469.992.

(j) The wildlife laws of Oregon (ORS 496.002 et seq.) contain the State's wildlife policy. ORS 496.012. The Department of Fish and Wildlife has permitting responsibility for the wildlife laws and is charged with their administration and enforcement.

(k) The fish and wildlife of Oregon are considered State property. ORS 498.002. Oregon imposes strict civil liability for injury or destruction of fish, wildlife or their habitats in violation of its statutes. ORS 498.705.

(l) Approval is required of the Director of the Department of Fish and Wildlife before a dam or obstruction may be constructed across State streams or waters. ORS 509.600. Artificial water courses are required to be screened to protect fish. ORS 509.615. Oregon prohibits deleterious substances from being introduced into State waters. ORS 509.125. It is unlawful to wantonly waste or destroy fish. ORS 509.112. An approved permit from the Fish and Wildlife Commission is required before explosives may be used to assist in the construction of a dam or similar structure. ORS 509.140.

(m) Oregon makes it unlawful to have possession of explosives without having obtained a Certificate of Possession from the State Fire Marshall. ORS 480.210. Violation of this law is punishable by a fine of not more than $250 or imprisonment of not more than one year, or both. ORS 480.990(7).

(n) The Department of Geology and Mineral Industries (ORS 516.010 et seq.) administers the Oregon law respecting mining and mine claims. ORS 5178.010–ORS 517.700. Oregon provides that mine claims are treated as a realty claim, and Oregon laws provide for the recordation of mine claims (ORS 517.030), claim assignment or transfer (ORS 517.090), millsite control (ORS 517.160), leasing of State land for the purpose of mining (ORS 517.420), and the licensing of mining operations using a dredging machine (ORS 517.611–ORS 517.700).

(o) The Oregon Department of Water Resources is the permitting authority for the use, appropriation and or diversion of Oregon waters (ORS 537.130, ORS 537.135) and surface waters. ORS 537.135, ORS 537.140 and ORS 537.800. That Department is responsible for enforcing the Oregon water conservation laws (ORS 537.010 et seq.). It is the permitting authority for the design, construction and maintenance of dams, dikes or other hydraulic structures or works. ORS 540.350 and ORS 540.400.

(p) The Oregon Department of Water Resources administers and enforces ORS 540.440 which requires that right-of-way water ditches be required to be kept clear from wild oats, mustard, thistles, weeds or noxious grasses.

(q) A permit is required before matter may be removed from the beds and banks of state waters or before fill may be deposited in State waters. The permitting authority is the Director, Division of State Lands. ORS 541.605–ORS 541.990.

(r) ORS 564.010–ORS 564.991 makes it a misdemeanor when wildflowers (designated by the Oregon Department

of Agriculture) located within 500 feet of the center of any public highway or located on a public right-of-way are wilfully or negligently injured or destroyed without the written permission of the owner of the land.

(s) ORS 750.505–ORS 570.990 require that the State and Counties control noxious weeds including white top and Russian knapweed which are deemed to be a menace to the public welfare. Owners and occupiers of lands containing such weeds are required to destroy them and may not seed with such weeds. ORS 570.535.

Copies of the Oregon Surface Mining and Mineral Land Reclamation Act, as amended, and the other Oregon statutes referred to herein are in the administrative record and are available for review at the places listed above under "ADDRESSES."

Federal programs are based on the Secretary's permanent program regulations: 30 CFR Subchapters A, F, G, J, K, L, and M. The permanent program regulations establish procedures and performance standards under the Act and form the benchmark for State programs. In order for a State to have a program approved by the Secretary, Section 503(a)(7) requires that the State's rules and regulations be consistent with the Secretary's regulations.

Pursuant to Section 504(a), the Secretary of the Interior becomes the regulatory authority when a Federal program is implemented for a State. The permanent program regulations contain references to "the regulatory authority" which means the Secretary when a Federal program is involved. Section 701(22) of the Act. The Secretary has delegated almost all authority for surface coal mining activities to the Director of the Office of Surface Mining. The director will be the official responsible for implementing the Oregon Federal program.

The parts of the permanent program regulations that must be included in a Federal program are listed in the regulations, 30 CFR 736.22(b). They include general requirements and definitions (Parts 700 and 701), the exemption for coal extraction incident to government-financed highway or other construction (Part 707), the designation of lands unsuitable for surface mining (Parts 760, 761 and 765), permits and permit applications (Subchapter G), reclamation bonding (Subchapter J), performance standards (Subchapter K), inspection and enforcement (Parts 842, 843 and 845), and blaster training and certification (Subchapter M). In addition, the provisions in the permanent regulations on protection of employees (Subchapter P) and restrictions on financial interests (Part 706) are applicable to Federal employees who, in the instance of a Federal program, are directly enforcing the Act.

The rules for the national 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 15323–15393 (March 13, 1979). Subchapter M was published on December 12, 1980 (45 FR 82098). Corrections were published at 44 FR 15485 (March 14, 1979), 44 FR 53507–53509 (September 14, 1979), 44 FR 66195 (November 19, 1979), 45 FR 26001 (April 16, 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 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), and 45 FR 76932 (November 20, 1980), 46 FR 37232 (July 17, 1981); 46 FR 41702 (August 17, 1981); 46 FR 47720 (September 29, 1981); 46 FR 53376 (October 28, 1981); 46 FR 52287 (December 7, 1981). Representatives of industry, two States and several environmental groups challenged the national 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* (Civil Action No. 79–1144). In response to the 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), January 30, 1980 (45 FR 6913) and August 4, 1980 (45 FR 51547–51550). In two opinions the court remanded certain other regulations which had been challenged in the lawsuit. These opinions were issued on February 26, 1980, and May 16, 1980. Many of the issues decided by the District Court have been appealed to the Court of Appeals for the District of Columbia Circuit. *In Re: Permanent Surface Mining Regulation Litigation*, Nos. 80–1810, 80–1811, 80–1812, 80–1813 and 80–1823. The Court has granted a stay of the proceeding pending the revision of regulations as noted below. However, the stay does not apply to Federal programs such as this one.

OMB Review

The recordkeeping and reporting requirements of the proposed rule are the same as those of the permanent program regulations which have been approved by the Office of Management and Budget under 44 U.S.C. Section 3507.

Although this rule would contain information and recordkeeping requirements, OSM anticipates less than ten respondents. Under the Paperwork Reduction Act, clearance of information collection forms is required only if ten or more respondents are expected. If in the future the number of respondents appears to be increasing, the proper forms, if they differ from those already approved, will be submitted to 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.

Oregon Federal Program

As mentioned above, when promulgating a Federal program for a State, OSM is required by Section 504(a) of the Act to take into consideration the nature of the terrain, climate, biological, chemical, and other relevant physical conditions of that State. OSM has reviewed Oregon laws and regulations to determine whether they suggest that special provisions may be necessary or appropriate based on special terrain or other physical conditions in the State. OSM solicits comments on special provisions that should be promulgated and the basis for those provisions.

The Director has determined that there is a reasonable expectation that coal exploration or surface coal mining operations will occur on non-Federal and non-Indian lands in the State of Oregon before June 1985. The State has failed to submit a program to the Secretary to obtain primary regulatory responsibility. Therefore, pursuant to 30 CFR 736.11, the Director must promulgate and implement a Federal program.

Explanation of Cross-Referencing

In the general notice of intent to promulgate Federal programs of May 16, 1980 (45 FR 32228), it was stated that each Federal program would be specific to the particular State and would implement the permanent program procedures and environmental protection provisions of the Act (45 FR at 32229). However, except for changes to incorporate more stringent State environmental protection standards and

to list other State laws requiring permits for which coordination is required, OSM believes that few changes are needed in the permanent program regulations for any particular State for which a Federal program must be promulgated.

In January 1981 the Secretary directed that the Department review all existing regulations with a goal of eliminating those which are burdensome, excessive, and unnecessary. Review of the permanent program regulations was initiated and may result in a large scale revision of them. See semi-annual Calendar of Federal Regulations notice of rule review and revision, 47 FR 1709 (January 13, 1982). See also, e.g., revisions of OSM's bonding regulations, 30 CFR Subchapter J, 46 FR 45082 (September 9, 1981) and of OSM's inspection and enforcement regulations, 30 CFR Parts, 842, 843, and 845, 46 FR 54864 (December 1, 1981).

In order to take advantage of the results which revision of the permanent program regulations will achieve, OSM proposes to develop and promulgate this Federal program in the following manner. Rather than repeating the full text of the permanent regulations which are being revised, there would be a cross-reference to the permanent program regulations. For example, criteria for the designation of lands unsuitable for surface coal mining would be provided by the statement that "the Secretary may designate lands unsuitable . . . pursuant to the criteria in 30 CFR Part 762" (see proposed Section 937.762). The effect of the proposed cross-referencing to the permanent program regulations, insofar as revision of this rule is concerned, would be that as the permanent program regulations are revised, this Federal program would be similarly revised. Over time, all of the permanent program regulations will undergo review and many will be revised. However, no changes to Federal programs for States will be required or proposed in response to administrative suspensions or judicial remands if the proposed cross-referencing method is.

No separate rulemaking would be undertaken or necessary for revision of this program if the cross-referencing alternative becomes effective, unless OSM determined that special conditions were necessary for a particular State. The statement for the permanent program proposed rule would invite comments on necessary modifications to accommodate unique or unusual aspects of surface mining in any State and the final rule would be tailored for each State as necessary.

The promulgation of the proposed cross-referenced Federal program for Oregon would not result in any modification of the substance of OSM's permanent program rules. A separate paragraph is proposed to be added under each section of the proposed Federal program for Oregon where that section deviates from the permanent program regulations. These paragraphs will generally be found in subsection (b). Cross-referencing to the permanent program rules may also be used in the promulgation of other Federal programs for States. Public comment on the cross-referencing method as it affects other Federal programs for States, however, should be directed to each of those rulemaking notices.

Several provisions of the permanent program regulations are already applicable to the Federal program for Oregon and need not be cross-referenced here because they were fully promulgated for application to all regulatory programs. Those provisions are 30 CFR Chapter VII, Subchapter P—Protection of Employees; Part 706—Restrictions on Financial Interests of Federal Employees; and Part 769—Petition Process for Designation of Federal Lands Unsuitable for Surface Coal Mining. However, 30 CFR Part 764—Designating Lands Unsuitable for Surface Coal Mining would be included in the Federal program for Oregon by a cross-reference under Section 937.764, to provide a petition process on non-Federal lands in Oregon.

With regard to bonding regulations (Subchapter J), only Part 800 is proposed to be cross-referenced because OSM has proposed to revise Subchapter J to include just one part, Part 800. 46 FR 45082 (September 9, 1981) (proposed).

Content and Organization of the Program

The content and organization of the proposed Federal program for the State of Oregon would generally follow the permanent program regulations. But, as discussed above, instead of the full text appearing, each section of this proposed program would only include reference to the pertinent permanent program regulation. Section 937.700(e) and (f) set out more stringent and inconsistent State statutes respectively. A separate paragraph is proposed to be added under each section where there are deviations from the Federal permanent program regulation for the Oregon Federal program. These paragraphs will generally be found in a Subsection (b).

The content and organization of the Oregon Federal program would be based on the following provisions of the Federal permanent program regulations, 30 CFR Chapter VII:

Subchapter A—General
Subchapter F—Areas Unsuitable for Mining
Subchapter G—Surface Coal Mining and Reclamation Operations Permits and Coal Exploration Systems Under Regulatory Programs
Subchapter J—Bond and Insurance Requirements for Bonding of Surface Coal Mining and Reclamation Operations
Subchapter K—Permanent Program Performance Standards
Subchapter L—Permanent Program Inspection and Enforcement Procedures
Subchapter M—Training Program for Blasters and Members of Blasting Crews, and Certification Programs for Blasters

Technical literature cited by OSM in the preamble to the permanent regulatory program (44 FR 14901–15309, March 13, 1979) was relied upon in developing the additions to the regulations for the Oregon Federal program. The reader is referred to that preamble for a discussion of the basis and purposes of the permanent program rules proposed to be referred in the Oregon program without substantive change.

The numbering system of the permanent program regulations has been incorporated in the numbering system for the proposed program. Program elements have been categorized under headings similar to the Subchapter titles. Subchapter T in 30 CFR Chapter VII has been established to include regulatory programs by State. Each State is assigned a part number. The proposed program for the State of Oregon is assigned Part 937.

