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Friday
July 30, 1982

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Patent and Trademark Office

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Agricultural Marketing Service

Aliens
Immigration and Naturalization Service

Antibiotics
Food and Drug Administration

Asbestos
Environmental Protection Agency

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

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Presidential Documents

Title 3—

The President

Proclamation 4954 of July 28, 1982

National Navaho Code Talkers Day

By the President of the United States of America

A Proclamation

Since the Revolutionary War, when General George Washington praised the Indians under his command, the United States has been privileged to have members of the Indian Nation serve in its armed forces.

From the bravery demonstrated at Valley Forge and the establishment of the U.S. Indian Scouts on August 1, 1866, to the present day, Native Americans have heeded the call to duty. Though often excluded from the annals of United States history, these people, nonetheless, have defended the only land they have ever known, asking for nothing more than opportunity in return.

The Navaho Nation, when called upon to serve the United States, contributed a precious commodity never before used in this way. In the midst of the fighting in the Pacific during World War II, a gallant group of men from the Navaho Nation utilized their language in coded form to help speed the Allied victory.

Equipped with the only foolproof, unbreakable code in the history of warfare, the code talkers confused the enemy with an earful of sounds never before heard by code experts. The dedication and unswerving devotion to duty shown by the men of the Navaho Nation in serving as radio code talkers in the Marine Corps during World War II should serve as a fine example for all Americans.

It is fitting that at this time we also express appreciation for the other American Indians who have served our Nation in times of war. Members of the Choctaw, Chippewa, Creek, Sioux, and other tribes used their tribal languages as effective battlefield codes against the Germans in World War I and the Japanese and Germans in World War II.

Beyond this unique role, American Indians serving in the United States military forces have established an outstanding record of bravery and heroism in battle. Many have given their lives in the performance of their duty. Their record should be recognized by all Americans.

By House Joint Resolution 444, the Congress has requested me to designate August 14, 1982, as National Navaho Code Talkers Day.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby designate August 14, 1982, as National Navaho Code Talkers Day, a day dedicated to all members of the Navaho Nation and to all Native Americans who gave of their special talents and their lives so that others might live. I ask the American people to join me in this tribute, and I call upon Federal, State and local officials to commemorate this day with appropriate activities.

IN WITNESS WHEREOF, I have hereunto set my hand this 28th. day of July in the year of our Lord nineteen hundred and eighty-two, and of the Independence of the United States of America the two hundred and seventh.

Ronald Reagan

[FR Doc. 82-20749
Filed 7-28-82; 2:03 pm]
Billing code 3195-01-M

Presidential Documents

Executive Order 12374 of July 28, 1982

Reports on International Organizations

By the authority vested in me as President of the United States of America by Section 306 of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2226), and Section 301 of Title 3 of the United States Code, and to provide for reports to the Congress on United States contributions to international organizations, it is hereby ordered as follows:

Section 1. The functions vested in the President by Section 306(b)(1) of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2226(b)(1)), are delegated to the Secretary of State.

Sec. 2. The Director of the Office of Management and Budget shall furnish to the Secretary of State those reports which the Director receives from agencies pursuant to the provisions of Section 306(b)(2) of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2226(b)(2)).

Ronald Reagan

THE WHITE HOUSE,
July 28, 1982.

[FR Doc. 82-20750
Filed 7-28-82; 2:04 pm]
Billing code 3195-01-M

Rules and Regulations

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

Agricultural Marketing Service

7 CFR Part 910

[Lemon Reg. 370]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of fresh California-Arizona lemons that may be shipped to market during the period August 1–7, 1982. Such action is needed to provide for orderly marketing of fresh lemons for this period due to the marketing situation confronting the lemon industry.

EFFECTIVE DATE: August 1, 1982.

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

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291, and has been designated a "non-major" rule. To minimize disruption as much as possible and still bring this marketing order into compliance with the Secretary's guidelines for fruit, vegetable and specialty crop marketing orders, issued January 25, 1982, this regulation (and subsequent weekly regulations throughout the shipping season) is being issued with the understanding that the Lemon Administrative Committee will initiate certain actions so that operations under the program will conform to the guidelines. The guidelines state that prorate programs, like the lemon marketing order, should be used guardedly so as to avoid stifling individual incentive or overly restricting market supplies. In recognition of the Department's guidelines, the committee has included in-depth discussion of all relevant issues in conjunction with amendments to the order presently being developed.

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has determined that this action will not have a significant economic impact on a substantial number of small entities. This action is designed to promote orderly marketing of the California-Arizona lemon crop for the benefit of producers, and will not substantially affect costs for the directly regulated handlers.

This final rule is issued under the marketing agreement, as amended, and Order No. 910, as amended (7 CFR Part 910), regulating the handling of lemons grown in California and Arizona. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The action is based upon the recommendations and information submitted by the Lemon Administrative Committee and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the Act.

This action is consistent with the marketing policy for 1982–83. The marketing policy was recommended by the committee following discussion at a public meeting on July 6, 1982. The committee met again publicly on July 27, 1982, at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of lemons deemed advisable to be handled during the specified week. The committee reports the demand for lemons is somewhat easier than it was last week.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation is based and the effective date necesary to effectuate the declared purposes of the Act. Interested persons were give an opportunity to submit information and views on the regulation at an open meeting. It is necessary to effectuate the declared purposes of the Act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Agricultural Marketing Service, Marketing agreements and orders, California, Arizona, Lemons.

Section 910.670 is added as follows:

§ 910.670 Lemon Regulation 370.

The quantity of lemons grown in California and Arizona which may be handled during the period August 1, 1982, through August 7, 1982, is established at 266,742 cartons.

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

Dated: July 29, 1982

D. S. Kuryloski,

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

[FR Doc. 82–20849 Filed 7–29–82; 11:47 am]
BILLING CODE 3410–02–M

7 CFR Part 932

[Docket No. AO–352–A4]

Olives Grown in California; Order Amending Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the olive marketing agreement and order program to improve its operation and effectiveness. The amendment was favored by the required two-thirds majority of growers voting in a referendum. The most significant changes would: Modify grade and size regulations under the order; change the definitions of crop year and fiscal year; and change the name, add a public member to, and modify other procedures of the Olive Administrative Committee. The amendment is based on proposals submitted by the committee which works with USDA in administering the program. These proposals were considered at a public hearing in December 1981. The referendum was conducted by the Department by mail ballot June 22–July 2, 1982.

EFFECTIVE DATE: August 1, 1982.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Acting Chief, Fruit Branch, Fruit and Vegetable Division, AMS, USDA, Room 2532–S, Washington, D.C. 20250, telephone (202) 447–5975.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Hearing, issued November 13, 1981, published November 18, 1981 (46 FR 56620); Notice of Recommended Decision, issued May 7, 1982, published May 13, 1982 (47 FR 20593); and Final Decision, issued June 14, 1982, published June 18, 1982 (47 FR 26394).

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 and Secretary's Memorandum 1512–1.

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has determined that this action will not have a significant economic impact on a substantial number of small entities. This action is designed to promote orderly marketing of California olives for the benefit of producers and will not substantially affect costs for the directly regulated handlers.

Findings and Determinations. 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 the aforesaid order and each previously issued amendment thereto; and all of 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.

(a) *Findings Upon the Basis of the Hearing Record.* 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), a public hearing was held upon proposed amendment of the marketing agreement, as amended, and Order No. 932, as amended (7 CFR Part 932), regulating the handling of olives grown in California.

Upon the basis of the record it is found that:

(1) The order, as amended, and as hereby further amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The order, as amended, and as hereby further amended, regulates the handling of olives grown in the production area in the same manner as, and is applicable only to persons in the respective classes of commercial and industrial activity specified in the marketing agreement and order upon which hearings have been held;

(3) The order, as amended, and as hereby further amended, is limited in its application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

(4) There are no differences in the production and marketing of olives grown in the production area which make necessary different terms and provisions applicable to different parts of such area; and

(5) All handling of olives grown in the production area is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

(b) *Additional findings.* It is necessary and in the public interest to make all of the amendatory provisions effective August 1, 1982. Any delay beyond that date would interfere with effective order administration. The amendatory order provides for a marketing year beginning August 1, 1982, and the improvements in program operations and procedures provided by that order should be utilized from the start of the 1982–83 season. A prompt effective date would be consistent with fulfilling that requirement.

In view of the foregoing, it is hereby found and determined that good cause exists for making this amendatory order effective August 1, 1982 in the **Federal Register**, and that it would be contrary to the public interest to delay the effective date of this order for 30 days after its publication in the **Federal Register** (Sec. 553(d), Administrative Procedure Act, 5 U.S.C. 551–559).

(c) *Determinations.* It is hereby determined that:

(1) The "Marketing Agreement, as Amended, Regulating the Handling of Olives Grown in California" upon which the aforesaid public hearing was held has been signed by handlers (excluding cooperative associations of producers who are not engaged in processing, distributing, or shipping the commodity covered by the said order, as amended, and as hereby further amended) who, during the period September 1, 1981 through February 28, 1982, handled not less than 50 percent of the volume of such olives covered by the said order, as amended and as hereby further amended; and

(2) The issuance of this amendatory order, amending the aforesaid order, as amended, is favored or approved by at least two-thirds of the producers who participated in a referendum on the question of its approval and who during the period September 1, 1981 through February 28, 1982 (which has been deemed to be a representative period), have been engaged within California, in the production of olives for market, such producers also having produced for market at least two-thirds of the volume of such commodity represented in the referendum.

List of Subjects in 7 CFR Part 932

Marketing agreements and orders, Olives, California.

Order Relative to Handling

It is therefore ordered, That on and after the effective date hereof, the handling of olives shall be in conformity to and in compliance with the terms and conditions of the said order, as amended, and as hereby further amended, as follows:

PART 932—OLIVES GROWN IN CALIFORNIA

1. Section 932.18 is revised to read:

§ 932.18 Committee.

"Committee" means the California Olive Committee established pursuant to § 932.25.

2. Section 932.19 is revised to read:

§ 932.19 Crop year and fiscal year.

(a) "Crop year" means the 12-month period beginning on August 1 of each year and ending on July 31 of the following year or such other period that may be recommended by the committee and approved by the Secretary.

(b) "Fiscal year" means the 12-month period beginning on Janaury 1 and ending on December 31 of each year or such other period that may be recommended by the committee and approved by the Secretary.

§ 932.23 [Amended]

3. Section 932.23 is amended by removing "932.51(a)(2)" and substituting "932.51(a)(3)" in lieu thereof.

4. Section 932.23a is revised to read:

§ 932.23a Limited use.

"Limited use" means the use of processed olives in the production of packaged olives of the halved, segmented (wedged), sliced, or chopped styles, as defined in the U.S. Standards for Grades of Canned Ripe Olives (7 CFR Part 52) or subsequent amendments thereto, including modifications of the requirements for such styles pursuant to this part, and such additional styles (and the requirements applicable thereto) as may be specified pursuant to § 932.52(a)(7).

5. Section 932.25 is revised to read:

§ 932.25 Establishment and membership.

A California Olive Committee consisting of 16 members, is hereby established to administer the terms and provisions of this part. Each member shall have an alternate who meets the same qualifications as the member. Eight of the members and their alternates shall be producers or officers or employees of producers, and eight of the members and their alternates shall be handlers or directors, officers, or employees of handlers. The eight members of the committee who are producers or officers or employees of producers are referred to in this subpart as "producer members" of the committee; and the eight members of the committee who are handlers or directors, officers, or employees of handlers are referred to in this subpart as "handler members" of the committee. The committee may be increased by one public member who shall not be a producer or handler of olives nor an officer or employee or director of any producer or handler of olives. District representation of the producer members shall be two from District 1, four from District 2, and two from District 3. Allocation of the handler members shall be four members to represent cooperative marketing organizations, herein referred to as "cooperative handlers", and four members to represent handlers who are not cooperative marketing organizations, herein referred to as "independent handlers": *Provided,* That whenever during the crop year in which nominations are made and in the preceding crop year, the cooperative handlers or the independent handlers handled as first handler 65 percent or more of the total quantity of olives so handled by all handlers, allocation shall be five members to represent the group which so handled 65 percent or more of such olives and three members to represent the group which handled 35 percent or less. The public member and alternate public member shall be selected from any place within the area. The committee may, with the approval of the Secretary, provide such other allocation of producer or handler membership, or both, as may be necessary to assure equitable representation.