In addition to the proposed rules, the Federal regulatory program for the State of Oregon will include the following provisions of 30 CFR Chapter VII:

30 CFR Chapter VII, Subchapter P—Protection of Employees
30 CFR Chapter VII, Part 706—Restriction of Financial Interests of Federal Employees

These provisions have been fully promulgated and implemented for application to all regulatory programs under 30 CFR Chapter VII. They will not be modified for application in any specific State. Therefore, those provisions, as codified in 30 CFR Chapter VII, would be part of the Federal regulatory program for the State of Oregon.

Other Information

OSM has examined these proposed rules according to the criteria of Executive Order 12291 (46 *FR* 13193, February 19, 1981) and determined that they do not constitute a major rule. There would be no major economic impact through adoption of this rule

because it would affect only a small number of mining operations.

OSM has examined these proposed rules pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, and determined that they will not have a significant impact on a substantial number of small entities. Separate determinations of effect will be prepared for all revisions of the permanent program rules and would consider the effects on small entities in the State of Oregon.

Section 702(d) of the Act provides that promulgation of a Federal program shall not constitute a major Federal action under the National Environmental Policy Act, 42 U.S.C. 4332. Thus, no Environmental Assessment is required for this rulemaking.

List of Subjects in 30 CFR 937:

Coal mining, Intergovermental relations, Surface mining, Underground mining, Reporting requirements.

Drafting Information

These regulations were drafted by William Patten, Office of the Solicitor and James M. Kress, Branch of Regulatory Programs, Office of Surface Mining.

Dated: May 21, 1982.

William P. Pendley,

Acting Assistant Secretary, Energy and Minerals.

OSM proposes to revise 30 CFR Part 937 to read as follows:

PART 937—OREGON

Sec.

937.700 General.
937.701 General.
937.707 Exemption for Coal Extraction Incident to Government-Financed Highway or Other Construction.
937.761 Areas Designated Unsuitable for Surface Coal Mining by Act of Congress.
937.762 Criteria for Designating Areas as Unsuitable for Surface Coal Mining Operations.
937.764 Process for Designating Areas Unsuitable for Surface Coal Mining Operations.
937.770 General Requirements for Permit and Exploration Procedures.
937.771 General Requirements for Permits and Permit Applications.
937.776 General Requirements for Coal Exploration.
937.778 Surface Mining Permit Applications—Minimum Requirements for Legal, Financial, Compliance, and Related Information.
937.779 Surface Mining Permit Applications—Minimum Requirements for Information on Environmental Resources.
937.780 Surface Mining Permit Applications—Minimum Requirements for Reclamation and Operations Plan.
937.782 Underground Mining Permit Applications—Minimum Requirements for Legal, Financial, Compliance, and Related Information.
937.783 Underground Mining Permit Applications—Minimum Requirements for Information on Environmental Resources.
937.784 Underground Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plan.
937.785 Requirements for Permits for Special Categories of Mining.
937.786 Reviews, Public Participation, and Approval or Disapproval of Permit Applications and Permit Terms and Conditions.
937.787 Administrative and Judicial Review of Decisions on Permit Applications.
937.788 Permit Review, Revisions, and Renewals, and Transfer, Sale, and Assignment of Rights Granted Under Permits.
937.795 Small Operator Assistance.
937.800 General Requirements for Bonding of Surface Coal Mining and Reclamation Operations.
937.815 Performance Standards—Coal Exploration.
937.816 Performance Standards—Surface Mining Activities.
937.817 Performance Standards—Underground Mining Activities.
937.818 Special Performance Standards—Concurrent Surface and Underground Mining.
937.819 Special Performance Standards—Auger Mining.
937.823 Special Performance Standards—Operations on Prime Farmland.
937.824 Special Performance Standards—Mountaintop Removal.
937.826 Special Performance Standards—Operations on Steep Slopes.
937.827 Special Performance Standards—Coal Processing Plants and Support Facilities Not Located at or Near the Minesite or Not Within the Permit Area for a Mine.
937.828 Special Performance Standards—In Situ Processing.
937.842 Federal Inspections.
937.843 Federal Enforcement.
937.845 Civil Penalties.

Authority: Pub. L. 95-87, the Surface Mining Control and Reclamation Act of 1977, 130 U.S.C. 1201 *et seq.*

§ Section 937.700 General.

(a) This Part contains all rules that are applicable to surface coal mining operations in Oregon which have been adopted under the Surface Mining Control and Reclamation Act of 1977.

(b) The rules in this part cross-reference pertinent parts of the permanent program regulations in this chapter. The full text of a rule is in the permanent program rule cited under the relevant section of the Oregon Federal program.

(c) The rules in this part apply to all surface coal mining operations in Oregon conducted on non-Federal and non-Indian lands. The rules in Subchapter D of this chapter apply to operations on Federal lands in Oregon.

(d) The information collection requirements contained in this part do not require approval by the Office of Management and Budget under 44 U.S.C. 3507 because there are fewer than ten respondents annually.

(e) The following provisions of Oregon laws provide, where applicable, for more stringent environmental control and regulation of surface coal mining operations than do the provisions of the Act and the regulations in this chapter. Therefore, pursuant to Section 505(b) of the Act, they shall not be construed to be inconsistent with the Act:

(1) Oregon Revised Statutes (ORS) 468.700–468.997, pertaining to the control of water pollution.

(2) ORS 498.002 and ORS 498.705, protecting fish and wildlife and their habitats.

(3) ORS 509.125, prohibiting deleterious substances from being introduced into State waters.

(4) ORS 509.140, requiring the approval of the Fish and Wildlife Commission before explosives may be used to construct a dam or similar structure.

(5) ORS 509.600, prohibiting the injury or destruction of fish within 600 feet of any fishway. Prior approval of the Director, The Department of Fish and Wildlife is required before constructing a dam or obstruction in State waters.

(6) ORS 509.615, requiring that artificial watercourses must be screeded.

(f) The following are Oregon laws that interfere with the achievement of the purposes and requirements of the Act and are, in accordance with Section 504(g) of the Act, preempted and superseded:

(1) Oregon Surface Mining and Mine Land Reclamation Acts, as amended, ORS 517.750–ORS 517.990.

(2) Oregon Administrative Rules (OAR) Department of Geology and Mineral Industries, Division 30, Rules and Regulations, Oregon Mined Land Reclamation Act, OAR 632–30–005 through OAR 632–30–060.

(3) ORS 273.551 and ORS 273.775 to ORS 273.790. The contractual and leasing responsibility of The Division of Lands over State lands and minerals is not affected by the Federal Program.

(4) ORS 275.340. To the extent that the State of Oregon construes this statute as delegating to the Counties the authority to issue surface coal mining permits and related exploration permits, then, to that extent, the Federal Program preempts the permitting authority of the Counties.

(5) ORS 517.780, which allows the State of Oregon to delegate permitting authority under certain circumstances to cities or counties.

§ 937.701 General.

Sections 700.5, 700.11, 700.12, 700.13, 700.14, 700.15 and Part 701 of this chapter shall apply to surface coal mining operations in Oregon.

§ 937.707 Exemption for Coal Extraction Incident To Government-Financed Highway or Other Construction.

Part 707 of this chapter, Exemption for Coal Extraction Incidental to Government-financed Highway or Other Construction, shall apply to surface coal mining and reclamation operations.

§ 937.761 Areas Designated Unsuitable For Surface Coal Mining By Act Of Congress.

Part 761 of this chapter, Areas Designated by Act of Congress, shall apply to surface coal mining and reclamation operations.

§ 937.762 Criteria For Designating Areas As Unsuitable For Surface Coal Mining Operations.

Part 762 of this chapter, Criteria for Designating Areas Unsuitable for Surface Coal Mining Operations, shall apply to surface coal mine operations beginning one year after May 14, 1982.

§ 937.764 Process For Designating Areas Unsuitable For Surface Coal Mining Operations.

Part 764 of this chapter, State Processes for Designating Areas Unsuitable for Surface Coal Mining Operations, pertaining to petitioning, initial processing, hearing requirements, decisions, data base and inventory systems, public information, and regulatory responsibilities shall apply to surface coal mine operations beginning one year after May 14, 1982.

§ 937.770 General Requirements For Permits And Exploration Procedures.

(a) Part 770 of this chapter, General Requirements for Permit Systems Under State Programs, shall apply to surface coal mining and exploration operations.

(b) Where applicable, no person shall conduct surface coal exploration operations which result in the removal of more than 250 tons in one location, or surface coal mining operations without permits issued pursuant to leases and/or certificates required by the State of Oregon, including compliance with Oregon's Statewide Planning Goals (ORS 197.180) and any relevant County Comprehensive Land Use Plans (ORS 197.005–ORS 197.775); license from the Division of State Lands where mines or exploration are on State lands (ORS 273.005–273.815); Solid Waste Disposal Permits, Hazardous Waste Transportation and Disposal Permits, Industrial Waste Disposal Permits issued by the Department of Environmental Quality (ORS 459.005–ORS 459.850); leases issued by the county where county designated forest lands are involved (ORS 275.340); noise restrictions enforced by The Department of Environmental Quality (ORS 467.010–467.990); Air Contaminant Discharge Permits (ORS 468.005–ORS 468.997), Water Pollution Control Facilities Permits, Waste Discharge Permits (ORS 468.900– ORS 468.997), Energy Facility Site Certificates (ORS 469.300–ORS 469.570, ORS 469.990, ORS 469.992) issued by the Department of Environmental Quality; The Department of Fish and Wildlife issues permits for dam use (ORS 509.600), for use of explosives used to construct dams or similar structures (ORS 509.140); The State Fire Marshall issues Certificates of Possession for persons having or using explosives (ORS 480.210); The Department of Geology and Minerals issues licenses for use of dredging machines (ORS 517.611–ORS 517.700); The Department of Water Resources issues permits with respect to the use, appropriation or diversion of State Waters (ORS 537.130, ORS 537.135) and surface waters (ORS 537.135, ORS 537.140 and ORS 537.800), and permits relative to the design, construction and maintenance of dams, dikes or other hydraulic structures or works (ORS 540.350, ORS 540.400); matter may be removed from the beds and banks of State waters and fill may be deposited in State waters once a permit is obtained from The Division of State Lands (ORS 541.605–ORS 541.990).

§ 937.771 General Requirements For Permits And Permit Applications.

(a) Part 771 of this chapter, General Requirements for Permits and Permit Applications, shall apply to any person who makes application for a permit to conduct surface coal mine operations.

(b) Any person who wishes to conduct new surface coal mining and reclamation operations or who wishes to revise a permit shall file a complete application at least 12 months prior to the date upon which permit issuance is desired and pay the Secretary a permit fee in accordance with 30 CFR 736.25.

§ 937.776 General Requirements For Coal Exploration.

(a) Part 776 of this chapter, General Requirements for Coal Exploration, shall apply to any person who conducts or seeks to conduct coal exploration operations.

(b) The Office shall make every effort to act on an exploration application within 60 days of receipt or such longer time as may be reasonable under the circumstances. If additional time is needed, OSM shall notify the applicant that the application is being reviewed, but more time is necessary to complete such review, setting forth the reasons and the additional time that is needed.

(c) Where coal exploration is to occur on State lands or the minerals to be explored are owned by the State, a mineral lease issued by the Oregon Division of Lands authorizing the coal exploration is required to be filed with the permit application.

§ 937.778 Surface Mining Permit Application—Minimum Requirements For Legal, Financial, Compliance and Related Information.

Part 778 of this chapter, Surface Mining Permit Applications—Minimum Requirements for Legal, Financial, Compliance, and Related Information, shall apply to any person who makes application for a permit to conduct surface mining and reclamation operations.

§ 937.779 Surface Mining Permit Applications—Minimum Requirements For Information On Environmental Resources.

Part 779 of this chapter, Surface Mining Permit Applications—Minimum Requirements for Information on Environmental Resources, shall apply to any person who makes application to conduct surface mining and reclamation operations.

§ 937.780 Surface Mining Permit Applications—Minimum Requirements For Reclamation And Operation Plan.

(a) Part 780 of this chapter, Surface Mining Permit Applications—Minimum Requirement for Reclamation and Operation Plan, shall apply to any person who makes application to conduct surface coal mining and reclamation operations on non-Federal and non-Indian lands.

(b) Any application for a permit shall demonstrate compliance with the air quality control laws (ORS 468.275 through ORS 468.350 and ORS 468.500 through ORS 468.580) administered by the Oregon Department of Environmental Quality and shall have obtained, where required, an Air Contaminant Discharge Permit from the Department of Environmental Quality (ORS 468.275 through ORS 468.350).