6. Section 932.28 is revised to read:

§ 932.28 Eligibility.

Each producer member of the committee shall, at the time of selection and during the member's term of office, be a producer in the district for which selected, and except for producers who are members of cooperative handlers shall not be engaged in the handling of olives either in a proprietary capacity, or as a director, officer, or employee. Each handler member of the committee shall, at the time of selection and during the member's term of office, be a handler in the group that the member represents or a director, officer, or employee of such handler. The public member and alternate public member of the committee shall not at the time of selection and during the term of office be engaged in or have a financial interest in the commercial production, marketing, buying, grading, or processing of olives, nor shall such member or alternate be an officer, director, member, or employee of any firm engaged in such activities.

7. Section 932.29 is amended by revising paragraph (a) and adding a new paragraph (c) to read:

§ 932.29 Nominations.

(a) Producer members. (1) Nominations for producer members of the committee, and their respective alternates, may be conducted according to the following procedures, or other procedures recommended by the committee and approved by the Secretary:

(i) Meetings shall be held in each producer district for the purpose of selecting candidates for the member and alternate member nominations;

(ii) Those candidates selected at the producer meetings shall be nominated by mail balloting of producers in that district;

(iii) The committee shall adopt, with approval of the Secretary, appropriate procedures to be observed for conducting producer nominations by mail: *Provided,* That the names of nominees shall be submitted to the Secretary prior to April 16 of the year in which nominations are made.

(2) Only producers, including duly authorized officers or employees of producers, shall participate in the nomination of producer members and alternate members. Each producer shall be entitled to cast only one vote for each nominee to be selected in the district in which the producer produces olives. No producer shall participate in the selection of nominees in more than one district. If a producer produces olives in more than one district, such producer shall select the district in which such producer will so participate and notify the committee of such choice.

* * * * *

(c) Public member. Nominations for the public member and alternate public member of the committee shall be submitted to the Secretary prior to April 16 of the year in which nominations are made. The committee shall prescribe procedures for the selection and voting for each candidate.

8. Section 932.30 is revised to read:

§ 932.30 Alternates.

An alternate for a member of the committee shall act in the place and stead of such member (a) during such member's absence, and (b) in the event of such member's removal, resignation, disqualification or death, until a successor for such member's unexpired term has been selected and has qualified. Except as otherwise specifically provided in this subpart, the provisions of this part applicable to members also apply to alternate members. The committee or the chariman of the committee may request one or more alternates to attend any or all meetings notwithstanding the expected or actual attendance of the respective member or members.

9. Section 932.35 is amended by revising paragraphs (g) and (h) to read:

§ 932.35 Duties.

The committee shall have, among others, the following duties:

* * * * *

(g) To submit to the Secretary, prior to the beginning of each fiscal year and not later than December 15, a budget of the anticipated expenses of the committee and the proposed assessment rate for such fiscal year, together with a report thereon.

(h) To cause the books of the committee to be audited by one or more certified public accountants at least once each fiscal year, and at such other times as the committee may deem necessary or as the Secretary may request. The report of each such audit shall show, among other things, the receipts and expenditures of funds, and at least two copies of each such audit report shall be submitted to the Secretary.

* * * * *

10. Section 932.36 is revised to read:

§ 932.36 Procedure.

Decisions of the committee shall be by majority vote of the members present and voting, and a quorum must be present: *Provided,* That decisions requiring a recommendation to the Secretary on matters pertaining to grade and size regulations shall require at least 10 affirmative votes, at least 5 of which must be from producer members and at least 5 of which must be from handler members and, if the committee is increased by the addition of a public member, at least 11 affirmative votes shall be required, at least 5 of which

must be from producer members and at least 5 of which must be from handler members. A quorum shall consist of at least 10 members of whom at least 5 shall be producer members and at least 5 shall be handler members and, if the committee is increased by the addition of a public member, a quorum shall consist of at least 11 members of which at least 5 shall be producer members and at least 5 shall be handler members. Except in case of an emergency, a minimum of 5 days advance notice shall be given with respect to any meeting of the committee. In case of an emergency, to be determined within the discretion of the chairman of the committee, as much advance notice of a meeting as is practicable in the circumstances shall be given. The committee may vote by mail or telegram upon due notice to all members, but any proposition to be so voted upon first shall be explained accurately, fully, and identically by mail or telegram to all members. When voted on by such method, at least 14 affirmative votes, of which seven shall be producer member votes and seven shall be handler member votes, shall be required for adoption and, if the committee is increased by the addition of a public member, votes by mail or telegram shall require at least 15 affirmative votes, of which at least 7 shall be producer member votes and at least 7 shall be handler member votes. The committee may recommend for the Secretary's approval changes in the number of affirmative votes required for adoption of any proposition voted upon by means of a mail or telegram ballot: *Provided,* That the number of affirmative votes required for adoption shall not be less than ten, and in any case an equal number of producer member and handler member votes shall be required for adoption and, if the committee is increased by the addition of a public member, the number of affirmative votes required for adoption shall be increased by one.

11. Section 932.37 is revised to read:

§ 932.37 Compensation and expenses.

The members of the committee and alternates when acting as members or at the request of the committee or its chairman shall serve without compensation, but shall be reimbursed for necessary expenses, as approved by the committee, incurred by them in the performance of their duties under this part.

12. Section 932.39 is amended by revising paragraphs (a) and (b) and adding a new paragraph (c) to read:

§ 932.39 Assessments.

(a) As the handler's pro rata share of the expenses which the Secretary finds are reasonable and likely to be incurred by the committee during a fiscal year, each handler who first handles olives during the current crop year shall pay to the committee, upon demand, assessments on all olives to be used in the production of packaged olives, including olives to be used in "canned ripe olives of the tree-ripened" type or green olives when such are regulated as packaged olives pursuant to § 932.52. The payment of assessments for maintenance and functioning of the committee may be required under this part throughout the period it is in effect irrespective of whether particular provisions thereof are suspended or become inoperative.

(b) The Secretary shall fix the rate of assessment to be paid by each such handler during a fiscal year in an amount designed to secure sufficient funds to cover the expenses which may be incurred during such period. At any time during or after the fiscal year, the Secretary may increase the rate of assessment in order to secure sufficient funds to cover any later finding by the Secretary relative to the expenses which may be incurred. Such increase shall be applied to all olives handled during the applicable crop year. In order to provide funds for the administration of the provisions of this part during the first part of a fiscal year before sufficient operation income is available from assessments, the committee may accept the payment of assessments in advance, and may also borrow money for such purpose.

(c) Any assessment not paid by a handler within a period of time prescribed by the committee may be subject to an interest or late payment charge, or both. The period of time, rate of interest and late payment charge shall be as recommended by the committee and approved by the Secretary. Subsequent to such approval, all assessments not paid within the presecribed period of time shall be subject to an interest or late payment charge or both.

13. Section 932.40 is amended by revising paragraph (a) to read:

§ 932.40 Accounting.

(a) If, at the end of a fiscal year, the assessments collected are in excess of expenses incurred, such excess shall be accounted for in accordance with one of the following:

(1) If such excess is not retained in a reserve as provided in paragraph (a)(2) of this section, the committee shall refund or credit to handler accounts the aforesaid excess. Each handler's share of such excess funds shall be the amount of assessments such handler has paid in excess of such handler's pro rata share of the actual net expenses of the committee for such fiscal year. Excess funds may be used temporarily by the committee to defray expenses of the subsequent fiscal year: *Provided,* That each handler's share of such excess shall be made available to the handler by the committee within five months after the end of the fiscal year.

(2) The committee, with the approval of the Secretary, may carry over such excess into subsequent fiscal years as a reserve: *Provided,* That funds already in the reserve do not exceed approximately one fiscal year's expenses. Such reserve funds may be used for any expenses authorized pursuant to § 932.38 and for necessary expenses of liquidation in the event of termination of this part. Upon such termination, any funds not required to defray the necessary expenses of liquidation shall be disposed of in such manner as the Secretary may determine to be appropriate: *Provided,* That to the extent practicable, such funds shall be returned pro rata to the persons from whom such funds were collected.

* * * * *

14. Section 932.45 is amended by revising paragraphs (d) introductory text and (e) to read:

§ 932.45 Production research and marketing research and development projects.

* * * * *

(d) If the committee should conclude that a program of production research, marketing research, or development should be undertaken or continued pursuant to this section in any fiscal year, it shall submit the following for the approval of the Secretary:

* * * * *

(e) The committee shall, as soon as practicable, prepare and mail reports on current production research and marketing research and development projects to the Secretary and make a copy of such reports available at the committee office for examination by producers, handlers, or other interested parties.

15. Section 932.50 is amended by revising the first sentence to read:

§ 932.50 Report of marketing policy.

At least 14 days prior to the start of each crop year (except that this period may be shortened by the committee not more than 5 days if warranted), the committee shall hold a meeting for the purpose of formulating a marketing

policy for the coming crop year: *Provided,* That with respect to the 1982–83 crop year the committee shall hold a meeting for such purpose as soon as practicable. * * *

16. Section 932.51 is amended by revising paragraph (a)(1)(ii); redesignating paragraphs (a)(2), (a)(3), and (a)(4) as paragraphs (a)(3), (a)(4), and (a)(5), respectively, adding a new paragraph (a)(2); and amending redesignated paragraphs (a)(4) and (a)(5) as follows:

§ 932.51 Incoming regulations.

(a) Minimum standards for natural condition olives.

(1) * * *

(i) * * *

(ii) Size-graded, either by sample or by lot, under the supervision of any such inspection service and classified into separate size designations and a certification issued with respect thereto by such inspection service. Such size designations shall be in accordance with those set forth in the U.S. Standards for Grades of Canned Ripe Olives (7 CFR Part 52) or subsequent amendments thereto, or such sizes as may be recommended by the committee and established by the Secretary: *Provided,* That, for the purpose of this part, the size designations in said standards shall be deemed to include the following additional size designations.

Designation(s)	Approximate count (per pound)	Average count range (per pound)
Subpetite		181 and up.
Petite	160	141–180, inclusive.
Extra Large Sevillano "L"	82	76–88, inclusive.
Extra Large Sevillano "C"	70	65–75, inclusive.

Provided Further, That the additional size designations may be renamed and/or modified as recommended by the committee and approved by the Secretary. Such certification shall show, in addition to the quantities by weight of the olives in the lot that are classified as being in each size or size designation the quantity of olives classified as culls by the handler: *Provided,* That when the Secretary, upon the recommendation of the committee, issues a definition of and classification for "culls", the aforesaid quantity of culls shall be determined on the basis of such definition and in accordance with such classification.

(2) Each handler may satisfy the incoming and outgoing size requirements for any lot of olives under the conditions set forth in subdivisions (i), (ii), and (iii) of this paragraph: *Provided,* That any such lot shall be kept intact under surveillance by the inspection services:

(i) When the Secretary authorizes use of limited size olives for limited use styles during any crop year, any lot of limited use size olives may be used in the production of packaged olives for limited use styles without an outgoing inspection if such olives are within the following average count range for that variety group, and meet such further size requirements as recommended by the committee with the approval of the Secretary:

Variety	Average count range (per pound)
Group 1, except Ascolano, Barouni, and St. Agostino.	76–88, inclusive.
Group 1, Ascolano, Barouni and St. Agostino.	89–140, inclusive.
Group 2, except Obliza	141–180, inclusive.
Group 2, Obliza	128–140, inclusive.

Provided, That the varietal groupings and/or average count ranges may be changed, and additional size certification procedures and requirements may be established as recommended by the committee and approved by the Secretary;

(ii) When limited use size olives are not authorized for limited use styles during any crop year, any lot of the minimum canning size olives may be used in the production of packaged olives for limited use styles without an outgoing inspection for size if such olives are within the following average count range for that variety group, and meet such further size requirements as recommended by the committee with approval of the Secretary:

Variety	Average count range (per pound)
Group 1, except Ascolano, Barouni, and St. Agostino.	65–75, inclusive.
Group 1, Ascolano, Barouni and St. Agostino.	65–88, inclusive.
Group 2, except Obliza	128–140, inclusive.
Group 2, Obliza	106–121, inclusive.