§ 937.782 Underground Mining Permit Applications—Minimum Requirements For Legal, Financial, Compliance, And Related Information.

Part 782 of this chapter, Underground Mining Permit Applications—Minimum requirements for Legal, Financial, Compliance, and Related Information, shall apply to any person who makes application for a permit to conduct underground mining operations.

§ 937.783 Underground Mining Permit Applications—Minimum Requirements For Information On Environmental Resources.

Part 783 of this chapter, Underground Mining Permit Applications—Minimum Requirements for Information on Environmental Resources, shall apply to any person who submits an application to conduct underground mining operations.

§ 910.784 Underground Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plan.

Part 784 of this chapter, Underground Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plan, shall apply to any person who makes application to conduct underground mining.

§ 937.785 Requirements for Permits for Special Categories of Mining.

Part 785 of this chapter, Requirements for Permits for Special Categories of Mining, shall apply to each person who makes application for a permit to conduct certain categories of surface coal mining and reclamation operations.

§ 937.786 Review, Public Participation, and Approval or Disapproval of Permit Applications and Permit Terms and Conditions.

Part 786 of this chapter, Review, Public Participation, and Approval or Disapproval of Permit Applications and Permit Terms and Conditions, shall apply to the review of applications made by any person for surface coal mining and reclamation operations.

§ 937.787 Administrative and Judicial Review of Decisions on Permit Applications.

Decisions on permit applications shall be subject to administrative and judicial review in accordance with Part 787 of this chapter and Sections 520, 525 and 526 of the Act.

§ 937.788 Permit Reviews, Revisions, and Renewals, and Transfer, Sale, and Assignment of Rights Granted Under Permits.

Part 788 of this chapter, Permit Reviews, Revisions, and Renewals, and Transfer, Sale, and Assignment of Rights Granted Under Permits, shall apply to review, revision, and renewal of permits for surface coal mine operations, and to transfer, sale, and assignment of rights granted under permits.

§ 937.795 Small Operator Assistance.

Part 795 of this chapter, Small Operator Assistance, shall apply to any person making application for assistance under the small operator assistance program.

§ 937.800 General Requirements for Bonding of Surface Coal Mining and Reclamation Operations.

Part 800 of this chapter, General Requirements for Bonding of Surface Coal Mining and Reclamation Operations Under Regulatory Programs, shall apply to all surface coal mining and reclamation operations.

§ 937.815 Performance Standards—Coal Exploration.

(a) Part 815 of this chapter, Permanent Program Performance Standards—Coal Exploration, shall apply to any person conducting coal exploration operations.

(b) All operators shall comply with the Oregon statutory requirements specified in Section 937.700.

§ 937.816 Performance Standards—Surface Mining Activities.

(a) Part 816 of this chapter, Permanent Program Performance Standards—Surface Mining Activities, shall apply to any person who conducts surface coal mining and reclamation operations.

(b) All operators shall comply with the Oregon statutory requirements specified in § 937.700.

§ 937.817 Performance Standards—Underground Mining Activities.

(a) Part 817 of this chapter, Permanent Program Performance Standards—Underground Mining Activities, shall apply to any person who conducts underground mining operations.

(b) All operators shall comply with the Oregon statutory requirements specified in § 937.700.

§ 937.818 Special Performance Standards—Concurrent Surface And Underground Mining.

Part 818 of this chapter, Special Permanent Program Performance Standards—Concurrent Surface and Underground Mining, shall apply to any person who conducts combined surface and underground mining operations.

§ 937.819 Special Performance Standards—Auger Mining.

Part 819 of this chapter, Special Permanent Program Performance Standards—Auger Mining, shall apply to any person who conducts surface coal mining operations which include auger mining.

§ 937.823 Special Performance Standards—Operations on Prime Farmland.

Part 823 of this chapter, Special Permanent Program Performance Standards—Operations on Prime Farmland, shall apply to any person who conducts surface coal mining and reclamation operations on prime farmlands.

§ 937.824 Special Performance Standards—Mountaintop Removal.

Part 824 of this chapter, Special Permanent Program Performance Standards—Mountaintop Removal, shall apply to any person who conducts surface coal mining operations constituting mountaintop removal mining.

§ 937.826 Special Performance Standards—Operations On Steep Slopes.

Part 826 of this chapter, Special Permanent Program Performance Standards—Operations on Steep Slopes, shall apply to any person who conducts surface coal mining and reclamation operations on steep slopes.

§ 937.827 Special Performance Standards—Coal Processing Plants and support Facilities Not Located At Or Near The Minesite Or Not Within The Permit Area For A Mine.

Part 827 of this chapter, Special Permanent Program Performance Standards—Coal Processing Plants and Support Facilities Not Located at or Near the Minesite or Not Within the Permit Area for a Mine, shall apply to any person who conducts surface coal mining and reclamation operations which includes the operation of coal processing plants and support facilities not located at or near the minesite or not within the permit area for a mine.

§ 937.828 Special Performance Standards—In Situ Processing.

Part 828 of this chapter, Special Permanent Program Performance Standards—In Situ Processing, shall apply to any person who conducts in situ processing activities.

§ 937.842 Federal Inspections.

(a) Part 842 of this chapter, Federal Inspections, shall apply to all exploration and surface coal mining and reclamation operations.

(b) OSM will furnish a copy of each inspection report regarding inspections conducted pursuant to this subpart to the Oregon Department of Geology and Mineral Industries upon request.

§ 937.843 Federal Enforcement.

(a) Part 843 of this chapter, Federal Enforcement, shall apply when enforcement action is required for violations on surface coal mining and reclamation operations.

(b) OSM will furnish a copy of each enforcement action document and order to show cause issued pursuant to this subpart to the Oregon Department of Geology and Mineral Industries upon request.

§ 937.845 Civil Penalties.

Part 845 of this chapter, Civil Penalties, shall apply when civil penalties are assessed for violations on surface mining and reclamation operation.

[FR Doc. 82-16725 Filed 6-18-82; 8:45 am]
BILLING CODE 4310-05-M

30 CFR Part 947

Surface Mining and Reclamation Operation Under a Federal Program for Washington

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

ACTION: Proposed rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) of the Department of the Interior proposed a Federal program for regulation of coal exploration and surface coal mining and reclamation operations on non-Federal and non-Indian lands in Washington. This includes surface effects of underground coal mining. This proposed program is necessary in order to regulate surface coal mining activities in the absence of a State program.

DATES: Written comments must be received not later than 5:00 p.m. on August 2, 1982 at the address below. A public hearing will be held on July 28, 1982. Requests to testify at the hearing should be received by July 24, 1982. If commenters request a hearing date later than that set, the hearing will be rescheduled and the new date announced by a notice in the Federal Register.

ADDRESSES: Written comments must be mailed to: Administrative Record Room (R and I-21), Office of Surface Mining, Wyoming State Office, P.O. Box 1420, Mills, Wyoming 82644, or hand delivered to Office of Surface Mining, Wyoming State Office, Freden Bldg. 935 Pendell Blvd., Mills, Wyoming 82244.

The public hearing on the proposed program will be held at the State of Washington General Administration Building Conference Room, Capitol Campus, Olympia, Washington 98504, beginning at 7:00 p.m.

FOR FURTHER INFORMATION CONTACT: James M. Kress, Office of Surface Mining, Branch of Regulatory Programs, Room 222, 1951 Constitution Avenue, N.W., Washington, D.C. 20240 Phone (202) 343-5866.

SUPPLEMENTARY INFORMATION:

Availability of Copies

Copies of the proposed program are available for inspection and may be obtained at the OSM office listed above under "ADDRESSES."

Public Comment Period

The comment period on the proposed program will extend until August 2, 1982. All comments must be received at the location listed above under "ADDRESSES" by the close of business on that date.

All written comments received, a transcript of the public hearing, summaries of public meetings held at the request of any person or organization to receive advice and recommendations concerning the proposed program with representatives of OSM, and other documents comprising the administrative record on the Washington Federal program will be made available for public review during regular business hours at the location listed above under "ADDRESSES."

OSM appreciates any and all comments on the proposal, but those that would be most useful should be as specific as possible, focus on the issues of this proposed rulemaking, and provide reasons for any recommendations. OSM will not consider comments that do not pertain to the issues in this proposal. Nor can OSM ensure consideration of comments received after the comment period ends or those delivered to an address other than that specified.

Public Hearing

A public hearing on the proposed program will be held at the time and location listed above to hear all those who wish to testify. The hearing may be cancelled if, by July 24, 1982, no person has expressed interest in presenting testimony. Those interested in testifying should contact OSM at the location under "ADDRESSES" above.

Individual testimony at the hearing will be limited to 15 minutes. The hearing will be transcribed. Filing of a written statement at the time of giving oral testimony would be helpful and would facilitate the job of the court reporter. Submission of written statements in advance of the hearing would greatly assist OSM officials who will attend the hearing. Advance submissions will give these officials an opportunity to consider appropriate questions which could be asked for clarification or to request more specific information from the person testifying. The public hearing will continue until all persons scheduled to speak have been heard. Persons in the audience who have not been scheduled to speak and wish to do so will be heard following the scheduled speakers. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to speak have been heard. Persons not scheduled to testify, but wishing to do so, assume the risk of having the public hearing adjourned unless they are present in the audience at the time all scheduled speakers have been heard.

The hearing date is set for approximately 30 days after publication of the proposed program in order to give the public ample opportunity to review the hearing transcript before the close of comment period. The hearing date is being advanced from that required by 30 CFR 736.12 because, surface mining operations are currently being conducted in Washington, and the State does not have an approved permanent regulatory program to control such activities. Allowing 60 days to elapse after publication of today's notice before holding the public hearing (as specified by 30 CFR 736.12) would delay promulgation of this program. OSM will consider requests for a later hearing date which are supported by valid reasons for postponement.

Background

Under section 504(a) of the Surface Mining Control and Reclamation Act of 1977 (the Act), Pub. L. 95-87, 30 U.S.C. 1201 *et seq.*, the Secretary is required to promulgate a Federal program within 34 months after passage of the Act if a State fails either to submit a program to assume responsibility for regulating surface mining activities, fails to resubmit a program within 60 days of disapproval, or fails at any time to implement, enforce or maintain an approved State program. The time for submitting State programs was extended by seven months to March 3, 1980 as the result of the litigation noted above, *In re: Permanent Surface Mining Regulation Litigation*, 13 ERC 1447 (July 25, 1979). The date for the required implementation of a Federal program in any State which did not submit a program to obtain primary regulatory responsibility has passed.

An additional standard for the promulgation of a Federal program is

found in 30 CFR Part 736, which requires the implementation of a program if the Director of OSM (the Director) "reasonably expects coal exploration or surface coal mining and reclamation operations to exist on non-Federal and non-Indian lands * * * at any time before June 1985 * * *." 30 CFR 736.11(a)(1).

Once a decisions is made that a Federal program is necessary for a State, the Secretary must make several determinations before promulgating a program. Section 504(a) of the Act requires that in implementing a Federal program the Secretary must take into consideration the nature of the State's terrain, climate, biological, chemical, and other relevant physical conditions. This requirement is also found in the regulations, 30 CFR 736.22(a)(1). The Act (Section 505(b)) and the regulations (Section 736.23(b)) also provide that if a State has more stringent land use and environmental laws or regulations they shall not be construed to be inconsistent with the Act or the Secretary's regulations. The Secretary believes that the requirements of section 505(b) can best be met by identifying State laws and regulations which impose equivalent or more stringent environmental controls and incorporating the requirements of those laws in the Federal program. If the State's laws or regulations establish more stringent standards than those of the Act or the Secretary's regulations, or if the State regulates or protects an aspect of the environment which neither the Act nor the Secretary's regulations protect, OSM would then specifically preserve those State standards in the Federal program.

Also, in promulgating a program for a State, section 504(g) specifies that any State statutes or regulations which regulate surface mining and reclamation operations are to be identified by the Secretary and will be superseded and preempted by the Federal program to the extent that they interfere with the achievement of the purposes and requirements of the Act and Federal program. This provision is reinforced by section 505(a) of the Act which states that only inconsistent State laws shall be superseded by the Federal program. Thus, State statutes and rules regulating the same activities as those covered by the Federal law and regulations and which do not provide as much protection as the Federal law and regulations so that they interfere with achievement of the purposes of the Act must be identified and will be preempted by OSM.

OSM reviewed Washington State statutes to determine if there are provisions which might have some bearing on some aspects of surface coal mining and reclamation operations. The following parts of the Revised Code of Washington (RCW) and Washington Administrative Code (WAC) were compared with the Federal permanent program regulations in 30 CFR Subchapters A, F, G, J, K, L, and M:

RCW 15.58 Washington Pesticide Control Act
RCW 17.21 Washington Pesticide Application Act
RCW 19.02 Business Regulation and Licensing System
RCW 19.27 State Building Code
RCW 21.20 Securities Act of Washington
RCW 23 Private Business Corporations and Cooperative Associations (Profit)
RCW 23A Washington Business Corporation Act
RCW 25 Partnerships
RCW 27.44 Indian Graves and Records
RCW 27.53 Archeological Site and Resources
RCW 34.04 Administrative Procedures Act
RCW 35.88 Cities and Towns—Protection from Water Pollution
RCW 35A.63 Planning and Zoning in Code Cities
RCW 36.75 Roads and Bridges (County)—General
RCW 43 State Government—Executive
RCW 43.21B Pollution Control Hearings Board
RCW 43.21C State Environmental Policy Act
RCW 43.51A Office of Archeology and Historic Preservation
RCW 47 Public Highways (State)
RCW 48 Insurance
RCW 49.17 Washington Industrial Safety and Health Act
RCW 49.24 Underground Workers Health
RCW 49.24.220 Underground Workers Health—Explosives, Use of—Blasting
RCW 51 Industrial Insurance
RCW 58 Boundaries and Plats
RCE 62A.5 Uniform Commercial Code—Letters of Credit
RCW 65 Recording, Registration and Legal Publications
RCW 70.74 Washington State Explosives Act
RCW 70.94 Washington Clean Air Act
RCW 70.95 Solid Waste Management
RCW 70.105 Hazardous Waste Disposal
RCW 70.107 Noise Control Act
RCW 70.118 On-Site Sewage Disposal
RCW 75 Food Fish and Shellfish
RCE 75.20.100 Hydraulic Projects Approval
RCW 76 Forest and Forest Products
RCW 76.08 Forest Practices
RCW 76.12 Reforestation
RCW 76.14 Forest Rehabilitation
RCW 77 Game and Game Fish
RCW 78 Mines, Minerals and Petroleum
RCW 78.40 Coal Mining Code
RCW 78.40.470 Explosives
RCW 78.44 Surface Mining
RCW 79 Public Lands
RCW 79.01.648 *et seq.* Coal Mine Leasing—Public Lands
RCW 79.70 Natural Area Preserves
RCW 85 Diking and Drainage
RCW 85.28 Private Ditches and Drains
RCW 86 Flood Control
RCW 87 Irrigation
RCW 89 Reclamation, Soil Conservation and Land Settlement
RCW 90 Water Rights—Environment
RCVW 90.14 Water Rights
RCW 90.22 Minimum Water Flows and Levels
RCW 90.48 Water Pollution Control
RCW 90.52 Pollution Disclosure Act
RCW 90.54 Water Resources Act
RCW 90.58 Shoreline Management Act
RCW 90.62 Environmental Coordination Procedures Act

The above statutes were compared to the Act and Federal permanent program regulations. The more stringent requirements, whether State of Federal, would be adopted for this program in the following manner. Section 505(b) of the Act provides that State statutes and regulations which provide for more stringent land use and environmental controls of surface coal mining and reclamation operations than the provisions of the Act and the Secretary's regulations shall not be construed as inconsistent. The proposed rules will list Washington State statutes which set different controls and for which compliance is required in the surface coal mining and reclamation operation. Determining whether the State statutes are more stringent than the Federal regulations will require a case-by-case analysis and cannot be predetermined. Citation in the proposed Federal program of State statutes with which compliance is required is not meant as an adoption of those state statutes and regulations for purposes of enforcement by OSM. Citation of such statutes is intended as an aid to persons who must comply with both the Federal program requirements and State statutes. However, if a State law is cited below as interfering with the achievement of the purposes of the Act, it would be superseded, and compliance would not be required. State regulations would not be cited in the various parts of the Washington Federal Program; only statutes would be listed. State regulations can readily change; OSM's incorporation of these changes would necessarily lag behind them. Confusion over which State regulations must be complied with would be avoided by not including citation of the Washington Administrative Code in the Federal program. However, if an operator must comply with a State statute he or she must also comply with the State regulation which implements the statute.

In accordance with 30 CFR 736.23, OSM's has tentatively identified the following statutes and regulations as interfering with the achievement of the purposes of the Act and the Federal program and thus proposes to supersede and preempt them to the extent they relate to surface coal mining and reclamation subject to regulation under the Act: Washington Surface Mining Act, RCW 78.44, and Surface Mined Land Reclamation regulation, WASC 332–18. Permittees will be required to conduct surface coal mining activities in compliance with all other existing State statutes and regulations.

To the degree practicable, OSM would coordinate permit requirements with State agencies to avoid unnecessary duplication. The Washington Department of Natural Resources (DNR) currently issues operating permits for surface mining pursuant to the Surface Mining Act, RCW 78.44. That Department would be informed of actions taken with respect to permit applications and enforcement. The Washington Department of Natural Resources (DNR) under the State Surface Mining Act, RCW 78.44, has a statutory requirement to review mine plans and issue permits for coal mining. OSM tentatively concludes this requirement would interfere with the achievement of the Federal program. Therefore, an operator would not need to obtain a permit to mine coal from the DNR under the State Surface Mining Act.

OSM and the Washington State Department of Ecology would be required to cooperate with the "lead agency," WAC 197–10–040, identified under the State Environmental Policy Act (SEPA) and other permitting authorities, 30 CFR 947.770. The permit application and related documents would be filed at the Department of Natural Resources, the Department of Ecology and the appropriate county recorder's office. OSM solicits comments on the best place to file these documents should these locations seem insufficient.

Finally, a Federal program, according to section 504(h) of the Act, must include a process for coordinating the review and issuance of surface mining permits with other Federal or State permits applicable to the proposed operation. The Federal statutes for which compliance must be coordinated in the issuance of a surface mining permit are set out in 30 CFR 736.22(c). State statutes for which a permit is required must be identified in the process of promulgating a Federal program, and the Federal program must provide for coordination with the permit review and issuance procedures.

Federal programs are based on the Secretary's permanent program regulations. 30 CFR Subchapters A, F, G, J, K, L, and M. The permanent program regulations implement procedures and performance standards of the Act. They form the benchmark for State programs. In order for a State to have a program approved by the Secretary, section 503(a)(7) requires that the State's rules and regulations be consistent with the Secretary's regulations. The Secretary's regulations were drafted in a manner to allow all coal mining States to submit programs consistent with them so that only in cases where local environmental or agricultural conditions necessitate alternatives would an exception be granted.

Pursuant to section 504(a), the Secretary of the Interior becomes the regulatory authority when a Federal program is implemented for a State. The permanent program regulations contain references to "the regulatory authority" which means the Secretary when a Federal program is involved. Section 701(22) of the Act. The Secretary has delegated all authority for surface coal mining activities to the Director of the Office of Surface Mining. The Director will be the official responsible for implementing the Washington Federal program. The parts of the permanent program regulations that must be included in a Federal program are listed in the regulations, 30 CFR 736.22(b). They include general requirements and definitions (Parts 700 and 701), the exemption for coal extraction incident to government-financed highway or other construction (Part 707), the designation of lands unsuitable for surface mining (Parts 760, 761 and 765), permits and permit applications (Subchapter G), reclamation bonding (Subchapter J), performance standards (Subchapter K), inspection and enforcement (Parts 842, 843 and 845), and blaster training and certification (Subchapter M). In addition, the provisions in the permanent regulations on protection of employees (Subchapter P) and restrictions on financial interests (Part 706) are applicable to Federal employees who, in the instance of a Federal program, are directly enforcing the Act.

OSM published a notice of intent to promulgate a Federal program for Washington in the **Federal Register** on May 16, 1980 (45 FR 32328–32330). Only two comments were received.

One commenter stated that the regulations should be specific to the State's environmental characteristics as required by 30 CFR 736.22(a)(1). OSM has considered the environmental characteristics of Washington in developing the proposed regulations. As discussed below, public comment is requested on whether further consideration of environmental characteristics and revisions to regulations is needed.

The other commenter requested that a regulatory analysis be prepared. A regulatory analysis is no longer required. Instead, a Determination of Effects (DE) was prepared complying with the Regulatory Flexibility Act, 5 U.S.C. 607 *et seq.*

The national permanent program regulations in 30 CFR Chapter VII establish the minimum standards for the regulatory programs in each State and the procedures for developing, promulgating and implementing the programs.

The rules for the national 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 15323–15393 (March 13, 1979). Subchapter M was published on December 12, 1980 (45 FR 82098). Corrections were published at 44 FR 15485 (March 14, 1979), 44 FR 53507–53509 (September 14, 1979), 44 FR 66195 (November 19, 1979), 45 FR 26001 (April 16, 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 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), and 45 FR 76932 (November 20, 1980), 46 FR 37232 (July 17, 1981); 46 FR 41702 (August 17, 1981); 46 FR 47720 (September 29, 1981); 46 FR 53376 (October 28, 1981); 46 FR 52287 (December 7, 1981). Representatives of industry, two States and several environmental groups challenged the national 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* (Civil Action No. 79–1144). In response to the 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), January 30, 1980 (45 FR 6913) and August 4, 1980 (45 FR 51547–51550). In two opinions the court remanded certain other regulations which had been challenged in the lawsuit. These opinions were issued on February 26, 1980, and May 16, 1980. Many of the issues decided by the District Court have been appealed to the Court of Appeals for the District of Columbia Circuit. *In Re: Permament Surface Mining Regulation Litigation,* Nos. 80–1810, 80–1811, 80–1812, 80–1813 and 80–1823. The Court has granted a stay of the proceeding pending the revision of regulations as noted below. However, the stay does not apply to Federal programs such as this one.

Under sections 501–503 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. Most States in which surface coal mining is now occurring submitted programs to obtain primary regulatory authority. And most of those States have been granted primary regulatory responsibility, either fully or conditionally.

OMB Review

The recordkeeping and reporting requirements of the proposed rule are the same as those of the permanent program regulations which have been approved by the Office of Management and Budget under 44 U.S.C. Section 3507.

Although the rules would contain information and recordkeeping requirements, OSM anticipates less than ten respondents. Under the Paperwork Reduction Act, clearance of information collection forms is required only if ten or more respondents are expected. If in the future the number of respondents appears to be increasing, the proper forms, if they differ from those already apporved, will be submitted to 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.

Washington Federal Program

Section 504(a) of the Act and 30 CFR 736.22(a)(1) require that each Federal program consider the nature of the State's terrain, climate, biological, chemical, geological, hydrological, agronomic, and other relevant physical conditions. Possible special environmental conditions have been previously identified by commenters concerned with the application of the definition of "arid and semi-arid area" in Washington State (44 FR 14925–14926), and its implications in the alluvial valley floor provisions of the Federal permanent regulatory program. OSM, therefore, solicits comments concerning the following:

1. Quantitative demonstration that alluvial valley floors do or do not exist in Washington State;

2. Means by which arid and semi-arid areas may be effectively delineated from humid areas in Washington State; and,

3. Any other special environmental conditions which reviewers may consider important in promulgating this Federal regulatory program for Washington State.

Explanation of Cross-Referencing

In the general notice of intent to promulgate Federal programs of May 16, 1980 (45 FR 32228), it was stated that each Federal program would be specific to the particular State and would implement the permanent program procedures and environmental protection provisions of the Act (45 FR at 32229). However, except for changes to incorporate more stringent State environmental protection standards and to list other State laws requiring permits for which coordination is required, OSM believes that few changes are needed in the permanent program regulations for any particular State for which a Federal program must be promulgated.

In January 1981 the Secretary directed that the Department review all existing regulations with a goal of eliminating those which are burdensome, excessive, and unnecessary. Review of the permanent program regulations was initiated and may result in a large scale revision of them. See semi-annual Calendar of Federal Regulations notice of rule review and revision, 47 FR 1709 (January 13, 1982). See also, e.g., revisions of OSM's bonding regulations, 30 CFR Subchapter J, 46 FR 45082 (September 9, 1981) and of OSM's inspection and enforcement regulations, 30 CFR Parts 842, 843, and 845, 46 FR 58464 (December 1, 1981).