Provided, That for whole and whole pitted styles of olives an additional size grading is required after processing, prior to canning, and those olives that fail to meet the requirements in § 932.52 may be used in limited use styles. *Provided Further,* That the varietal groupings, average count ranges, and/or other size requirements may be changed or modified as recommended by the committee and approved by the Secretary;

(iii) The committee may recommend, subject to approval by the Secretary, size certification procedures for olives used in the production of canned whole or pitted styles of olives: *Provided,* That if size certification for canned whole or pitted styles is implemented, marketing order sizes shall be adopted and size requirements in the U.S. Grade Standards shall not apply. Size certification of such styles shall be applicable to any or all sizes of olives recommended by the committee and approved by the Secretary pursuant to § 932.52(a)(2). Size certification procedures recommended to the Secretary may include but are not limited to the establishment of average count ranges, acceptable count ranges, and approximate counts (midpoints) for each variety or variety group.

(3) Each handler shall, under the supervision of any such inspection service, dispose of into noncanning use an aggregate quantity of olives, comparable in size and characteristics and equal to the quantities shown on the certification for each lot to be:

(i) Variety Group 1 olives, except the Ascolano, Barouni, and St. Agostino varieties, of a size which individually weigh less than $\frac{1}{90}$ pound;

(ii) Variety Group 1 olives of the Ascolano, Barouni, and St. Agostino varieties of a size which individually weigh less than $\frac{1}{140}$ pound;

(iii) Variety Group 2 olives, except the Obliza variety, of a size which individually weigh less than $\frac{1}{180}$ pound;

(iv) Variety Group 2 olives of the Obliza variety of a size which individually weigh less than $\frac{1}{140}$ pound;

(v) Such other sizes for the foregoing variety groups as are not authorized for limited use pursuant to § 932.52; and

(vi) Olives classified as culls.

(4) Notwithstanding the provisions of paragraph (a)(3) of this section, a handler may (i) meet any deficit in such handler's undersize obligation in one variety by disposing of, under supervision of the inspection service, as other than canned ripe olives, an equal quantity of undersize olives, of any other variety, or by so disposing of an equal quantity of olives of that or any other variety of sizes larger than undersize of a quality better than culls, and (ii) meet any deficit in such handler's cull obligation in one variety by so disposing of an equal quantity of cull olives of any other variety, or by so disposing of an equal quantity of olives of any variety of sizes larger than undersize of a quality better than culls.

(5) Each handler shall hold at all times a quantity of olives equal to the quantities required in paragraph (a)(3) of this section, less any quantity previously disposed of as specified in such subparagraph.

* * * * *

17. Section 932.52 is amended by revising paragraphs (a)(1), (a)(2), (a)(2)(i), (a)(2)(ii), (a)(2)(iii), (a)(3), introductory text, (a)(6), and paragraphs (b)(1) and (b)(2) to read:

§ 932.52 Outgoing regulations.

(a) Minimum standards for packaged olives. * * *

(1) Canned ripe olives, other than those of the "tree-ripened" type, shall grade at least U.S. Grade C as such grade is defined in the U.S. Standards for Grades of Canned Ripe Olives (7 CFR Part 52) or subsequent amendments thereto, or as modified by the committee, with approval of the Secretary, for purposes of this part.

(2) Except as provided in § 932.51(a) (1) and (2), canned whole ripe olives, other than those of the "tree-ripened" type, shall conform to the single size designations set forth in the U.S. Standards for Grades of Canned Ripe Olives (7 CFR Part 52) or subsequent amendments thereto, or as modified by the committee, with the approval of the Secretary, and shall be of a size not smaller than the following applicable size requirements, tolerances and percentages: *Provided,* That the Secretary, on the basis of a recommendation of the committee or other available information, may change such sizes, tolerances or percentages:

(i) With respect to variety group 1 olives, except the Ascolano, Barouni, and St. Agostino varieties, the individual fruits shall each weigh no less than 1/5 pound, except that (A) for olives of the extra large size designation, not more than 25 percent, by count, of such olives may weigh less than 1/5 pound each including not more than 10 percent, by count, of such olives that weigh less than 1/62 pound each; and (B) for olives of any designation except the extra large size, not more than 5 percent, by count, of such olives may weigh less than 1/5 pound each;

(ii) With respect to variety group 1 olives of the Ascolano, Barouni and St. Agostino varieties, the individual fruits shall each weigh not less than 1/88 pound except that (A) for olives of the extra large size designation, not more than 25 percent, by count, of such olives may weigh less than 1/88 pound each including not more than 10 percent, by count, of such olives that weigh less than 1/88 pound each, and (B) for olives of any size designation, except the extra large size, not more than 5 percent, by count, of such olives may weigh less than 1/88 pound each;

(iii) With respect to variety group 2 olives, except the Obliza variety, the individual fruits shall each weigh not less than 1/140 pound except that (A) for olives of the small size designation, not more than 35 percent, by count, of such olives may weigh less than 1/140 pound each including not more than 7 percent, by count, of such olives that weigh less than 1/160 pound each; and (B) for olives of any size designation, except the small size, not more than 5 percent, by count, of such olives may weigh less than 1/140 pound each; and

(iv) * * *

(3) Subject to the provisions set forth in paragraph (a)(4) of this section and § 932.51(a) (1) and (2), processed olives to be used in the production of canned pitted ripe olives, other than those of the "tree-ripened" type, shall meet the same requirements as prescribed pursuant to paragraph (a)(2) of this section: *Provided,* That olives smaller than those so prescribed, as recommended annually by the committee and approved by the Secretary, may be authorized for limited use but any such limited use size olives so used shall be not smaller than the following applicable minimum size: *Provided further,* That each such minimum size may also include a size tolerance (specified as a percent) as recommended by the committee and approved by the Secretary.

* * * * *

(6) The size designations used in this section mean the size designations described in (a)(1)(ii) of § 932.51.

(7) * * *

(b) Disposition requirements for limited use size olives. (1) The requirements of this paragraph are in addition to and not in substitution of the requirements of § 932.51(a)(5).

(2) Each handler shall, under the supervision of the Processed Products Branch, USDA, or the Federal or Federal-State Inspection Service, dispose of limited use size olives into limited use or into noncanning use: *Provided,* That whenever a handler's use of limited use size olives is restricted pursuant to § 932.52(a)(4), such handler shall dispose of into noncanning use that quantity of such limited use size olives which is in excess of the quantity permitted for limited use.

* * * * *

18. Section 932.53 is amended by revising paragraph (a) to read:

§ 932.53 Inspection and certification.

(a) Each handler shall have the olives such handler handles inspected and certified as for conformance with all applicable requirements pursuant to §§ 932.51 and 932.52 with respect to such handling. Inspection and certification for conformance with the requirements of § 932.51 shall be by the Federal or Federal-State Inspection Service, including certification as to size, and inspection for conformance with the requirements of § 932.52 shall be by the Processed Products Branch, USDA, except that the disposition of olives, other than as canned ripe olives, in accordance with the requirements of § 932.51(a)(3) may be under the supervision of any of such inspection services. A copy of each certification by the said inspection services, pursuant to the provisions of this section, shall be furnished to the committee.

* * * * *

§ 932.54 [Amended]

19. Section 932.54 is amended by removing "932.51(a)(2)" and substituting "932.51(a)(3)" in lieu thereof.

20. Section 932.68 is amended by removing paragraph (d) and revising paragraph (c) to read:

§ 932.68 Termination.

* * * * *

(c) The Secretary shall terminate the provisions of this subpart at the end of any crop year whenever the Secretary finds that such termination is favored by a majority of producers who, during a representative period determined by the Secretary, have been engaged in the area in the production of olives for market as packaged olives: *Provided,* That such majority have during such representative period produced for market more than 50 percent of the volume of such olives produced for market, but such termination shall be effective only if announced on or before July 15 of the then current crop year.

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

Dated: July 27, 1982.

Signed at Washington, D.C., to become effective August 1, 1982.

C. W. McMillan,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 82-20668 Filed 7-29-82; 8:45 am]

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7 CFR Part 948

Irish Potatoes Grown in Colorado, Area No. 3; Handling Regulation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This continuing regulation requires fresh market shipments of potatoes grown in Colorado—Area No. 3 to be inspected and meet minimum grade, size and maturity requirements.

The regulation will promote orderly marketing of such potatoes and keep less desirable qualities and sizes from being shipped to consumers.

EFFECTIVE DATE: August 1, 1982.

FOR FURTHER INFORMATION CONTACT: Charles W. Porter, Chief, Vegetable Branch, F&V, AMS, USDA, Washington, D.C. 20250 (202) 447–2615. The Final Impact Statement relating to this rule is available upon request from Mr. Porter.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

Information collection requirements contained in this regulation (7 CFR Part 948) have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB #0581–0111.

This rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291 and has been designated a "nommajor" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has determined that this action will not have a significant economic impact on a substantial number of small entities because it would not significantly affect costs for the directly regulated handlers.

Marketing Agreement No. 97 and Order No. 948, both as amended, regulate the handling of potatoes grown in designated counties of Colorado Area No. 3. The program is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The Colorado Area No. 3 Potato Committee, established under the order, is responsible for its local administration.

This regulation is based upon recommendations made by the committee at a public meeting in Greeley, Colorado, on June 10, 1982.

The grade, size, maturity and inspection requirements specified herein are similar to those which have been issued during past seasons. They are necessary to prevent potatoes of poor quality or undesirable sizes from being distributed to fresh market outlets. They will also benefit consumers and producers by standardizing and improving the quality of the potatoes shipped from the production area.

Again the minimum quantity exemption will be 1,000 pounds. This should relieve the burden on handling noncommercial quantities of potatoes and allow direct marketing outlets to operate in greater freedom.

Exceptions are provided to certain of these requirements to recognize special situations in which such requirements would be inappropriate or unreasonable.

Shipments are permitted to certain special purpose outlets without regard to the grade, size, maturity and inspection requirements, provided that safeguards are met to prevent such potatoes from reaching unauthroized outlets. Certified seed is exempt because requirements for this outlet differ greatly from those for fresh market. Shipments for use as livestock feed are likewise exempt. Since no purpose would be served by regulating potatoes used for charity purposes, such shipments are exempt. Also potatoes for most processing uses are exempt under the legislative authority for this part.

Potatoes for prepeeling will be handled without regard to maturity requirements since skinning of such potatoes would be of no consequence. Also, the maturity requirements terminate on December 31 because at that stage of the marketing season potatoes are generally mature with skins firmly set.

This regulation promotes efficiency by standardizing marketing practices and will have no measurable effect on the quantity of potatoes shipped from Colorado Area No. 3, or upon U.S. retail potato prices. The regulation should enable the Colorado Area No. 3 potato industry to better compete with other potato producing areas in the U.S. by ensuring the use of grades and sizes acceptable to buyers.

Requirements contained in this handling regulation, effective August 1, 1982, will continue in effect from marketing season to marketing season indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the committee or other information available to the Secretary. Heretofore, regulations issued under the marketing order were made effective for a single marketing season. The change to issue regulations which will continue in effect from marketing season to marketing season reflects the fact that regulations change infrequently from season to season and it is believed unnecessary to issue them for only a single season. In addition, this action could result in a reduction in operational costs to the committee and the government. Although the final regulation will be effective for an indefinite period, the committee will continue to meet prior to or during each season to consider recommendations for modification, suspension, or termination of the regulation. Prior to making any such recommendations, the committee will submit to the Secretary a marketing policy for the season in accordance with § 948.20 of the order, including an analysis of supply and demand factors having a bearing on the marketing of the crop. Committee meetings are open to the public and interested persons may express their views at these meetings or may file comments with the Fruit and Vegetable Division before July 1 each year. The Department will evaluate committee recommendations and information submitted by the committee, comments filed, and other available information, and determine whether modification, suspension, or termination of the regulations on shipments of Colorado Area 3 potatoes would tend to effectuate the declared policy of the act.

Findings

After consideration of all relevant matter presented, including the proposal set forth in the notice, it is hereby found that the following handling regulation will tend to effectuate the declared policy of the act by setting the minimum grade, size, maturity and inspection requirements which the Secretary has found should be maintained for orderly marketing.

It is hereby further found that good cause exists for not postponing the effective date of this section until 30 days after its publication in the **Federal Register** (5 U.S.C. 553) in that (1) shipments of potatoes grown in the production area will have begun by the effective date specified herein, (2) to maximize benefits to producers, this regulation should apply to as many shipments as possible during the marketing season, (3) notice was given in the June 30, 1982 **Federal Register** (47 FR 28400) allowing interested persons until July 15, 1982 to file written comments and none was received, and (4) compliance with this regulation, which is similar to regulations issued during previous seasons, requires no special preparation on the part of persons subject thereto which cannot be completed by the effective date herein.

List of Subjects in 7 CFR Part 948

Marketing agreements and orders, Potatoes, Colorado.

PART 948—IRISH POTATOES GROWN IN COLORADO

Section 948.385 (46 FR 39118, July 31, 1981) is removed and a new § 948.387 is added as follows:

§ 948.387 Handling regulation.

On and after August 1, 1982, no person shall handle any lot of potatoes grown in Area No. 3 unless such potatoes meet the requirements of paragraphs (a), (b) and (c) of this section, or unless such potatoes are handled in accordance with

paragraphs (d) and (e), or (f) of this section.

(a) *Grade and size requirements—All varieties*—U.S. No. 2 or better grade, 1⅞ inches minimum diameter or 4 ounces minimum weight. However, Size B may be handle if U.S. No. 1 grade.

(b) *Maturity (Skinning) requirements—All Varieties*—During the period beginning August 1 and ending December 31 each season, for U.S. No. 2 grade, not more than "moderately skinned," and for all other grades, not more than "slightly skinned"; thereafter no maturity requirements.

(c) *Inspection.* (1) No handler shall handle any potatoes for which inspection is required unless an appropriate inspection certificate has been issued with respect thereto and the certificate is valid at the time of shipment. For purpose of operation under this part it is hereby determined pursuant to paragraph (d) of § 948.40, that each inspection certificate shall be valid for a period not to exceed five days following the date of inspection as shown on the inspection certificate.

(2) No handler may transport or cause the transportation by motor vehicle of any shipment of potatoes for which an inspection certificate is required unless each shipment is accompanied by a copy of the inspection certificate applicable thereto and the copy is made available for examination at any time upon request.

(d) *Special purpose shipments.* (1) The grade, size, maturity and inspection requirements of paragraphs (a), (b), and (c) of this section shall not be applicable to shipments of potatoes for:

(i) Livestock feed;

(ii) Charity;

(iii) Canning, freezing, and "other processing" as hereinafter defined; and

(iv) Certified seed potatoes (§ 948.6).

(2) The maturity requirements set forth in paragraph (b) of this section shall not be applicable to shipments of potatoes for prepeeling.

(e) *Safeguards.* Each handler making shipments of potatoes pursuant to paragraph (d) of this section shall:

(1) Prior to shipment, apply for and obtain a Certificate of Privilege from the committee;

(2) Furnish the committee such reports and documents as required, including certification by the buyer or receiver on the use of such potatoes; and

(3) Bill each shipment directly to the applicable buyer or receiver.

(f) *Minimum quantity.* For purpose of regulation under this part, each person may handle up to but not to exceed 1,000 pounds of potatoes per shipment without regard to the requirements of paragraphs (a) and (b) of this section, but this exception shall not apply to any shipment of over 1,000 pounds of potatoes.

(g) *Definitions.* The terms "U.S. No. 1," "U.S. No. 2," "Size B," "moderately skinned" and "slightly skinned" shall have the same meaning as when used in the United States Standards for Grades of Potatoes (7 CFR 51.1540–51.1566) including the tolerances set forth therein. The term "prepeeling" means the commercial preparation in a prepeeling plant of clean, sound, fresh potatoes by washing, peeling or otherwise removing the outer skin, trimming, sorting, and properly treating to prevent discoloration preparatory to sale in one or more of the styles of peeled potatoes described in § 52.2422 United States Standards for Grades of Peeled Potatoes (7 CFR 52.2421–52.2433). The term "other processing" has the same meaning as the term appearing in the act and includes, but is not restricted to, potatoes for dehydration, chips, shoestrings, starch, and flour. It includes only that preparation of potatoes for market which involves the application of heat or cold to such an extent that the natural form or stability of the commodity undergoes a substantial change. The act of peeling, cooling, slicing, dicing, or applying material to prevent oxidation does not constitute "other processing." All other terms used in this section shall have the same meaning as when used in Marketing Agreement No. 97, as amended, and this part.

(h) *Applicability to imports.* Pursuant to section 8e of the act and § 980.1, "Import regulations" (7 CFR 980.1), round white varieties of Irish potatoes, except certified seed potatoes, imported into the United States during the period beginning August 1 and ending June 4 each season, shall meet the minimum grade, size, quality, and maturity requirements specified in paragraphs (a) and (b) of this section.

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

Dated: July 28, 1982, to become effective August 1, 1982.

D. S. Kuryloski,

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

[FR Doc. 82-20741 Filed 7-29-82; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 958

Onions Grown in Certain Designated Counties in Idaho and Malheur County, Oreg.; Handling Regulation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This continuing regulation requires fresh market shipments of onions grown in certain designated counties in Idaho and Malheur County, Oregon, to be inspected and meet minimum quality and size requirements. The regulation will promote orderly marketing of such onions and keep less desirable qualities and sizes from being shipped to consumers.

EFFECTIVE DATE: August 1, 1982.

FOR FURTHER INFORMATION CONTACT: Charles W. Porter, Chief, Vegetable Branch, F&V, AMS, USDA, Washington, D.C. 20250 (202) 447–2615. The Final Impact Statement relating to this rule is available upon request from Mr. Porter.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

Information collection requirements contained in this regulation (7 CFR Part 958) have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB #0581–0087.

This rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291 and has been designated a "nonmajor" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has determined that this action will not have a significant economic impact on a substantial number of small entities because it would not significantly affect costs for the directly regulated handlers.

Marketing Agreement No. 130 and Order No. 958, both as amended, regulate the handling of onions grown in certain designated counties in Idaho and Malheur County, Oregon. The program is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The Idaho-Eastern Oregon Onion Committee, established under the order, is responsible for its local administration.

This regulation is based upon recommendations made by the committee at its public meeting in Ontario, Oregon, on June 22, 1982.

The grade, size, pack, maturity and inspection requirements specified herein are similar to those which have been issued during past seasons. They are necessary to prevent onions of poor quality or undesirable sizes from being

distributed to fresh market outlets. They will benefit consumers and producers by standardizing and improving the quality of the onions shipped from the production area.

This regulation is designed to enable the Idaho-Eastern Oregon onion industry to better compete with other onion producing areas by establishing minimum quality standards for onions entering the fresh market. Exceptions are provided to recognize special situations in which these requirements would be inappropriate or unreasonable.

Shipments are permitted to certain special purpose outlets without regard to the grade, size, maturity, pack, and inspection requirements, provided that safeguards are met to prevent such onions from reaching unauthorized outlets. These special purpose shipments include those for planting, livestock feed, charity, dehydration, extraction and pickling since such shipments do not normally enter commercial fresh market channels and no useful purpose would be served by regulating such shipments. Onions for canning and freezing are exempt under the legislative authority for this part.

Requirements contained in this handling regulation, effective August 1, 1982, will continue in effect from marketing season to marketing season indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the committee or other information available to the Secretary. Heretofore, regulations issued under the marketing order were made effective for a single marketing season. The change to issue regulations which will continue in effect from marketing season to marketing season reflects the fact that regulations change infrequently from season to season and it is believed unnecessary to issue them for only a single season. In addition, this action could result in a reduction in operational costs to the committee and the government. Although the regulation will be effective for an indefinite period, the committee will continue to meet prior to or during each season to consider recommendations for modification, suspension, or termination of the regulation. Prior to making any such recommendations, the committee will submit to the Secretary a marketing policy for the season in accordance with § 958.50 of the order, including an analysis of supply and demand factors having a bearing on the marketing of the crop. Committee meetings are open to the public and interested persons may express their views at these meetings or may file comments with the Fruit and Vegetable Division before July 1 each year. The Department will evaluate committee recommendations and information submitted by the committee, comments filed, and other available information, and determine whether modification, suspension, or termination of the regulations on shipments of Idaho-Eastern Oregon onions would tend to effectuate the declared policy of the act.

Findings

After consideration of all relevant matter presented, including the proposal set forth in the notice, it is hereby found that the following handling regulation will tend to effectuate the declared policy of the act by setting the minimum quality, size, and inspection requirements which the Secretary has found should be maintained for orderly marketing.

It is hereby further found that good cause exists for not postponing the effective date of this section until 30 days after its publication in the **Federal Register** (5 U.S.C. 553) in that (1) shipments of onions grown in the production area will have begun by the effective date specified herein, (2) to maximize benefits to producers, this regulation should apply to as many shipments as possible during the marketing season, (3) notice was given in the **Federal Register** allowing interested persons to file written comments and none was received, and (4) compliance with this regulation, which is similar to regulations issued during previous seasons, requires no special preparation on the part of persons subject thereto which cannot be completed by the effective date herein.

List of Subjects in 7 CFR Part 958

Marketing agreements and orders, Onions, Idaho, Oregon.

PART 958—ONIONS GROWN IN CERTAIN DESIGNATED COUNTIES IN IDAHO, AND MALHEUR COUNTY, OREGON

Section 958.327 (46 FR 50044, October 9, 1981) is removed and a new § 958.328 is added as follows:

§ 958.328 Handling regulation.

During the period beginning August 1 and ending June 1 each season, no person may handle any lot of onions, except braided red onions, unless such onions are at least "moderately cured," as defined in paragraph (f) of this section, and meet the requirements of paragraphs (a) and (b) of this section, or unless such onions are handled in accordance with paragraphs (c) and (d) or (e) of this section.

(a) *Grade and size requirements.* —(1) *White varieties.* Shall be either:

(i) U.S. No. 2, 1 inch minimum to 2 inches maximum diameter; or

(ii) U.S. No. 2, if not more than 30 percent of the lot is comprised of onions of U.S. No. 1 quality, and at least 1½ inches minimum diameter; or

(iii) U.S. No. 1, at least 1½ inches minimum diameter.

However, none of these three categories of onions may be commingled in the same bag or other container.

(2) *Red varieties.* U.S. No. 2 or better grade, at least 1½ inches minimum diameter.

(3) *All other varieties.* Shall be either:

(i) U.S. No. 2 grade, at least 3 inches minimum diameter, if not more than 30 percent of the lot is comprised of onions of U.S. No. 1 quality; or

(ii) U.S. No. 1, 1½ inches minimum to 2¼ inches maximum diameter; or

(iii) U.S. No. 1, at least 2¼ inches minimum diameter.

However, none of these three categories of onions may be commingled in the same bag or other container.

(b) *Inspection.* No handler may handle any onions regulated hereunder unless such onions are inspected by the Federal-State Inspection Service and are covered by a valid applicable inspection certificate, except when relieved of such requirement pursuant to paragraph (c) or (d) of this section.

(c) *Special Purpose shipments.* The minimum grade, size, maturity, and inspection requirements of this section shall not be applicable to shipments of onions for any of the following purposes:

(1) Planting; (2) livestock feed; (3) charity; (4) dehydration; (5) canning; (6) freezing; (7) extraction; and (8) pickling.

(d) *Safeguards.* Each handler making shipments of onions for dehydration, canning, freezing, extraction or pickling pursuant to paragraph (c) of this section shall:

(1) First apply to the committee for and obtain a Certificate of Privilege to make such shipments;

(2) Prepare, on forms furnished by the committee, a report in quadruplicate on each individual shipment to such outlets authorized in paragraph (c) of this section;

(3) Bill or consign each shipment directly to the applicable processor; and

(4) Forward one copy of such report to the committee office and two copies to the processor for signing and returning one copy to the committee office. Failure of the handler or processor to report such shipments by promptly signing and returning the applicable report to the

committee office may be cause for cancellation of such handler's Certificate of Privilege and/or the processor's eligibility to receive further shipments pursuant to such Certificate of Privilege. Upon cancellation of any such Certificate of Privilege the handler may appeal to the committee for reconsideration.

(e) *Minimum quantity exemption.* Each handler may ship up to, but not to exceed, one ton of onions each day without regard to the inspection and assessment requirements of this part, if such onions meet minimum grade, size and maturity requirements of this section. This exception shall not apply to any portion of a shipment that exceeds one ton of onions.

(f) *Definitions.* The terms "U.S. No. 1" and "U.S. No. 2" have the same meaning as defined in the United States Standards for Grades of Onions (Other Than Bermuda-Granex-Grano and Creole Types), as amended (7 CFR 51.2830–51.2854), or the United States Standards for Grades of Bermuda-Granex-Grano Type Onions (7 CFR 51.3195–51.3209), whichever is applicable to the particular variety, or variations thereof specified in this section. The term "braided red onions" means onions of red varieties with tops braided (interlaced). The term "moderately cured" means the onions are mature and are more nearly well cured than fairly well cured. Other terms used in this section have the same meaning as when used in Marketing Agreement No. 130 and this part.