In order to take advantage of the results which revision of the permanent program regulations will achieve, OSM proposes to develop and promulgate this Federal program in the following manner. Rather than repeating the full text of the permanent regulations which are being revised, there would be a cross-reference to the permanent program regulations. For example, criteria for the designation of lands unsuitable for surface coal mining would be provided by the statement that "Part 762 of this chapter * * * shall apply to surface coal mine operations." (See proposed Section 947.762). One effect of the proposed cross-referencing to the permanent program regulations would be that as the permanent program regulations are revised, this Federal program would be similarly revised. Over time, all of the permanent program regulations will undergo review and many will be revised.

No separate rulemaking would be undertaken or necessary for revision of this program if cross-referencing becomes effective, unless OSM determines that special conditions were necessary for a particular State. Comments on the permanent program proposed rules are invited on necessary modifications to accommodate unique or unusual aspects of surface mining in any State so that the final rule would be tailored for each Federal program State as necessary.

The promulgation of this cross-referencing Federal program would not result in any moddification of the substance of OSM's permanent program rules. Cross-referencing to the permanent program rules is also being used in the promulgation of other Federal programs for States. Public comment on the cross-referencing method as it affects other Federal programs for States, however, should be directed to each of those rulemaking notices.

Several provisions of the permanent program regulations are already applicable to a particular State Federal program and need not be cross-referenced here because they were fully promulgated for application to all regulatory programs. Those provisions are 30 CFR Chapter VII, Subchapter P—Protection of Employees; Part 706—Restrictions on Financial Interests of Federal Employees; and Part 769—Petition Process for Designation of Federal Lands Unsuitable for Surface Coal Mining. However, 30 CFR Part 764—Designating Lands Unsuitable for Surface Coal Mining would be included in the program by a cross-reference under Section 947.764, to provide a petition process on non-Federal lands in that State.

With regard to bonding regulations (Subchapter J), only Part 800 is proposed to be cross-referenced because OSM has proposed to revise Subchapter J to include just one part, Part 800. 46 FR 45082 (September 9, 1981) (proposed).

Content and Organization of the Program

The content and organization of the proposed Federal program for the State

of Washington would generally follow the permanent program regulations. But, as discussed above, instead of the full text appearing, each section of this proposed program would only include reference to the pertinent permanent program regulation. Section 947.700 (e) and (f) set out both inconsistent and more stringent State statutes. A separate paragraph is proposed to be added under each section where there are deviations from the Federal permanent program regulation for the Washington Federal program. These paragraphs will generally be found in a subsection (b).

The content and organization of the Washington Federal program would be based on the following provisions of the Federal permanent program regulations, 30 CFR Chapter VII:

Subchapter A—General
Subchapter F—Areas Unsuitable for Mining
Subchapter G—Surface Coal Mining and Reclamation Operations Permits and Coal Exploration Systems Under Regulatory Programs
Subchapter J—Bond and Insurance Requirements for Bonding of Surface Coal Mining and Reclamation Operations
Subchapter K—Permanent Program Performance Standards
Subchapter L—Permanent Program Inspection and Enforcement Procedures
Subchapter M—Training Program for Blasters and Members of Blasting Crews, and Certification Programs for Blasters

Technical literature cited by OSM in the preamble to the permanent regulatory program (44 FR 14901–15309, March 13, 1979) was relied upon in developing the additions to the regulations for the Washington Federal program. The reader is referred to that preamble for a discussion of the basis and purposes of the permanent program rules proposed to be referenced in the Washington program without substantive change.

Discussion of substantive revisions to procedures or standards is provided below to enable the reviewer to understand the rationale behind the proposed provision. The discussions are in numerical order and under the program subheadings. Discussion is also provided of new procedures proposed by OSM to exercise discretion provided in the permanent program regulations or to make provisions of the program compatible with other Federal and State statutes.

The numbering system of the permanent program regulations has been incorporated in the numbering system for the proposed program. Program elements have been categorized under headings similar to the Subchapter titles. Subchapter T in 30 CFR Chapter VII has been established to include regulatory programs by State. Each State is assigned a part number. The proposed program for the State of Washington is assigned Part 947.

In addition to the proposed rules, the Federal regulatory program for the State of Washington will include the following provisions of 30 CFR Chapter VII:

30 CFR Chapter VII, Subchapter P—Protection of Employees
30 CFR Chapter VII, Part 706—Restriction of Financial Interests of Federal Employees

These provisions have been fully promulgated and implemented for application to all regulatory programs under 30 CFR Chapter VII. They will not be modified for application in any specific State.

Therefore, those provisions, as codified in 30 CFR Chapter VII, would be part of the Federal regulatory program for the State of Washington.

Detailed Discussion

General

Section 947.700 would contain six subsections: the first four sections, § 947.700 (a), (b), (c), and (d), would contain general statements on scope and applicability of the program. Section 947.700(e) would indicate Washington State laws which have been identified as having provisions which regulate activities involved in surface coal mining operations and which have provisions that in some instances are more stringent than the Act and the Secretary's regulations. Section 947.700(f) would identify the Washington Surface Mining Act and regulations promulgated pursuant to it as interfering with achievement of the purpose of the Act and Federal regulations. The State statute and regulations would be preempted and superseded.

Sections 947.701 through 947.707 would establish the same provisions, where applicable, as 30 CFR Chapter VII, Subchapter A, General. Section 947.701(a) would contain all applicable general requirements, including the definitions in 30 CFR 700.5 and 701.5. Additional definitions would be included in paragraph (b) of § 947.701. They are taken from the Washington Revised Code although they do have a counterpart in the WAC. The definitions are included here in order to provide consistency because the State statutes are cited in other sections of the rules. The proposed definitions include:

	Statute	Regulation
1. License Information Request.	RCW 19.02, RCW 43.31.	WAC 308-300-020.
2. Master Application	RCW 80.62-040.	

License Information Request would be used in § 947.770(b) in reference to Washington's procedure for coordinating the issuance of business licenses. Therefore, the definition is proposed to be added in the definitions.

Master Application would also be used in § 947.770(b) in reference to Washington's procedure for coordinating the issuance of environmental permits. The term is, therefore, proposed to be added in the definitions.

1. Forestry (Forest land)	RCW 76.09.020(6).	WAC 222-16-010(17).
2. Noxious Plants	RCW 17.10.080	WAC 16-750-010.

These modified definitions would appear in proposed § 947.701(c). The Washington Forest Practices rules and regulations WAC 222–16–010 contain a definition of the term "forest land," as including "* * * all land which is capable of supporting a merchantable stand of timber and is not being actively used in a manner (for a use) which is incompatible with timber growing." Such lands are included in OSM's proposed definition of "forest land" in this Federal program. The term "forest land" would appear in parentheses next to the present term "foresting" for increased clarity and consistency. This is considered more stringent because foresting is not more extensive in scope.

Section 947.701(d) would require that OSM make records available locally to the public at the county courthouse. This requirement is contingent on whether the county will agree to file the records. OSM requests suggestions in the case that an agreement cannot be reached. This requirement would also apply to §§ 947.776(b) and 947.782(b).

Areas Unsuitable for Mining

Sections 947.761 through 947.764 would establish the same provisions, where applicable, as 30 CFR Chapter VII Subchapter F, Areas Unsuitable for Mining. No separate section for Federal lands is included because 30 CFR Part 769 is directly applicable and need not be made a part of a Federal program. The following changes would be made:

Sections 947.762 and 947.764 would implement the petition process for designating lands unsuitable for surface coal mining or terminating designations.

The effective date for the petition process is one year after Part 947 is effective in accordance with the requirements of section 504(a) of the Act and 30 CFR 765.13.

A paragraph would be added in § 947.764 to assure that the Washington Department of Natural Resources and the Department of Ecology are notified of areas designated unsuitable or for which designations have been termianted. This notification will be provided as a courtesy since those agencies regulate aspects of surface coal mining operations pursuant to their responsibilities under the Washington statutes listed in § 947.770 of the proposed rules.

Permits and Coal Exploration Approvals, §§ 947.770 through 947.795 would establish the same provisions, where applicable, as 30 CFR Chapter VII, Subchapter G, Surface Coal Mining and Reclamation Operations Permits and Coal Exploration Procedures System. The following changes would be made:

In § 947.770 the Washington State statutes which could affect permit issuance would be listed. The procedures for coordinating Federal, State and local permit applications to avoid unnecessary duplication would be provided for in this section.

The State of Washington provides optional procedures (RCW 43.31 and RCW 90.62) to assist those who must obtain a number of permits by establishing a mechanism in State government which coordinates administrative decision-making procedures. The optional procedures would be included pursuant to section 504(h) of the act to facilitate initial permit application.

The proposed procedure under § 947.700(b) would require an applicant to consult with the two State agencies invovled in coordinating and issuing permits to mine coal. While consultation with the State agencies concerning their coordination procedures is required, applicants would not be required to use these procedures in obtaining permits. An applicant may make separate application to each permitting agency if he or she wishes. This option is consistent with RCW 90.62.040. The Office, however, recommends the use of the master application procedure to coordinate the issuance of State required permits. Section 947.770(b) would list Federal and State laws to be coordinated.

Section 947.770(d) would list State permits that need to be coordinated with OSM.

Section 947.780 for the surface mining reclamation and operations plan and § 947.784 for the underground reclamation and operations plan and § 947.784 for the underground reclamation and operations plan would require an applicant to demonstrate compliance with the Washington Clean Air Act and the Washington Water Pollution Control Act. In addition an applicant would also have to obtain approval from a local Air Pollution Control Authority if production will exceed 1 million ton per year.

Bonding

Section 947.800 would establish the same provisions, where applicable, as 30 CFR Chapter VII, Subchapter J, Bond and Insurance Requirements for Surface Coal Mining and Reclamation Operations.

Only Part 800 is proposed to be cross-referenced because OSM has proposed to revise Subchapter J to include just one part, Part 800. 46 FR 45082 (September 9, 1981) (proposed).

Performance Standards

Sections 947.815 through 947.828 would establish the same provisions, where applicable, as 30 CFR Chapter VII, Subchapter K, Permanent Program Performance Standards. The following changes would be made:

Section 947.815(b) would require compliance, when applicable, with road building standards in the Forest Practices Act, RCW 76.09, on forest lands.

Section 947.816(b). Pursuant to the Washington State Surface Mining Act, RCW 78.44.090(10), all surface mining that will disturb streams must comply with the requirements of the State fisheries law (Title 75 RCW), and every application for an operating permit for surface mining operations must have a reclamation plan that is approved by the Department of Fisheries with regard to operations in streams. The Hydraulic Project Approval Law, RCW 75.20.100, requires that any person desiring to divert, obstruct, or change the natural flow or bed of any river or stream must submit full plans and specifications of the proposed construction or work to the Department of Fisheries and Department of Game and obtain approval from the Directors of the Departments before commencing work. The Shoreline Management Act, RCW 90.58, concerns development of shorelines of the State. Compliance with these laws would be required under this section, notwithstanding the preemption of the State's Surface Mining Act.

The section would also list other State statutes with which compliance would be necessary: The Forest Practices Act, the Water Pollution Control Act, the Minimum Water Flows and Levels Act, and the Pesticide Control Act. Under some conditions, the requirements of the these State laws are more stringent than those of OSM so that the operator would comply with the more stringent law. Determinations will be made on a case-by-case basis.

Section 947.817(b). This section would list for underground mining the same State laws with which compliance is required under § 947.816(b) for surface mining. One additional statute would be listed, the Washington Water Code, RCW 90.03. In some instances, these statutes and their implementing regulations establish more stringent standards than found in Part 817 of the permanent program regulations. Determination of stringency will be made on a case-by-case basis. No additions would be made to the permanent program regulations on special performance standards, 30 CFR Parts 818 through 829.

Inspection and Enforcement Procedures

Sections 947.842, 947.843 and 947.845 would establish the same provisions as 30 CFR Chapter VII, Subchapter L, Permanent Program Inspection and Enforcement Procedures. No changes to the provisions of the inspection and enforcement provisions in Parts 842, 843, and 845 of the permanent program regulation are proposed. Two separate paragraphs are proposed to be added to §§ 947.842 and 947.843 to authorize the Secretary to furnish copies of enforcement actions taken upon request to the Washington Department of Natural Resources and to the Department of Ecology.

Other Information

OSM has examined these proposed rules according to the criteria of Executive Order 12291 (46 FR 13193, February 19, 1981) and determined that they do not constitute a major rule. There would be no major economic impact through adoption of this rule because it would affect only a small number of mining operations.

OSM has examined these proposed rules pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, and determined that they will not have a significant impact on a substantial number of small entities. Separate determinations of effect will be prepared for all revisions of the permanent program rules and would consider the effects on small entities in the State of Washington.

Section 702(d) of the Act provides that promulgation of a Federal program shall not constitute a major Federal action

under the National Environmental Policy Act, 42 U.S.C. 4332. Thus, no Environmental Assessment is required for this rulemaking.

List of Subjects in 30 CFR Part 947

Coal mining, Intergovernmental relations, Surface mining, Underground mining, Reporting requirements.

Drafting Information

These regulations were drafted by David Jones, Office of the Solicitor and James M. Kress, Branch of Regulatory Programs, Office of Surface Mining.

William P. Pendley,

Acting Assistant Secretary, Energy and Minerals.

May 21, 1982.

OSM proposes to revise 30 CFR Chapter VII by adding Part 947 to read as follows:

PART 947—WASHINGTON

Sec.

947.700 General.
947.701 General.
947.707 Exemption for coal extraction incident to government-financed highway or other construction.
947.761 Areas designated unsuitable for surface coal mining by Act of Congress.
947.762 Criteria for designating areas as unsuitable for surface coal mining operations.
947.764 Process for designating areas unsuitable for surface coal mining operations.
947.770 General requirements for permit and exploration procedures.
947.771 General requirements for permits and permit applications.
947.776 General requirements for coal exploration.
947.778 Surface mining permit applications—minimum requirements for legal, financial, compliance, and related information.
947.779 Surface mining permit applications—minimum requirements for information on environmental resources.
947.780 Surface mining permit applications—minimum requirements for reclamation and operations plan.
947.782 Underground mining permit applications—minimum requirements for legal, financial, compliance, and related information.
947.783 Underground mining permit applications—minimum requirements for information on environmental resources.
947.784 Underground mining permit applications—minimum requirements for reclamation and operation plan.
947.785 Requirements for permits for special categories of mining.
947.786 Reviews, public participation, and approval or disapproval of permit applications and permit terms and conditions.
947.787 Administrative and judicial review of decisions on permit applications.
947.788 Permit review, revisions, and renewals, and transfer, sale, and assignment of rights granted under permits.
947.795 Small operator assistance.
947.800 General requirements for bonding of surface coal mining and reclamation operations.
947.815 Performance standards—coal exploration.
947.816 Performance standards—surface mining activities.
947.817 Performance standards—underground mining activities.
947.818 Special performance standards—concurrent surface and underground mining.
947.819 Special performance standards—auger mining.
947.823 Special performance standards—operations on prime farmland.
947.824 Special performance standards—mountaintop removal.
947.826 Special performance standards—operations on steep slopes.
947.827 Special performance standards—coal processing plants and support facilities not located at or near the minesite or not within the permit area for a mine.
947.828 Special performance standards—in situ processing.
947.842 Federal inspections.
947.843 Federal enforcement.
947.845 Civil penalties.

Authority: Pub. L. 95–87, The Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 *et seq.*

§ 947.700 General.

(a) This part contains all rules that are applicable to surface coal mining operations in Washington which have been adopted under the Surface Mining Control and Reclamation Act of 1977.

(b) The rules in this part cross-reference pertinent parts of the permanent program regulations in this chapter. The full text of a rule is in the permanent program rule cited under the relevant section of the Washington Federal program.

(c) The rules in this part apply to all surface coal mining operations in Washington conducted on non-Federal and non-Indian lands. The rules in Subchapter D of this chapter apply to operations on Federal lands in Washington.

(d) The information collection requirements contained in this part do not require approval by the Office of Management and Budget under 44 U.S.C. 3507 because there are fewer than ten respondents annually.

(e) The following provisions of Washington laws provide for more stringent environmental control and regulation of some aspects of surface coal mining operations than do the provisions of the Surface Mining Control and Reclamation Act and the regulations in this chapter. Therefore, pursuant to section 505(b) of the Act, they shall not be construed to be inconsistent with the Act:

(1) Washington Clean Air Act, RCW 70.94.

(2) Washington Food Fish and Shell Fish Laws pertaining to the Department of Fisheries on operations in streams, RCW 75.

(3) Washington Hydraulic Projects Approval Law, RCW 75.20.100.

(4) Washington Forest Practices Act, RCW 76.09.

(5) Washington Water Code, RCW 90.03.

(6) Washington Water Pollution Control Act, RCW 90.48.

(7) Washington Minimum Water Flows and Levels Act, RCW 90.22.

(8) Washington Shoreline Management Act, RCW 90.58.

(9) Washington Pesticide Control Act, RCW 15.58.

(f) The following are Washington laws that interfere with the achievement of the purposes and requirements of the Act and are, in accordance with section 504(g) of the Act, preempted and superseded:

(1) The Washington Surface Mining Act of 1971, Revised Code of Washington (RCW) 78.44, as related to surface coal mining, except to the extent that it regulates surface coal mining operations which affect two acres or less or which otherwise are not regulated by the Surface Mining Control and Reclamation Act.

(2) Surface Mined Reclamation regulations, Washington Administrative Code (WAC) 332–18, except to the extent that such regulations apply to surface coal mining operations which affect two acres or less or which otherwise are not regulated by the Surface Mining Control and Reclamation Act.

§ 947.701 General.

(a) Sections 700.5, 700.11, 700.12, 700.13, 700.14, 700.15 and Part 701 of this chapter shall apply to surface coal mining operations in Washington.

(b) The following definitions shall apply to the Washington Federal program under § 701.5 of this chapter:

License Information Request means the application used to obtain a Licensing Guide Sheet prepared by the License Information Service of the Business License Center as authorized in RCW 19.02 and the Business Coordination Act, RCW 43.31, and defined in WAC 308–300–200. This consolidated license system allows a business to obtain a guide sheet which directs the business to all required business licenses in the State of Washington.

Master Application means the application which may be submitted to the Washington Department of Ecology pursuant to RCW 90.62 and the Environmental Coordination Procedures Act, RCW 90.62.040.

(c) The following modified definitions shall be applicable under § 701.5 of this chapter:

Forestry (Forest Land). Includes land used or managed for the long-term production of wood, wood fiber, or wood derived products. All land which is capable of supporting a merchantable stand of timber and is not being actively used in a manner (for a use) which is incompatible with timber growing is also included. 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.

Noxious plants means species that have been included on official State of Washington lists of noxious plants in accordance with RCW 17.10.080.

(d) Records required by § 701.14 of this chapter to be made available locally to the public shall be retained at the county recorder's office, at the Information Center of the Department of Ecology under RCW 90.62.120, and at the nearest OSM State Office.

§ 947.707 Exemption for coal extraction incidental to government-financed highway or other construction.

Part 707 of this chapter, Exemption for Coal Extraction Incident to Government-Financed Highway or Other Construction, shall apply to surface coal mining and reclamation operations.

§ 947.761 Areas designated unsuitable for surface coal mining by act of Congress.

Part 761 of this chapter, Areas Designated by Act of Congress, shall apply to surface coal mining and reclamation operations.

§ 947.762 Criteria for designating areas as unsuitable for surface coal mining operations.

Part 762 of this chapter, Criteria for Designating Areas Unsuitable for Surface Coal Mining Operations, shall apply to surface coal mine operations.

§ 947.764 Process for designating areas unsuitable for surface coal mining operations.

Part 764 of this chapter, State Processes for Designating Areas Unsuitable for Surface Coal Mining Operations, pertaining to petitioning, initial processing, hearing requirements, decisions, data base and inventory systems, public information, and regulatory responsibilities shall apply to surface coal mine operations.

§ 947.770 General requirements for permits and exploration procedures.

(a) Part 770 of this chapter, General Requirements for Permit Systems Under State Programs, shall apply to surface coal mining and exploration operations.

(b) To avoid duplication and to provide for the coordination of review and issuance of permits for surface coal mining and reclamation operations, the applicant shall consult with the State of Washington pursuant to: (1) The Business License Center concerning a License Information Request under the Business Coordination Act, RCW 43.31 and RCW 19.02; and (2) The Department of Ecology concerning a Master Application pursuant to the Environmental Coordination Procedures Act, RCW 90.62, and the State Environmental Policy Act, RCW 43.21C.

(c) The Secretary shall coordinate, to the extent practicable, issuance of permits under the following Federal and Washington State laws to avoid duplication:

Federal law	Washington law
(1) Clean Water Act, as amended, 33 U.S.C. 1251 *et seq.*	Water Pollution Control Act, Chapter 90.48 RCW; Washington Forest Practices Act, Chapter 76.09 RCW.
(2) Clean Air Act, as amended, 52 U.S.C. 7401 *et seq.*	Washington Clean Air Act, Chapter 70.94 RCW.
(3) Resource Conservation and Recovery Act, 42 U.S.C. Section 3251 *et seq.*	Solid Waste Management Act, Chapter 70.95 RCW; Hazardous Waste Disposal Act, Chapter 70.105 RCW.
(4) National Historic Preservation Act, 16 U.S.C. 470 *et seq.*	Indian Graves & Records, Chapter 27.44 RCW.
(5) Archeological & Historic Preservation Act, 16 U.S.C. 469a *et seq.*	Archeological Sites & Resources, Chapter 27.53 RCW; Department of Ecology, Chapter 43.21A RCW.
(6) National Environmental Policy Act, 42 U.S.C. 4321 *et seq.*	State Environmental Policy Act, Chapter 43.21C RCW.
(7) Coastal-Zone Management Act, 16 U.S.C. Sections 1451, 1453–1464.	Shoreline Management Act, Chapter 90.58 RCW.
(8) Endangered Species Act, 16 U.S.C. Section 1531 *et seq.*	Natural Area Preserves Act (Plants), Chapter 79.70 RCW; Department of Game, Chapter 43.17 RCW; Game Commission, Chapter 77.08 RCW.
(9) Fish and Wildlife Coordination Act, 16 U.S.C. Section 661–667.	Water Resources Act of 1971, Chapter 90.54 RCW; Minimum Water Flows and Levels, Chapter 90.22 RCW.
(10) Noise Control Act, 42 U.S.C. Section 4903.	Noise Control Act of 1974, Chapter 70.107 RCW.
(11) Overall Coordination. See NEPA, No. 6 above.	Environmental Coordination Procedures Act, Chapter 90.62 RCW.
(12) Bald Eagle Protection Act, 16 U.S.C. 668–668(d).	

(d) The following State permits shall be coordinated by the Secretary to avoid duplication to the extent possible:

(1) Department of Ecology:	
Surface Water Rights Permit	RCW 90.03.250.
Dam Safety Approval	RCW 90.03.350.
Reservoir Permit	RCW 90.03.370.
Approval of Change of Place or Purpose of Use (water).	RCW 90.03.380.
Ground Water Permit	RCW 90.44.050.
New Source Construction Approval	RCW 70.94.152.
Burning Permit	RCW 70.94.650.
Flood Control Zone Permit	RCW 86.16.080.
Waste Discharge Permit	RCW 90.48.180.
National Pollution Discharge Elimination System (NPDES) Permit.	RCW 90.48.
Approval of Change of Point of Diversion.	RCW 90.03.380.
Sewage Facilities Approval	RCW 90.48.110.
Water Quality Certification	RCW 90.48.160.
(2) Department of Natural Resources:	
Burning Permit	RCW 76.04.150 and 170.
Dumping Permit	RCW 76.04.242.
Operating Permit for Machinery	RCW 76.04.275.
Cutting Permit	RCW 76.08.030.
Forest Practices	RCW 76.09.060.
Right of Way Clearing	RCW 76.04.310.
Drilling Permit	RCW 78.52.120.
(3) Regional Air Pollution Control Agencies:	
New Source Construction Approval	RCW 70.94.152.
Burning Permit	RCW 70.94.650.
(4) Department of Fisheries:	
Hydraulic Permit	RCW 75.20.
(5) Department of Game:	
Hydraulic Permit	RCW 75.20.100.
(6) Department of Social Health Services:	
Public Sewage	WAC 248.92.
Public Water Supply	WAC 248.54.
(7) Department of Labor & Industries:	
Explosives license	RCW 70.74.135.
Blaster's license	WAC 296.52.040.
Purchaser's license	WAC 296.52.220.
Storage Magazine license	WAC 296.52.170.
(8) Cities and Counties:	
New Source Construction Approval	RCW 70.94.152.
Burning Permit	RCW 70.94.650.
Shoreline Substantial Development Permit.	RCW 90.58.140.
Zoning and Building Permits	Local Ordinances.