(g) *Applicability to imports.* Pursuant to section 8e of the act and § 980.117 *"Import regulations; onions"* (43 FR 5499); onions imported during the effective period of this section shall meet the grade, size, quality and maturity requirements specified in the introductory paragraph and paragraph (a) of this section.

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

Dated July 28, 1982, to become effective August 1, 1982.

D. S. Kuryloski,

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

[FR Doc. 82–20740 Filed 7–29–82; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 1207

Potato Research and Promotion Plan, Expenses and Rate of Assessment

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation authorizes expenses for the functioning of the National Potato Promotion Board. It enables the Board to collect assessments from designated handlers on assessable potatoes and to use the resulting funds for its expenses.

EFFECTIVE DATE: July 1, 1982.

FOR FURTHER INFORMATION CONTACT: Charles W. Porter, Chief, Vegetable Branch, F&V, AMS, USDA, Washington, D.C. 20250, (202) 447–2615. The Final Impact Analysis relating to this final rule is available upon request from Mr. Porter.

SUPPLEMENTARY INFORMATION: Information collection requirements contained in this regulation (7 CFR Part 1207) have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB #0581–0093.

This final rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291 and has been designated a "nonmajor" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has determined that this action will not have a significant economic impact on a substantial number of small entities because it would not significantly affect costs for the directly regulated handlers.

The Potato Board is the administrative agency established under the Potato Research and Promotion Plan (7 CFR 1207). This program is effective under the Potato Research and Promotion Act (7 U.S.C. 2611–2627).

Notice was published in the July 1 **Federal Register** (47 FR 28680) regarding the proposals. It afforded persons an opportunity to submit written comments not later than July 16, 1982. None was received.

After consideration of all relevant matters, including the proposal in the notice, it is found that the following expenses and rate of assessment should be approved.

It is further found that good cause exists for not postponing the effective date of this section until 30 days after publication in the **Federal Register** (7 U.S.C. 553) because this part requires that the rate of assessment for a particular period apply to all assessable potatoes from the beginning of such period.

List of Subjects in 7 CFR Part 1207

Administrative practice and procedure, Marketing agreements, Advertising, Agricultural research, Potatoes.

PART 1207—POTATO RESEARCH AND PROMOTION PLAN

§ 1207.410 [Removed]

Section 1207.410 (46 FR 48116, October 1, 1981) is hereby removed and § 1207.411 is added as follows:

§ 1207.411 Expenses and rate of assessment.

(a) The reasonable expenses that are likely to be incurred during the fiscal period beginning July 1, 1982, and ending June 30, 1983, by the National Potato Promotion Board for its maintenance and functioning and for such purposes as the Secretary determines to be appropriate will amount to $2,470,000.

(b) The rate of assessment to be paid by each designated handler in accordance with the provisions of the Plan shall be one cent ($0.01) per hundredweight of assessable potatoes handled by such person during said fiscal period.

(c) Unexpended income in excess of expenses for the fiscal period may be carried over as an operating monetary reserve.

(d) Terms used in this section have the same meaning as when used in the Potato Research and Promotion Plan.

(Title III of Pub. L. 91–670; 84 Stat. 2041; 7 U.S.C. 2611–2627)

Dated: July 27, 1982.

William T. Manley,

Deputy Administrator, Marketing Program Operations.

[FR Doc. 82–20685 Filed 7–29–82; 8:45 am]

BILLING CODE 3410–02–M

DEPOSITORY INSTITUTIONS DEREGULATION COMMITTEE

12 CFR Part 1204

[Docket No. D–0027]

Establishment of Interest Rates on Deposits Not Subject to Interest Rate Ceilings

AGENCY: Depository Institutions Deregulation Committee.

ACTION: Interpretive ruling.

SUMMARY: Effective December 1, 1981, Federally insured depository institutions were authorized by the Depository Institutions Deregulation Committee ("Committee") to offer to their IRA/Keogh depositors a new category of time deposit not subject to a Federal interest rate ceiling. In addition, effective May 1, 1982, the Committee authorized depository institutions to offer a new 3½ year or more category of time deposit not subject to a Federal interest rate

ceiling. Questions have arisen concerning the permissible methods by which depository institutions may establish interest rates on such accounts. At its June 29, 1982 meeting, the Committee voted to allow institutions complete discretion in establishing interest rates on deposit accounts not subject to interest rate ceilings.

EFFECTIVE DATE: June 29, 1982.

FOR FURTHER INFORMATION CONTACT: Elaine Boutilier, Attorney-Advisor, Department of the Treasury (202) 566–8737; Rebecca Laird, Senior Associate General Counsel, Federal Home Loan Bank Board (202) 377–6446; Mark Leemon, Attorney, Office of the Comptroller of the Currency (202) 447–1880; F. Douglas Birdzell, Counsel, or Joseph A. DiNuzzo, Attorney, Federal Deposit Insurance Corporation (202) 389–4147; or Paul S. Pilecki, Senior Attorney, Board of Governors of the Federal Reserve System (202) 452–3281.

List of Subjects in 12 CFR Part 1204

Banks, Banking.

SUPPLEMENTARY INFORMATION:

PART 1204—INTEREST ON DEPOSITS

Pursuant to its authority under Title II of the Depository Deregulation and Monetary Control Act of 1980 (94 Stat. 142; 12 U.S.C. 3501 *et seq.*), to prescribe rules governing the payment of interest and dividends on deposits of Federally insured commercial banks, savings and loan associations, and mutual savings banks, the Committee amends, effective June 29, 1982, Part 1204—Interest on Deposits (12 CFR Part 1204) by adding a new Section 201 to read as follows:

§ 1204.201 Establishment of interest rates on deposits not subject to interest rate ceilings.

(a) Effective December 1, 1981, Federally insured depository institutions were authorized by the Committee to offer to IRA/Keogh depositors a new category of time deposit with a maturity of 1½ years or longer not subject to a Federal interest rate ceiling (12 CFR 1204.118). As of May 1, 1982, the Committee also permitted depository institutions to offer a new deposit category with a maturity of 3½ years or longer not subject to interest rate ceilings (12 CFR 1204.119). The Committee's rules regarding these new deposit categories provide that the depository institution may pay interest at any rate as agreed to by the depositor. Subsequently, questions have arisen concerning the permissible methods of establishing interest rates on these accounts. The Board of Governors of the Federal Reserve System, the Federal Home Loan Bank Board, the Office of the Comptroller of the Currency and the Federal Deposit Insurance Corporation have required that all deposit contracts, including those applicable to deposit categories not subject to interest rate ceilings state explicitly either the specific rate to be paid on the deposit or an objectively verifiable method for determining the rate. The type of index that could be used to determine the rate payable on floating-rate time deposits was also limited to a verifiable index or rate outside the discretion of the institution. At its June 29, 1982 meeting, the Committee considered the issue of the extent to which depository institutions will have discretion in establishing interest rates for deposit categories that are not subject to interest rate ceilings limitations. The Committee determined that depository institutions may retain complete discretion in establishing interest rates on deposit categories that are not subject to interest rate ceilings. However, the Committee noted that advertising and other consumer protection requirements are not overriden by this interpretive ruling. It also expressed recognition that State contract laws would remain applicable to such deposit contracts.

(b) For example, depository institutions may contractually provide for completely negotiable rates on deregulated time deposits, which may or may not vary from time to time at the discretion of the depository institution. Alternatively depository institutions may set a minimum interest rate on a deposit not subject to interest rate regulations, and retain the option to pay a higher rate or a bonus any time during the maturity period of the account. This option, since it is nonbinding, is available irrespective of whether it is contained in the deposit contract. Institutions may also offer an account whose interest rate will float in accordance with any index, regardless of whether the index is within the control of the institution. Existing agency regulations providing that increases in rate within the discretion of the depository institution will constitute early withdrawals are hereby superseded to the extent that they conflict with this interpretation.

By order of the Committee.

Steven L. Skancke,

Executive Secretary.

[FR Doc. 82–20687 Filed 7–29–82; 8:45 am]

BILLING CODE 4810–25–M

CIVIL AERONAUTICS BOARD

14 CFR Part 241

[Reg. ER–1297; Amdt. 45 to Part 241; Docket 39077]

Uniform System of Accounts and Reports for Certificated Air Carriers; Reductions in Reporting Requirements

AGENCY: Civil Aeronautics Board.

ACTION: Final Rule.

SUMMARY: The CAB reduces for certificated air carriers the financial and statistical reporting requirements contained in the CAB Form 41 Report by eliminating several reporting schedules, revising the groupings of air carriers for reporting purposes and limiting the applicability of certain CAB Form 41 schedules. These actions will more closely align the data collected with the CAB's data needs.

DATES: Adopted: July 8, 1982. Effective: This rule is subject to OMB clearance for reporting requirements. The rule will become effective September 1, 1982, provided the Board receives OMB clearance. A notice will be issued of OMB's decision.

FOR FURTHER INFORMATION CONTACT: Jack M. Calloway or M. Clay Moritz, Data Requirements Section, Information Management Division, Office of Comptroller, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428, (202) 673–6042.

SUPPLEMENTARY INFORMATION: In a notice of proposed rulemaking issued December 18, 1980, the Board proposed to reduce the reporting requirements contained in its CAB Form 41 Report (EDR–417, 45 FR 85064, December 24, 1980). This proposal was intended to benefit all certificated air carriers by reducing their current level of financial and statistical reporting. These reductions were to be accomplished by:

1. Eliminating ten CAB Form 41 schedules;

2. Limiting the applicability of certain CAB Form 41 schedules to more closely align data collected with the Board's data needs;

3. Consolidating several CAB Form 41 statistical schedules and thereby reducing the number of data items and the overall number of schedules filed;

4. Reducing significantly the level of reporting for the smaller certificated air carriers; and

5. Raising the revenue boundaries between carrier groups to reflect industry revenue growth and the effects of inflation.

Fifteen comments, including one reply comment, were received in response to the rulemaking notice. Of the fifteen, eight were from certificated air carriers,[1] four from manufacturers of commercial airframes and engines,[2] and one each from the Aerospace Industries Association of America, Inc. (AIA), and the New York State Department of Transportation. The reply comment was filed by Delta Air Lines, Inc. The comments generally support the reporting relief proposed in EDR–417, but a majority of them suggest certain modifications to the proposed changes. These modifications are discussed below under separate captions.

Elimination of CAB Form 41 Schedules P–2(a) and T–7

Of the ten CAB Form 41 schedules proposed for elimination,[3] Schedules P–2(a), "Revenue Market Report" and T–7, "Statistical Market Report" are the only ones to receive any support for retention. The AIA, American, Douglas and Lockheed all object to the elimination of P–2(a) and T–7.

The AIA, Douglas and Lockheed indicate that both schedules are useful in industry analyses and in maintaining a historical data base; however, none of the three comments support retention on a "must have" basis. American, on the other hand, supports the retention of both schedules because they are useful in developing information on competitors and the composition of markets in important entities. Furthermore, American states that the schedules are useful to the Board in monitoring the effects of deregulation.

Delta filed a reply comment opposing American's support for retaining P–2(a) and T–7. In rebutting American's position, Delta states that the original purpose of both schedules was to enable the Board to fulfill its regulatory functions and that it was not their purpose to provide detailed market data to competitors. Delta also states that EDR–417 inherently reflects the fact that the Board no longer needs the P–2(a) and T–7 data to perform regulatory functions and that carriers should not be forced to provide sensitive data for use by their competitors.

We have decided to eliminate both schedules. The Board no longer has a regulatory need for geographic revenue data as reported on Schedule P–2(a) or traffic data as reported on Schedule T–7. Nevertheless, traffic data by geographic area can still be extracted from service segment reports.

Consolidation of Accounts on Schedule P–5.2

The AIA, Boeing, Douglas, Lockheed, and Pratt & Whitney comments oppose the proposed consolidation of the airframe and aircraft engine maintenance expense accounts shown on Schedule P–5.2, "Aircraft Operating Expenses." Their comments state that these cost data are used in both projecting cost estimates for aircraft design analyses and in analyzing cost trends for current products. Because the airframe and engine cost data used in these analyses relate to products of totally distinct manufacturers, each needing its own separate data base, the above organizations strongly object to consolidating airframe and engine maintenance expense data on Schedule P–5.2.