§ 947.771 General requirements for permits and permit applications.

(a) Part 771 of this chapter, General Requirements for Permits and Permit Applications, shall apply to any person who makes application for a permit to conduct suface coal mine operations.

(b) Any person who wishes to conduct new surface coal mining and reclamation operations shall file a complete application at least 12 months prior to the date upon which permit issuance is desired, and shall pay to the Secretary a permit fee in accordance with 30 CFR 736.25.

(c) Any person who wishes to revise a permit shall submit a complete application at least 6 months prior to the date upon which permit issuance is desired and shall pay to the Secretary a fee in accordance with 30 CFR 736.25.

§ 947.776 General Requirements for Coal Exploration.

(a) Part 776 of this chapter, General requirements for Coal Exploration, shall apply to any person who conducts or seeks to conduct coal exploration operations.

(b) The Office shall make every effort to act on an exploration application within 60 days of receipt or such longer time as may be reasonable under the circumstances. If additional time is

needed, OSM shall notify the applicant that the application is being reviewed, but more time is necessary to complete such review, setting forth the reasons and the additional time that is needed.

§ 947.778 Surface Mining Permit Application—Minimum Requirements for Legal, Financial, Compliance and Related Information.

Part 778 of this chapter, Surface Mining Permits Applications—Minimum Requirements for Legal, Financial, Compliance, and Related Information, shall apply to any person who makes application for a permit to conduct surface mining and reclamation operations.

§ 947.779 Surface Mining Permit Applications—Minimum Requirements for Information on Environmental Resources.

Part 779 of this chapter, Surface Mining Permit Applications—Minimum Requirements for Information on Environmental Resources, shall apply to any person who makes application to conduct surface mining and reclamation operations.

§ 947.780 Surface Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plan.

(a) Part 780 of this chapter, Surface Mining Permit Applications—Minimum Requirement for Reclamation and Operation Plan, shall apply to any person who makes application to conduct surface coal mining and reclamation operations.

(b) Any applicant for a surface coal mining permit which is to produce more than 1,000,000 tons per year shall demonstrate compliance with local Air Pollution Control Authorities and the Washington Clean Air Act, RCW 70.94.

(c) Any applicant for a surface mining permit shall describe the steps taken to comply with the Washington Clear Air Act, RCW 70.94, and the Washington Water Pollution Control Act, RCW 90.48.

§ 947.782 Underground Mining Permit Applications—Minimum Requirements for Legal, Financial, Compliance, and Related Information.

Part 782 of this chapter, Underground Mining Permit Applications—Minimum Requirements for Legal, Financial, Compliance, and Related Information, shall apply to any person who makes application for a permit to conduct underground mining operations.

§ 947.783 Underground Mining Permit Applications—Minimum Requirements for Information on Environmental Resources.

Part 783 of this chapter, Underground Mining Permit Applications—Minimum Requirements for Information on Environmental Resources, shall apply to any person who submits an application to conduct underground mining operations.

§ 947.784 Underground Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plan.

(a) Part 784 of this chapter, Underground Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plan, shall apply to any person who makes application to conduct underground mining.

(b) Any application for underground mining permits which will produce more than 1,000,000 tons per year shall demonstrate specific compliance with local Air Pollution Control Authorities and the Washington Clear Air Act, RCW 70.94.

(c) Any applicant for an underground mining permit shall also indicate how compliance will be achieved with the Washington Clean Air Act, RCW 70.94, and the Washington Water Pollution Control Act, RCW 90.48.

§ 947.785 Requirements for Permits for Special Categories of Mining.

(a) Part 785 of this chapter, Requirements for Permits for Special Categories of Mining, shall apply to each person who makes application for a permit to conduct certain categories of surface coal mining and reclamation operations.

(b) In order for a variance to be granted from the approximate original contour requirement in areas of steep slope mining, an applicant shall obtain the approval of the Washington Department of Natural Resources and the Department of Ecology in order to meet watershed improvement requirements.

§ 947.786 Review, Public Participation, and Approval or Disapproval of Permit Applications and Permit Terms and Conditions.

(a) Part 786 of this chapter, Review, Public Participation, and Approval or Disapproval of Permit Applications and Permit Terms and Conditions, shall apply to the review of applications made by any person for surface coal mining and reclamation operations.

(b) The Secretary shall provide a copy of the decision to grant or deny a permit application to the Department of Natural Resource and the Department of Ecology.

§ 947.787 Administrative and Judicial Review of Decisions on Permit Applications.

Part 787 of this chapter, Administrative and Judicial Review of Decisions by Regulatory Authority on Permit Applications, shall apply to the review of decisions on permit applications for surface coal mining and reclamation operations.

§ 947.788 Permit Reviews, Revisions, and Renewals, and Transfer, Sale, and Assignment of Rights Granted Under Permits.

Part 788 of this chapter, Permit Reviews, Revisions, and Renewals, and Transfer, Sale, and Assignment of Rights Granted Under Permits, shall apply to review, revision, and renewal of permits for surface coal mine operations, and to transfer, sale, and assignment of rights granted under permits.

§ 947.795 Small Operator Assistance.

Part 795 of this chapter, Small Operator Assistance, shall apply to any person making application for assistance under the small operator assistance program.

§ 947.800 General Requirements For Bonding of Surface Coal Mining and Reclamation Operations.

Part 800 of this chapter, General Requirements for Bonding of Surface Coal Mining and Reclamation Operations Under Regulatory Programs, shall apply to all surface coal mining and reclamation operations.

§ 947.815 Performance Standards—Coal Exploration.

(a) Part 815 of this chapter, Permanent Program Performance Standards—Coal Exploration, shall apply to any person conducting coal exploration operations.

(b) Any person who conducts exploration shall comply with the Washington Forest Practices Act, RCW 76.09, and regulations promulgated pursuant to it.

§ 947.816 Performance Standards—Surface Mining Activities.

(a) Part 816 of this chapter, Permanent Program Performance Standards—Surface Mining Activities, shall apply to any person who conducts surface coal mining and reclamation operations.

(b) All operators shall have a plan of reclamation approved by the Washington Department of Fisheries for operation in affected streams, RCW 75, and shall comply with the Hydraulic Project Approval Law, RCW 75.20.100, the Shoreline Management Act, RCW 90.58, the Forest Practices Act, RCW 76.09, the Water Pollution Control Act, RCW 90.48, the Minimum Water Flows and Levels Act, RCW 90.22, and the Pesticide Control Act, RCW and regulations promulgated pursuant to these laws.

§947.817 Performance Standards—Underground Mining Activities.

(a) Part 817 of this chapter, Permanent Program Performance Standards—Underground Mining Activities, shall apply to any person who conducts underground mining operations.

(b) All operators shall have a plan of reclamation approved by the Washington Department of Fisheries for operation in affected streams. RCW 75, and shall comply with the Hydraulic Project Approval Law, RCW 75.20.100, the Shoreline Management Act, RCW 90.58, the Forest Practices Act, RCW, 76.09, the Water Pollution Control Act, RCW 90.48, the Minimum Water Flows and Levels Act, RCW 90.22, the Pesticide Control Act, RCW, and the Washington Water Code, RCW 90.03, and regulations promulgated pursuant to these laws.

§947.818 Special Performance Standards—Concurrent Surface and Underground Mining.

Part 818 of this chapter, Special Permanent Program Performance Standards—Concurrent Surface and Underground Mining, shall apply to any person who conducts combined surface and underground mining operations.

§947.819 Special Performance Standards—Auger Mining.

Part 819 of this chapter, Special Permanent Program Performance Standards—Auger Mining, shall apply to any person who conducts surface coal mining operations which include auger mining.

§947.823 Special Performance Standards—Operations on prime Farmland.

Part 823 of this chapter, Special Permanent Program Performance Standards—Operations on Prime Farmland, shall apply to any person who conducts surface coal mining and reclamation operations on prime farmlands.

§947.824 Special Performance Standards—Mountaintop Removal.

Part 824 of this chapter, Special Permanent Program Performance Standards—Mountaintop Removal, shall apply to any person who conducts surface coal mining operations constituting mountaintop removal mining.

§947.826 Special Performance Standards—Operations on Steep Slopes.

Part 826 of this chapter, Special Permanent Program Performance Standards—Operations on Steep Slopes, shall apply to any person who conducts surface coal mining and reclamation operations on steep slopes.

§947.827 Special Performance Standards—Coal Processing Plants and Support Facilities not Located at or Near the Minesite and not Within the Permit Area for a Mine.

Part 827 of this chapter, Special Permanent Program Performance Standards—Coal Processing plants and Support Facilities Not Located at or Near the Minesite or Not Within the Permit Area for a Mine, shall apply to any person who conducts surface coal mining and reclamation operations which include the operation of coal processing plants and support facilities not located at or near the minesite and not within the permit area for a mine.

§947.828 Special Performance Standards—In Situ Processing.

Part 828 of this chapter, Special Permanent Program Performance Standards—In Situ Processing, shall apply to any person who conducts in situ processing activities.

§947.842 Federal Inspections.

(a) Part 842 of this chapter, Federal Inspections, shall apply to all exploration and surface coal mining and reclamation operations.

(b) Upon request OSM shall furnish a copy of an inspection report to the Washington Department of Natural Resources and the Department of Ecology.

§947.843 Federal Enforcement

(a) Part 843 of this chapter, Federal Enforcement, shall apply when enforcement action is required for violations on surface coal mining and reclamation operations.

(b) Upon request OSM shall furnish a copy of each enforcement action document and order to show cause issued pursuant to this section to the Washington Department of Natural Resources and the Department of Ecology.

§947.845 Civil Penalties.

Part 845 of this chapter, Civil Penalties, shall apply when civil penalties are assessed for violations on surface coal mining and reclamation operations.

[FR Doc. 82-16726 Filed 6-18-82; 8:45 am]
BILLING CODE 4310-05-M

Reader Aids

Federal Register

Vol. 47, No. 119

Monday, June 21, 1982

INFORMATION AND ASSISTANCE

PUBLICATIONS

Code of Federal Regulations

CFR Unit	202-523-3419 523-3517
General information, index, and finding aids	523-5227
Incorporation by reference	523-4534
Printing schedules and pricing information	523-3419

Federal Register

Corrections	523-5237
Daily Issue Unit	523-5237
General information, index, and finding aids	523-5227
Privacy Act	523-5237
Public Inspection Desk	523-5215
Scheduling of documents	523-3187

Laws

Indexes	523-5282
Law numbers and dates	523-5282 523-5266
Slip law orders (GPO)	275-3030

Presidential Documents

Executive orders and proclamations	523-5233
Public Papers of the President	523-5235
Weekly Compilation of Presidential Documents	523-5235

United States Government Manual 523-5230

SERVICES

Agency services	523-4534
Automation	523-3408
Library	523-4986
Magnetic tapes of FR issues and CFR volumes (GPO)	275-2867
Public Inspection Desk	523-5215
Special Projects	523-4534
Subscription orders (GPO)	783-3238
Subscription problems (GPO)	275-3054
TTY for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, JUNE

23681-23912.....1
23913-24096.....2
24097-24250.....3
24251-24538.....4
24539-24688.....7
24689-25000.....8
25001-25112.....9
25113-25318.....10
25319-25502.....11
25503-25728.....14
25729-25932.....15
25933-26116.....16
26117-26368.....17
26369-26610.....18
26611-26804.....21

CFR PARTS AFFECTED DURING JUNE

At the end of each month, the Office of the Federal Register publishes separately a list of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Executive Orders:
January 29, 1859
(Revoked by PLO 6260).....26131
May 8, 1889
(Revoked by PLO 6257).....26130
May 28, 1889
(Revoked in part by PLO 6255).....26129
April 1, 1895
(See PLO 6260).....26131
April 30, 1896
(See PLO 6260).....26131
November 10, 1917
(Revoked in part by PLO 6259).....26130
November 21, 1923
(Revoked in part by PLO 6266).....26133
June 8, 1926
(Revoked in part by PLO 6252).....26133
December 22, 1927
(Revoked by PLO 6263).....26132
April 23, 1929
(Revoked by PLO 6263).....26132
12367.....26119