Beyond the obvious benefits accruing to airframe and aircraft engine manufacturers from the separate reporting of airframe and engine data, we have also considered the uncertainty surrounding the post-sunset data needs of continuing programs. Changing maintenance expense reporting now and again for the post-sunset environment could actually increase carrier burden by requiring two reporting system changes within a relatively short period of time. Furthermore, carriers may experience only a minimal reduction in reporting burden if the proposed changes are made, since they would still be maintaining separate accounts for airframe and engine maintenance data in their accounting systems. For these reasons, we have decided not to consolidate the reporting of airframe and aircraft engine maintenance expense data on Schedule P–5.2.

We have also decided not to eliminate Schedule P–5.1 "Aircraft Operating Expenses." This schedule is now filed by Group I air carriers and contains less detail than Schedule P–5.2 due to a higher level of account summarization. Under EDR–417, not changing Schedule P–5.2 would force all Group I air carriers that receive section 406 subsidy or have annual revenues of $10 million or more to revise their accounting systems to collect more detailed cost data solely for the purpose of complying with the Schedule P–5.2 reporting requirements. To avoid this unnecessary burden, we have decided to retain Schedule P–5.1 for these carriers. Because of this, the revised Schedule P–5.1 that was proposed in EDR–417 as a minimum level of reporting for all Group I air carriers with annual revenues below $10 million and not receiving section 406 subsidy, has been redesignated as Schedule P–5.1(a) in the final rule.

Consolidation of Traffic and Capacity Statistical Reporting Schedules

Nine of the fifteen comments object to the proposed consolidation of eight Form 41 statistical schedules into four schedules. The changes were to be accomplished by combining service classes and dropping or combining statistical data elements.

Braniff, Delta, Frontier and United object to the proposed changes as being very burdensome, considering the reprogramming effort needed to change their current automated report generation systems. Braniff and Delta estimate that it would cost $15,000 to $20,000 to reprogram for the proposed change. Once the reprogramming is accomplished, these carriers foresee no significant reduction in the level of burden needed to generate the reports currently being filed.

While not objecting to the concept of consolidating the statistical schedules, the AIA, American, Boeing, Douglas, and TWA did suggest certain modifications to the proposed changes that would retain several of the individual data elements that were targeted for elimination.

We have decided not to adopt the proposed consolidation of the statistical schedules. Our decision is based on consideration of the above comments and our concern that other changes may be required for the post-sunset era; thus, carriers would be making two changes to their statistical reporting systems within a relatively short period of time causing a further increase in burden with no increase in benefits.

Consideration of the Board's data requirements in the post-sunset environment has also caused us to drop the proposed Schedule T–2.1, "Traffic, Capacity, Aircraft Operations and Miscellaneous Statistics by Type of Aircraft" from the final rule. This schedule, along with the filing of a Schedule T–9, "Nonstop Market Report," was intended to enable Group I air

[1] American Airlines, Inc. (American), Braniff International (Braniff), Delta Air Lines, Inc., (Delta), Eastern Air Lines, Inc. (Eastern), Frontier Airlines, Inc. (Frontier), Transamerica Airlines, Inc. (Transamerica), Trans World Airlines, Inc. (TWA) and United Air Lines, Inc. (United).

[2] Boeing Commercial Airplane Company (Boeing), Lockheed-California Company (Lockheed), McDonnell Douglas Corporation (Douglas) and Pratt & Whitney Aircraft Group—United Technologies (Pratt & Whitney).

[3] Schedules A–2, "Controlling Person's Certification;" B–7(a), "Reinvestment of Flight Equipment Capital Gains;" B–8(a), "Flight Equipment Capital Gains Invested or Deposited for Reinvestment in Flight Equipment;" P–1.1, "Statement of Operations—Group I Air Carriers;" P–2(a), "Revenue Market Report;" P–3.1, "Transport Revenues;" P–5.1, "Aircraft Operating Expenses;" P–12, "Fuel Inventories and Consumption;" T–3.1, "Statement of Traffic and Capacity Statistics;" and T–7, "Statistical Market Report."

carriers to reduce their reporting burden by eliminating the need for these carriers to continue reporting their traffic and capacity statistics on Schedules T–1, T–2, and T–3. We believe that changing a carrier's statistical reporting system at this time and then again to reflect post-sunset requirements would effectively increase carrier burden over the long run. In keeping with this rationale, we have also decided to retain the current monthly filing of Schedule T–9. The net effect of not adopting Schedule T–2.1 and the proposed quarterly filing of Schedule T–9 is that existing carrier reporting responsibilities will not increase but merely continue at the current level.

Groupings for Certificated Air Carriers

EDR–417 also proposed to revise the operating revenue boundaries that are used to group similarly sized certificated carriers for the purpose of establishing the level of detailed data that each group must maintain and report. Eastern filed a comment suggesting that the size of the markets served, rather than total operating revenues, should be used to determine a carrier's level of reporting. Eastern feels that all carriers serving the largest markets should be subject to equal reporting requirements, particularly for service segment data reporting. Currently, Group III air carriers file service segment data, which contains traffic data by flight, while nonsubsidized Group I and Group II carriers report traffic data aggregated by service segment and aircraft type on CAB Form 41 Schedule T–9, "Nonstop Market Report."

Forcing small carriers to significantly increase their reporting burden in order to file the detailed service segment data that Eastern seeks would not be consistent with the provisions of the Regulatory Flexibility Act, Pub. L. 96–354, which calls for relating an agency's regulatory and informational requirements to the size of the businesses being regulated. Moreover, the Board's adoption of Order 81–12–9 on December 1, 1981, which grants limited confidential treatment for service segment data reports, should diminish Eastern's concern over the two levels of traffic reporting. With these factors in mind, we have not included Eastern's suggestion in the final rule.

We have also decided not to adopt Eastern's suggestion that carriers automatically be reclassified within the carrier groupings every six months because this approach would not allow the consideration of other relevant factors, such as whether revenue fluctuations are temporary or permanent, in making a reclassification decision. Despite rejecting the automatic reclassification of carriers, the final rule does provide for the issuance of a semiannual update of the carrier groupings by the Office of Comptroller.

Finally, it should be noted that we have not eliminated Section 04 "Air Carrier Groupings and Standard Name Abbreviations" from the final rule. Section 04 has been renamed "Air Carrier Groupings" and revised to contain the new revenue boundaries used in grouping carriers. An initial list of carrier groupings, that reflects the new revenue boundaries, is provided below. This list is based on the total operating revenues for the twelve months ended September 30, 1981.

CARRIER GROUPINGS BASED ON TOTAL OPERATING REVENUES

Name	Abbreviation	Authority			Section 406 subsidy	Operating entity
		Section 401		Section 418		
		Route	Charter	All-cargo		
Group III Air Carriers:						
Air California	Air California	Yes	Yes			Domestic.
Air Florida, Inc	Air Florida	Yes	Yes			Domestic, Atlantic, Latin America
American Airlines, Inc	American	Yes		Yes		Domestic, Latin America.
Continental Air Lines, Inc	Continental	Yes		Yes		Domestic, Pacific, Latin America.
Delta Air Lines, Inc	Delta	Yes		Yes		Domestic, Atlantic, Latin America.
Eastern Air Lines, Inc	Eastern	Yes				Domestic, Latin America.
Flying Tiger Lines, Inc., The	Flying Tiger	Yes		Yes		Domestic, Atlantic, Pacific.
Frontier Airlines, Inc	Frontier	Yes		Yes	Yes	Domestic.
Northwest Airlines, Inc	Northwest	Yes		Yes		Domestic, Atlantic, Pacific.
Ozark Air Lines, Inc	Ozark	Yes		Yes	Yes	Domestic.
Pacific Southwest Airlines	Pacific Southwest	Yes	Yes			Domestic.
Pan American World Airways, Inc	Pan American	Yes		Yes		Domestic, Atlantic, Pacific, Latin America.
Piedmont Aviation, Inc	Piedmont	Yes		Yes	Yes	Domestic.
Republic Airlines, Inc.[1]	Republic	Yes			Yes	Domestic.
Southwest Airlines Co.	Southwest	Yes				Domestic.
Texas International Airlines, Inc	Texas	Yes				Domestic.
Transamerica Airlines, Inc	Transamerica	Yes	Yes	Yes		Domestic, International.
Trans World Airlines, Inc	Trans World	Yes		Yes		Domestic, Atlantic.
United Air Lines, Inc	United	Yes		Yes		Domestic.
US Air, Inc. d/b/a USAIR	USAIR	Yes		Yes		Domestic.
Western Air Lines, Inc	Western	Yes		Yes		Domestic, Latin America.
World Airways, Inc	World	Yes	Yes	Yes		Domestic, Atlantic.
Group II Air Carriers:						
Alaska Airlines, Inc	Alaska	Yes		Yes	Yes	Domestic.
Aloha Airlines, Inc	Aloha	Yes				Domestic.
Capitol Air, Inc	Capitol	Yes	Yes	Yes		Domestic, Atlantic, Latin America.
Hawaiian Airlines, Inc	Hawaiian	Yes		Yes		Domestic.
Wien Air Alaska, Inc	Wien	Yes		Yes	Yes	Domestic.
Group I Air Carriers: Total Operating Revenues Over $10 Million:						
Air Midwest, Inc	Air Midwest	Yes			Yes	Domestic.
Air Wisconsin, Inc	Air Wisconsin	Yes		Yes		Domestic.
Alaska International Air, Inc	Alaska International	Yes		Yes		Domestic.
Altair Airlines, Inc	Altair	Yes				Domestic.
American International Airways, Inc	American International		Yes			Domestic, International.
Aspen Airways, Inc	Aspen	Yes				Domestic.
Britt Airways, Inc	Britt	Yes				Domestic.
Cascade Airways, Inc	Cascade	Yes				Domestic.
Empire Airlines, Inc	Empire	Yes				Domestic.
Evergreen International Airlines, Inc	Evergreen	Yes	Yes	Yes		Domestic, International.
Golden West Airlines Co. d/b/a Golden West Airlines.	Golden West	Yes				Domestic.
Midway Airlines, Inc	Midway	Yes				Domestic.

CARRIER GROUPINGS BASED ON TOTAL OPERATING REVENUES—Continued

Name	Abbreviation	Authority			Section 406 subsidy	Operating entity
		Section 401		Section 418		
		Route	Charter	All-cargo		
Mississippi Valley Airlines, Inc	Mississippi Valley	Yes				Domestic.
Muse Air Corporation	Muse	Yes				Domestic.
New York Airlines, Inc. d/b/a New York Air	NY Air	Yes				Domestic.
People Express Airlines, Inc	People Express	Yes				Domestic.
Reeve Aleutian Airways, Inc	Reeve	Yes				Domestic.
Rocky Mountain Airways, Inc	Rocky Mountain	Yes				Domestic.
Rosenbalm Aviation, Inc	Rosenbalm		Yes			Domestic, International.
Southern Air Transport, Inc	Southern		Yes	Yes		Domestic, International.
Zantop International Airlines, Inc	Zantop International		Yes	Yes		Domestic, International.
Total Operating Revenues Under $10 Million and Receives Section 406 Subsidy:						
Kodiak Western Alaska Airlines, Inc.	Kodiak	Yes			Yes	Domestic.
Sky West Aviation, Ind. d/b/a Sky West Airlines	Sky West	Yes		Yes	Yes	Domestic.
Total Operating Revenues Under $10 Million and Does Not Receive Section 406 Subsidy:						
Aeromech, Inc	Aeromech	Yes				Domestic.
Aerostar Airlines, Inc. d/b/a Aerostar Airlines	Aerostar		Yes			Domestic, International.
Air Nevada Airlines, Inc	Air Nevada	Yes				Domestic.
ANA, Ltd. d/b/a Air North	Air North	Yes				Domestic.
Air United States, Inc	Air U.S.	Yes				Domestic.
American Trans Air, Inc	American Trans Air		Yes			Domestic, International.
Arrow Airways, Inc	Arrow		Yes	Yes		Domestic, International.
Big Sky Transportation Company d/b/a Big Sky Airlines, Inc.	Big Sky	Yes				Domestic.
Challenge Air Transport, Inc	Challenge	Yes	Yes	Yes		Domestic, International.
Cochise Airlines, Inc	Cochise	Yes				Domestic.
Colgan Airways Corporation	Colgan	Yes				Domestic.
Delta Development Corporation d/b/a Western Yukon Air.	Western Yukon	Yes				Domestic.
Elan Air Corp	Elan		Yes	Yes		Domestic, International.
Evergreen Helicopters of Alaska, Inc	Evergreen Helicopters	Yes				Domestic.
Global International Airways, Corp	Global		Yes	Yes		Domestic, International.
Great American Airways, Inc	Great American		Yes			Domestic, International.
Gulf Air Transport, Inc	Gulf		Yes			Domestic, International.
Guy-America Airways, Inc. a/k/a American Overseas Airways.	Guy-America	Yes				Latin America.
Imperial Airlines, Inc	Imperial	Yes				Domestic.
Jet America	Jet America	Yes				Domestic.
L.A.B. Flying Service, Inc	LAB	Yes				Domestic.
Marco Island Airways, Inc	Marco	Yes				Domestic.
Mid-South Airlines, Inc	Mid-South	Yes				Domestic.
Midstate Airlines, Inc	Midstate	Yes				Domestic.
Munz Northern Airlines, Inc	Munz	Yes				Domestic.
Newair Flight, Inc	Newair	Yes				Domestic.
Northeastern International Airways, Inc	Northeastern	Yes	Yes			Domestic, International.
Peninsula Airways, Inc	Peninsula	Yes				Domestic.
Rich International Airways, Inc	Rich	Yes	Yes	Yes		Domestic, International.
Sea Airmotive, Inc	Sea	Yes				Domestic.
South Pacific Island Airways, Inc	South Pacific	Yes				Pacific.
T-Bird Air, Inc	T-Bird		Yes			Domestic, International.
United Air Carriers, Inc. d/b/a Overseas National Airways.	Overseas		Yes			Domestic, International.
WestAir Jet, Inc. d/b/a Pacific Express	Pacific Express	Yes				Domestic.
Wright Air Lines, Inc	Wright	Yes		Yes		Domestic.
Yukon Air Service, Inc. d/b/a Air North and Nenama Air Service.	Air North/Nenana	Yes				Domestic.

[1] Includes Republic Airlines West, Inc.

Entity Reporting by Charter Carriers

The final major issue raised by the comments is Transamerica's concern over the proposed full entity reporting for charter carriers, which requires these carriers to distinguish between domestic and international operations for reporting purposes. The thrust of this is to recognize that many charter carriers are now engaged in scheduled service and that scheduled service represents an increasing proportion of their total operations.

Transamerica, however, states that during 1980 scheduled service accounted for only five percent of the revenue ton-miles flown in its total operations and that the carrier does not anticipate any change in this relationship in the immediate future. Transamerica further states that the impact of its scheduled service operations in any industry analysis of charter carrier operations would be insignificant and that forcing it to make the necessary allocations would be very burdensome. Finally, Transamerica suggests that reporting criteria be established to ensure the collection of entity data from charter carriers only when meaningful data will be derived from the allocation process.

We understand Transamerica's concern about the costs associated with implementing an entity reporting system. However, with the changes that have occurred within the industry since deregulation, we believe all certificated carrier reporting should be on the same basis. As a result of deregulation, charter carriers can apply for a certificate to provide scheduled service, and some of them now provide such service in excess of their charter operations. At the same time, schedule service carriers no longer have restrictions on the volume of off-route charter operations that they can perform. Clearly, the lines of difference between certificated route carriers and certificated charter carriers are diminishing. With this in mind and to facilitate the comparability of data through uniform reporting, the final rule requires charter carriers to report on an entity basis.[4]

[4] This action does not preclude Transamerica from requesting a waiver from this requirement under Section 1–2 of this part.

Editorial Amendment

Section 26, General Corporate Elements, was last amended by ER–1188 on July 17, 1980 (45 FR 48867, July 22, 1980). In the process of changing Title 14 of the Code of Federal Regulations, Section 26 was inadvertently revoked and reserved. To correct this oversight, the attached final rule restores Section 26 to Part 241.

The requirements contained in this regulation are subject to clearance by the Office of Management and Budget. We will publish a notice of the outcome of the OMB review as soon as it is completed.

The authority citation is amended to conform with Federal Register Guidelines.

List of Subjects in 14 CFR Part 241

Air carriers, and Uniform System of Accounts and Reports.

PART 241—UNIFORM SYSTEM OF ACCOUNTS AND REPORTS FOR CERTIFICATED AIR CARRIERS

Final Rule

Accordingly, the Civil Aeronautics Board amends 14 CFR Part 241, *Uniform System of Accounts and Reports for Certificated Air Carriers* as follows:

1. The authority for Part 241 is amended to read:

Authority: Secs. 204, 401, 407, 416, 417, 901, 902, 1002, Pub. L. 85–726, as amended, 72 Stat. 743, 754, 766, 771, 783, 784, 788, 76 Stat. 145 (49 U.S.C. 1324, 1371, 1377, 1386, 1387, 1471, 1472, and 1482).

2. The Table of Contents is amended by revising the title of Section 04 now entitled *Air Carrier Groupings and Standard Name Abbreviations* to read:

04 Air Carrier Groupings.

3. Section 04, *Air Carrier Groupings and Standard Name Abbreviations*, is retitled and revised to read:

Section 04—Air Carrier Groupings

(a) All certificated air carriers are placed into three basic air carrier groupings based upon their level of operations and the nature of these operations. In order to determine the level of operations, total operating revenues for a twelve month period are used. The following operating revenue ranges are used to establish air carrier groupings:

Carrier group	Total annual operating revenues
I	0–$75,000,000
II	$75,000,001–$200,000,000
III	$200,000,001+

For reporting purposes, Group I air carriers are further divided into three subgroups: (1) air carriers with total annual operating revenues between $10,000,000 and $75,000,000; (2) air carriers with total annual operating revenues below $10,000,000 that receive subsidy payments under section 406 of the Act, and (3) air carriers with total annual operating revenues below $10,000,000 that do not receive subsidy payments under section 406 of the Act.

(b) Both the criteria for establishing air carrier groupings and the assignment of each air carrier to a specific group of carriers will be reviewed periodically by the Comptroller to assure the maintenance of appropriate standards for the grouping of carriers. When an air carrier's level of operations passes the upper or lower limits of its currently assigned carrier grouping, the carrier is not automatically transferred to a different group and a new level of reporting. The Office of Comptroller will issue an updated listing of the carrier groups on a semiannual basis. A carrier may petition for reconsideration of its assigned carrier grouping or request a waiver from the accounting and reporting requirements that are applicable to a particular group under the provisions of Section 1–2 of this Uniform System of Accounts and Reports.

4. Section 21, is amended by deleting the list of air carriers from paragraph (i) and by revising paragraphs (h) and (i) to read:

Section 21—Introduction to System of Reports

* * * * *

(h) Two separate entities shall be established for air carriers predominantly engaged in conducting charter activities for the purpose of submitting the prescribed reports: (1) domestic operations, and (2) international operations. The domestic entity includes all operations within and between the 50 States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the United States Virgin Islands. All other operations will be in the international entity.

(i) The entities for which separate reports shall be made by the different route and charter air carriers will be set semiannually by the Board's Comptroller.

5. Section 22, is amended by revising the List of Schedules in CAB Form 41 Report and the Due Dates of Schedules in CAB Form 41 Report in paragraph (a), and by revising paragraphs (b) and (e) to read:

Section 22—General Reporting Instructions

(a) * * *

LIST OF SCHEDULES IN CAB FORM 41 REPORT

Schedule No.	Title	Filing frequency	Applicability by carrier group		
			I	II	III
A	Certification	Q	(1)	X	X
B–1	Balance Sheet	Q	(1)	X	X
B–1.1	Balance Sheet for Small Air Carriers	S–A	(1)		
B–3	Statement of Changes in Stockholder Equity	Q		X	X
B–5	Property and Equipment	Q	(1)	(1)	(1)
B–7	Airframes and Aircraft Engines Acquired	Q		(1)	(1)
B–7(b)	Flight Equipment Acquired	Q	(1)	(1)	(1)
B–8	Property and Equipment Retired	Q	(1)	X	X
B–10	Unamortized Developmental and Preoperating Costs	Q	(1)	(1)	(1)
B–12	Statement of Changes in Financial Position	Q	(1)	X	X
B–13	Summary of Projected Financial Commitments and Related Deposits	Q	(1)	X	X
B–41	Receivables, Payables and Investments Relating to Affiliates and Other Investment Data.	A	(1)	X	X
B–43	Inventory of Airframes and Aircraft Engines	A	(1)	X	X
B–43.1	Aircraft Inventory Data—Small Air Carriers	A	(1)		
B–46	Long-Term and Short-Term Nontrade Debt	A	(1)	(1)	X
P–1.1	Statement of Operations for Small Air Carriers	S–A	(1)		
P–1.2	Statement of Operations	Q	(1)	X	X
P–1(a)	Interim Operations Report	M	X	X	X
P–2	Notes to CAB Form 41 Report	Q	(1)	X	X
P–3	Transport Revenues; Depreciation and Amortization; Nonoperating Income and Expense (Net).	Q	(1)	X	X
P–3(a)	Income Taxes	Q			X
P–4	Transport-related Revenues and Expenses; Explanation of Extraordinary Items and Cumulative Effect of Accounting Changes on Prior Years; Explanation of Prior Period Adjustments and Dividends Declared.	Q	(1)	(1)	(1)
P–5.1	Aircraft Operating Expenses	Q	(1)		
P–5.2	Aircraft Operating Expenses	Q		X	X
P–5.1(a)	Statement of Aircraft Operating Expenses for Small Air Carriers	S–A	(1)		
P–5(a)	Components of Flight Equipment Depreciation	Q	(1)	(1)	(1)
P–6	Maintenance, Passenger Service and General and Administrative Expense Functions.	Q	(1)	X	X
P–7	Aircraft and Traffic Servicing, and Promotion and Sales Expense Functions—Group II and Group III Air Carriers.	Q		X	X
P–8	Aircraft and Traffic Servicing, and Promotion and Sales Expense Subfunctions—Group III Air Carriers.	Q			X

LIST OF SCHEDULES IN CAB FORM 41 REPORT—Continued

Schedule No.	Title	Filing frequency	Applicability by carrier group		
			I	II	III
P-10	Employment Statistics by Labor Category	A	(1)	X	X
P-12(a)	Fuel Consumption by Type of Service and Specific Operational Markets	M	(1)	X	X
T-1(a)	Traffic and Capacity Statistics by Class of Service	M	X	X	X
T-1(b)	Traffic and Capacity Statistics by Class of Service—Scheduled Services	M		X	X
T-1(c)	Traffic and Capacity Statistics by Class of Service—Nonscheduled Services	M		X	X
T-2(a)	Traffic, Capacity, Aircraft Operations and Miscellaneous Statistics by Type of Aircraft.	Q	X	X	X
T-2(b)	Traffic, Capacity, Aircraft Operations, and Miscellaneous Statistics by Type of Aircraft.	Q	X	X	X
T-3(a)	Airport Activity Statistics—Revenue Service	Q	X	X	X
T-3(b)	Airport Activity Statistics—Revenue Service	Q	X	X	X
T-3(c)	Airport Activity Statistics—Nonscheduled Revenue Service	Q	X	X	X
T-6	Report of Civil Aircraft Charters	Q	(5)	(5)	X
T-8	Report of All-Cargo Operations	S-A	(6)	(6)	(6)
T-9	Nonstop Market Report	M	(1)	(1)	
G-41	Persons Holding More Than 5 Per Centum of Respondent's Capital Stock	A	(1)	X	X

M=Monthly. Q=Quarterly. S-A=Semiannually. A=Annually. X=All carriers.
[1] Applicable to Group I air carriers receiving section 406 subsidy and Group I air carriers with annual operating revenues of $10 million or more.
[2] Applicable to Group I air carriers with annual operating revenues below $10 million who do not receive section 406 subsidy.
[3] Applicable only to air carriers receiving section 406 subsidy.
[4] Applicable to air carriers who do not receive section 406 subsidy.
[5] Applicable to charter carriers.
[6] Applicable to carriers conducting all-cargo operations.