Proclamations:
1245 (Revoked by PLO 6266).....26133
4944.....24097
4945.....24099
4946.....25503
4947.....26117

5 CFR

1260.....26369
1261.....26369

Proposed Rules:
340.....24726
720.....24336

7 CFR

1.....26611
2.....23681, 24101
15.....25458
15b.....25458
29.....25933
102.....23910
277.....25496
301.....23682, 23683, 26121
371.....25001
760.....24689
905.....25935
908.....24137, 25113, 26122
910.....24251, 25319, 26370
916.....23913
917.....23913
923.....23684
979.....24109
981.....25001
1032.....25113
1040.....26370
1106.....25505
1701.....24251
1900.....24539
2900.....25319

Proposed Rules:
28.....26637
52.....25366
54.....23725
235.....25368
272.....24968, 26639
273.....24968, 26639
276.....26639
932.....26394
1011.....26656
1046.....26656
1071.....26665
1073.....26665
1098.....26656
1104.....26665
1106.....26665
1126.....26665
1132.....26665
1200.....23733, 24338
1701.....25371

8 CFR

100.....25002

Proposed Rules:
214.....24596
248.....24596

9 CFR

92.....24540
317.....26371
318.....26371
319.....26371

Proposed Rules:
318.....23941
381.....23941

10 CFR

508.....25729, 26615

Proposed Rules:
430.....26143
456.....26148
485.....25535
501.....25153

12 CFR

217.....24252
303.....25733
563b.....24252
701.....23685

Proposed Rules:
Ch. VII.....23747
29.....23944, 26157
202.....23738, 23741, 25019

350 23743
614 25535
701 23750
721 23751

13 CFR

122 24110

14 CFR

39 ..... 25114, 25115
71 ..... 25506, 25507, 26615
73 26123
75 26615
91 ..... 25116, 25508
97 25510
298 25935
382 25936

Proposed Rules:

21 24596
39 ..... 23691–23698, 24138, 24541
71 ..... 23699–23702, 23752, 24112, 24139–24141, 25155, 25156, 25539, 26157, 26665
75 24597
91 ..... 26112, 26158
97 23703
202 25019
203 25019
204 25019
208 25019
211 25019
212 25019
213 25019
215 25019
231 23949
250 24689
294 25019
298 ..... 23949, 25019
399 24598

15 CFR

376 25118
806 23705
970 24948

16 CFR

13 ..... 24113, 25118

Proposed Rules:

Ch. II 24034
13 25157
436 25372
455 24542
1025 25512
1632 25159

17 CFR

140 24113
210 25120
211 ..... 23915, 23916
229 25126
231 25120
239 25126
240 ..... 23919, 26161
249 25120

Proposed Rules:

21 23951
201 25372
230 25372
240 ..... 24338, 25372, 26161
250 25372
260 25372
270 25372
275 25372

18 CFR

1 24691
3 24691
157 24254
271 ..... 25132, 25133
282 24117
284 24254
375 ..... 24524, 24691

Proposed Rules:

1 24691
271 ..... 23752, 24141, 24342, 25374, 25540, 26163
274 24726
284 24726
375 24726
381 24726

19 CFR

148 24117
177 25975
210 25134

Proposed Rules:

134 24344

20 CFR

416 24274

Proposed Rules:

404 ..... 23954, 25376
651 23754
654 23754

21 CFR

5 ..... 23705, 25733
12 ..... 25733, 26375
13 26375
14 26375
15 26375
16 26375
20 24277
74 24278
80 24691
81 ..... 24278, 24285
82 24278
137 24692
146 24286
177 24288
193 ..... 25950, 25951
436 23707
440 23711
442 23707
444 ..... 23707, 25320
448 23707
449 23707
450 23707
510 ..... 26375, 26376
520 ..... 25320, 25734, 26376, 26377
524 26377
544 24290
548 24693
556 25320
558 ..... 23712, 24694, 24695, 26378, 26379
561 25952–25954
573 24292
610 24696
630 24696
1308 26616

Proposed Rules:

101 ..... 25379, 26580
105 26580
201 24735

22 CFR

41 24293
514 24119

23 CFR

625 25268

Proposed Rules:

655 25541

24 CFR

203 26124
207 26124
220 26124
868 24293
886 24700
888 25735
891 24120

25 CFR

Proposed Rules:

250 23755

26 CFR

1 25139
6a 24701
26a 24127

Proposed Rules:

1 ..... 24112, 24737, 25026, 26666

27 CFR

9 ..... 24293, 24295, 25517
18 ..... 23920, 25003
240 ..... 23920, 25003

Proposed Rules:

9 24344
240 26399

28 CFR

2 ..... 25735, 25736

29 CFR

5 ..... 24296, 24297
6 24702
40 24702
580 24702
1601 ..... 24542, 24703
1910 ..... 25323, 26557
1952 ..... 25323, 25327

Proposed Rules:

1904 24346
1910 ..... 24751, 26560

30 CFR

250 ..... 24751, 25330
251 25330
730 26356
731 26356
732 26356
733 26356
736 26356
906 25332
913 ..... 23858, 23886
920 25955
943 24130

Proposed Rules:

Ch. VII 26405
226 25252
231 24128
270 24129
700 25092
701 ..... 24954, 25092, 25486, 26592, 26754
736 25278
740 25092
741 25092
742 25092
743 25092
744 25092
745 25092
746 25092
760 25278
761 25278
762 25278
764 25278
765 25278
769 25278
785 25486
816 ..... 24954, 26592, 26754, 26760
817 ..... 24954, 26592, 26754, 26760
822 25486
826 26760
906 25979
910 25981
913 25164
914 26406
916 ..... 23766, 26165
922 26779
925 ..... 23767, 26164
931 23898
934 26769
935 26406
937 26786
938 25383
942 25165
947 26794
951 25029

31 CFR

209 24131
535 25003

Proposed Rules:

51 25029
53 25543
55 25543
81 25543
90 25543
92 25543
93 25543
120 25543
121 25543
122 25543
127 25543

32 CFR

242b 24297
536 26616
706 ..... 24131, 24132
806b 26617
1665 24542

Proposed Rules:

1656 24599
1660 24599

33 CFR

1 25519
100 25139–25142
117 ..... 24543, 24544, 26125–26127
127 25519
157 24547
175 24548

Proposed Rules:

110 26165
126 26166
154 26166
156 26166
161 26166
167 26167

34 CFR

642 24938
643 24938
644 24938
645 24938
646 24938

36 CFR

7 2429
50 ..... 24299, 24302
800 24306
811 25520

Proposed Rules:

1 24143
2 24143
3 24143
4 24143
5 24143
6 24143
7 24143
9 23768
12 24143
219 24348

37 CFR

201 25004

38 CFR

3 24549

Proposed Rules:

1 23954
21 24603

39 CFR

111 25957
3001 23712
3002 25523

40 CFR

1 25006
52 ..... 23927, 24306, 24552, 25007–25013, 25143, 25144, 25334, 25335, 26379–26388, 26618–26623
60 25524
61 24703
62 25335
81 25016
122 24918
125 ..... 24918, 25963
162 23928
180 ..... 23931–23935, 25017, 25741, 25957–25963
401 24534
420 24554
723 24308
762 ..... 23713, 23717
763 25145

Proposed Rules:

Ch. I 25743
4 24755
30 26564
50 26407
52 ..... 23773, 23778, 24755 25745
60 26750
62 26169
81 24755
122 ..... 24144, 25546
123 ..... 23955, 25546, 26170
124 ..... 24921, 25546
125 ..... 24921, 25981
141 24756
158 26171
162 25030
180 ..... 23955, 23957, 24604, 25031, 25032, 25746–25750, 25981
425 23958
440 25682
761 ..... 24976, 25555
790 24348

41 CFR

Ch. I 25018
Ch. 9 26390
7–1 25964
7–6 25964
7–7 25964
7–30 25964
8–2 26127
8–4 25525
8–75 25525

Proposed Rules:

9 23780
101–8 25337
101–41 24357

43 CFR

2 26390
4 26390
2650 26390
3300 25967

Public Land Orders:

548 (Revoked in part by PLO 6252) 24133
619 (Revoked by PLO 6256) 26129
1409 (Revoked by PLO 6254) 23935
1461 (Revoked by PLO 6261) 26131
5345 (Amended PLO 6253) 24133
5791 (Corrected by PLO 6264) 26132
6200 (Corrected by PLO 6265) 26133
6252 24133
6253 24133
6254 23935
6255 26129
6256 26129
6257 26130
6258 26130
6259 26130
6260 26131
6261 26131
6262 26132
6263 26132
6264 26132
6265 26133
6266 26133

Proposed Rules:

Subtitle A 25384
Subtitle B 25384
3140 25720
3830 24144

44 CFR

64 ..... 25018, 25145, 25146, 26133
65 ..... 23718, 23719
67 ..... 23720, 24321

Proposed Rules:

67 ..... 23780–23785, 24357

45 CFR

302 24716
303 24716
304 24716
305 24716
306 24716
1611 25148

Proposed Rules:

97 26104

46 CFR

Ch. II 25530
42 25148
50 24554
71 24554
91 24554
107 24554
189 24554
510 ..... 24555, 25530
536 25532

Proposed Rules:

Ch. I 26667
7 24604
25 25166
26 25166
35 25166
58 25166
78 25166
97 25166
111 25166
112 25166
162 25166
196 25166
502 24377

47 CFR

1 26393
2 ..... 24557, 25342
13 25972
22 24557
67 24720
73 ..... 24572–24580, 25342–25346, 26624
74 ..... 24580, 24723
81 23722
87 23722
90 ..... 23722, 24581, 26631

Proposed Rules:

Ch. I 24612, 25033, 26668
2 ..... 25033, 25982
21 25033
73 ..... 24144, 24613, 26408
74 25033
90 26677
94 25033

48 CFR

Proposed Rules:

19 25034
53 26679

49 CFR

1 24581
171 24582
172 24582
173 ..... 24582, 26633
175 24582
385 26135
512 24587
571 ..... 25149, 26138
575 ..... 24593, 25930, 26139
1033 ..... 23723, 24332, 25347
1039 26634
1090 26634
1110 24594
1125 25973
1136 26142
1249 26634
1300 26634

Proposed Rules:

172 24157
173 ..... 24157, 25167, 26172
178 ..... 25167, 26172
192 25555
396 26172
571 ..... 25169, 26174
1032 26409
1102 25035

50 CFR

26 25150
91 26635
285 ..... 25350, 26393
371 24723
611 ..... 23936, 25018
661 ..... 24134, 24136
672 23936
674 24724

Proposed Rules:

20 25922

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

Last Listing June 18, 1982

This is a continuing list of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (telephone 202–275–3030).

S.J. Res. 131/Pub. L. 97–194 Designating "National Theatre Week". (June 16, 1982; 96 Stat. 114) Price: $1.75.

S. 1808/Pub. L. 97–195 To authorize an Under Secretary of Commerce for Economic Affairs. (June 16, 1982; 96 Stat. 115) Price: $1.75.



Just Released

Code of Federal Regulations

Revised as of April 1, 1982

Quantity	Volume	Price	Amount
_____	Title 21—Food and Drugs (Parts 600 to 799)	$6.00	$_____
_____	Title 21—Food and Drugs (Parts 800 to 1299)	7.00	_____
		Total Order	$_____

A Cumulative checklist of CFR issuances for 1981 appears in the back of the first issue of the Federal Register each month in the Reader Aids section. In addition, a checklist of current CFR volumes, comprising a complete CFR set, appears each month in the LSA (List of CFR Sections Affected).

Please do not detach

Order Form

Mail to: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402

Enclosed find $_____. Make check or money order payable to Superintendent of Documents. (Please do not send cash or stamps). Include an additional 25% for foreign mailing.

Charge to my Deposit Account No.

☐☐☐☐☐☐☐–☐

Order No._____

VISA®

MasterCard

Credit Card Orders Only

Total charges $_____ Fill in the boxes below.

Credit Card No. ☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

Expiration Date Month/Year ☐☐☐☐

Please send me the **Code of Federal Regulations** publications I have selected above.

Name—First, Last

Street address

Company name or additional address line

City State ZIP Code

(or Country)

PLEASE PRINT OR TYPE

For Office Use Only.

	Quantity	Charges
Enclosed		
To be mailed		
Subscriptions		
Postage		
Foreign handling		
MMOB		
OPNR		
UPNS		
Discount		
Refund		