DUE DATES OF SCHEDULES IN CAB FORM 41 REPORT

Due dates[1]	Schedule No.
Jan. 20	P-1(a).
Jan. 30	P-1(a), T-1, T-2, T-3, T-6, T-9.
Feb. 10[2]	A, B-1, B-1.1, B-3, B-5, B-7, B-7(b), B-8, B-10, B-12, B-13, P-1.1, P-1.2, P-2, P-3, P-3(a), P-4, P-5.1, P-5.2, P-5.1(a), P-5(a), P-6, P-7, P-8, P-10.
Feb. 20	P-12(a).
Mar. 1	P-1(a), T-1, T-9.
Mar. 20	P-12(a).
Mar. 30	B-41, B-43, B-43.1, B-46, P-1(a), G-41, T-1, T-8, T-9.
Apr. 20	P-12(a).
Apr. 30	P-1(a), T-1, T-2, T-3, T-6, T-9.
May 10	A, B-1, B-3, B-5, B-7, B-7(b), B-8, B-10, B-12, B-13, P-1.2, P-2, P-3(a), P-4, P-5.1, P-5.2, P-5(a), P-6, P-7, P-8.
May 20	P-12(a).
May 30	P-1(a), T-1, T-9.
June 20	P-12(a).
June 30	P-1(a), T-1, T-9.
July 20	P-12(a).
July 30	P-1(a), T-1, T-2, T-3, T-6, T-9.
Aug. 10	A, B-1, B-1.1, B-3, B-5, B-7, B-7(b), B-8, B-10, B-12, B-13, P-1.1, P-1.2, P-2, P-3, P-3(a), P-4, P-5.1, P-5.2, P-5.1(a), P-5(a), P-6, P-7, P-8, T-8.
Aug. 20	P-12(a).
Aug. 30	P-1(a), T-1, T-9.
Sept. 20	P-12(a).
Sept. 30	P-1(a), T-1, T-9.
Oct. 20	P-12(a).
Oct. 30	P-1(a), T-1, T-2, T-3, T-6, T-9.
Nov. 10	A, B-1, B-3, B-5, B-7, B-7(b), B-8, B-10, B-12, B-13, P-1.2, P-2, P-3, P-3(a), P-4, P-5.1, P-5.2, P-5(a), P-6, P-7, P-8.
Nov. 20	P-12(a).
Nov. 30	P-1(a), T-1, T-9.
Dec. 20	P-12(a).
Dec. 30	P-1(a), T-1, T-9

[1] Due dates falling on a Saturday, Sunday or national holiday will become effective the first following work day.
[2] B and P reporting due dates are extended to March 30 if preliminary schedules are filed at the Board by February 10.

(b) Each air carrier shall file the applicable schedules of the CAB Form 41 Report with the Civil Aeronautics Board in accordance with the above instructions with the following exceptions:

(1) The time for filing B and P report schedules for the final quarter or semiannual period of each calendar year may be extended to the following March 30 if the preliminary Schedules B–1, B–1.1, P–1.1 or P–1.2, P–3 and P–3(a) are submitted, as applicable, and are received on or before their respective due dates.

(2) For the third month of any calendar quarter, Schedule P–1(a) need not be filed if Schedule P–1.1 or P–1.2 for the quarter or semiannual period, as applicable, is received on the due date prescribed for Schedule P–1(a).

(3) Income and expense data on Schedule P–1(a) for each month will be withheld by the Board from public disclosure, until such time as (i) the semiannual or quarterly financial reports are due, (ii) the semiannual or quarterly financial reports are filed, or (iii) information covered by monthly reports is publicly released by the carrier concerned, whichever occurs first. Before that time, income and expense data reported on Schedule P–1(a) will be disclosed to parties to any proceeding before the Board to the extent that such data are relevant and material to the issues in the proceeding upon a determination to this effect by the administrative law judge assigned to the case or by the Board. Any data to which access is granted may be introduced into evidence, subject to the normal rules of admissibility of evidence. The Board will make other disclosure of these data upon its own motion or upon application of any interested person, when the Board finds the public interest so requires. The Board may, from time to time, publish summary information compiled from Schedule P–1(a) in a form which will not identify the individual carrier. At the request of an air carrier, and upon a showing by such air carriers that public disclosure of its preliminary year-end report would adversely affect its interests and would not be in the public interest, the Board will withhold such preliminary year-end report from public disclosure until such time as (i) the final report is filed, (ii) the final report is due, or (iii) information covered by the preliminary report is publicly released by the carrier concerned, whichever occurs first.

* * * * *

(e) All financial data reported on B, P and G schedules shall reflect the status of the air carrier's books of account for the period for which the report is being made and shall conform to the instructions contained in this Uniform System of Accounts and Reports. At the option of the air carrier, Group III air carriers may round reported financial data to the nearest thousands of dollars by typing "($000)" at the top of each amount column. All Group I and Group II air carriers may, at their option, round reported financial data to the nearest whole dollars by dropping the cents. All rounded amounts must be balanced within and between schedules. This option applies only to the submission of hardcopy reports. Instructions for the submission of data in ADP format are contained in the *Manual of ADP Instructions, Outputs, Codes and Related Material,* which is available from the Board's Information Management Division.

* * * * *

Section 23 [Amended]

6. Section 23, *Certification and Balance Sheet Elements,* is amended by:

A. Removing the title and reporting instructions for Schedule A–2, *Controlling Person's Certification.*

B. Revising paragraph (a) of the reporting instructions for Schedule B–1 to read:

Schedule B–1—Balance Sheet

(a) This schedule shall be filed by Group II and Group III air carriers and Group I air carriers that receive section 406 subsidy or have annual operating revenues of $10 million or more.

* * * * *

C. Adding an account title and reporting instructions for a new Schedule B–1.1 immediately following the reporting instructions for Schedule B–1 to read:

Schedule B–1.1—Balance Sheet for Small Air Carriers

(a) This schedule shall be filed semiannually by Group I air carriers with annual operating revenues below

$10 million that do not receive section 406 subsidy.

(b) Each carrier shall insert in the space provided for "OAG Code" its carrier code as contained in the Official Airlines Guide (OAG). If the OAG does not contain a carrier code for the reporting carrier, a code will be provided by the Board's Information Management Division upon request. This code will then be inserted in the space provided for "carrier code."

(c) This schedule shall show the account balances at the close of business on June 30 or December 31, as applicable, of each semiannual reporting period.

(d) "Current Assets" shall include all resources that may reasonably be expected to be realized in cash or sold or consumed within one year. This group of assets is classified into three basic accounts:

(1) "Cash and Equivalents" shall include cash on hand and on deposit, U.S. Government securities, and other temporary cash investments.

(2) "Notes and Accounts Receivable-Net" shall include general traffic accounts receivable, government receivables, notes and receivables from associated companies, officers, employees and others, and a deduction for a reasonable allowance for bad debts.

(3) "Other Current Assets" shall contain all other current assets not provided for in the above classifications. This account shall include, but is not limited to, short-term prepayments, expendable spare parts, supplies and other inventories of flight equipment replacement parts that are usually replaced rather than repaired, and materials and supplies held in stock, such as fuel and oil, expendable tools, office supplies and food service supplies. Spare parts may be reduced by an allowance for obsolescence to provide for losses in value.

(e) "Property and Equipment" shall be segregated into that which is owned and that which is leased under capital leases. All property and equipment, with the deception of land, shall be reported net of accumulated depreciation or amortization.

(f) "Other Assets" shall included all assets not included in the above categories, such as long-term investments, long-term prepayments, long-term receivables, deferred charges, intangible assets, equipment purchase deposits, and construction work in progress.

(g) "Current Liabilities" shall include all obligations, the liquidation of which is reasonably expected to require the use of existing resources within one year. This group of liabilities is classified into three basic accounts:

(1) "Notes and Accounts Payable" shall include any payments on long-term debt, short-term notes and accounts payable, and accrued expenses that are payable within one year.

(2) "Accrued Taxes" shall include tax liabilities, such as those imposed on income, property and payroll, which are reasonably expected to be liquidated within one year.

(3) "Other Current Liabilities" shall include all current liabilities which are not provided for elsewhere, such as air traffic liabilities for unused transportation sold (includes sales of transportation on both the reporting carrier and other carriers).

(h) "Long-Term Debt" shall include all obligations which are not reasonably expected to be liquidated within one year. Typical examples include bonds payable, long-term notes payable, lease obligations, and pension obligations.

(i) "Other Liabilities" shall include any debts or obligations which are not properly listed in the "Current Liabilities" or "Long-Term Debt" sections.

(j) "Deferred Credits" shall include all credit balances of a general clearing nature, including credits held in suspense pending receipt of further information necessary for final disposition. Included in this account are deferred income taxes and deferred investment tax credits.

(k) "Stockholder's Equity" shall be reported as follows:

(1) "Capital Stock" shall be segregated as between common and preferred. The number of shares outstanding, along with the par or stated value of the stock, shall be reported. In the case of no-par stock without stated value, the full consideration received shall be reported.

(2) "Other Paid-In Capital" shall include the difference between the price at which the capital stock is sold and the par or stated value of the stock.

(3) "Retained Earnings" shall represent the net income or loss from all operations of the corporate entity less dividends.

(4) "Treasury Stock" shall represent the cost of stock issued by the carrier and reacquired by it but not retired or cancelled.

(l) The statement of certification shall be signed by the carrier's chief accounting officer.

(m) All substantive matters that may materially influence interpretations or conclusions in regard to the financial condition or the earnings position of the air carrier which are not clearly identified in the body of the schedule or which represent information that cannot be expressed adequately in monetary terms shall be completely and clearly stated in a note attached to this schedule and cross-referenced to the affected account or accounts.

D. Revising paragraph (a) of the reporting instructions for Schedule B–3 to read:

Schedule B–3—Statement of Changes in Stockholder Equity

(a) This schedule shall be filed by all Group III and Group II air carriers.

* * * * *

E. Revising paragraph (a) of the reporting instructions for Schedule B–7 to read:

Schedule B–7—Airframes and Aircraft Engines Acquired

(a) This schedule shall be filed by all Group II and Group III air carriers not receiving section 406 subsidy.

* * * * *

F. Revising paragraph (a) of the reporting instructions for Schedule B–7(b) to read:

Schedule B–7(b)—Flight Equipment Acquired

(a) This schedule shall be filed by all carriers receiving section 406 subsidy.

* * * * *

G. Removing the title and reporting instructions for Schedule B–7(a), *Reinvestment of Flight Equipment Capital Gains.*

H. Revising paragraph (a) of the reporting instructions for Schedule B–8 to read:

Schedule B–8—Property and Equipment Retired

(a) This schedule shall be filed by all Group II and Group III air carriers and Group I air carriers that receive section 406 subsidy.

I. Removing the title and reporting instructions for Schedule B–8(a), *Flight Equipment Capital Gains Invested or Deposited for Reinvestment in Flight Equipment.*

J. Revising paragraph (a) of the reporting instructions for Schedule B–10 to read:

Schedule B–10—Unamortized Developmental and Preoperating Costs

(a) This schedule shall be filed by air carriers receiving section 406 subsidy.

* * * * *

K. Revising paragraph (a) of the reporting instructions for Schedule B–12 to read:

Schedule B–12—Statement of Changes in Financial Position

(a) This schedule shall be filed by all Group II and Group III air carriers and Group I air carriers that receive section 406 subsidy or have annual operating revenues of $10 million or more.

* * * * *

L. Revising paragraph (a) of the reporting instructions for Schedule B–13 to read:

Schedule B–13—Summary of Projected Financial Commitments and Related Deposits

(a) This schedule shall be filed by all Group II and Group III air carriers and Group I air carriers that receive section 406 subsidy.

* * * * *

M. Revising paragraph (a) of the reporting instructions for Schedule B–41 to read:

Schedule B–41—Receivables, Payables and Investments Relating to Affiliates and Other Investment Data

(a) This schedule shall be filed by all Group II and Group III air carriers and Group I air carriers that receive section 406 subsidy or have annual operating revenues of $10 million or more.

* * * * *

N. Revising paragraph (a) of the reporting instructions for Schedule B–43 to read:

Schedule B–43—Inventory of Airframes and Aircraft Engines

(a) This schedule shall be filed by all Group II and Group III air carriers and Group I air carriers that receive section 406 subsidy or have annual operating revenues of $10 million or more.

* * * * *

O. Adding an account title and reporting instructions for a new Schedule B–43.1 immediately following the reporting instructions for Schedule B–43 to read:

Schedule B–43.1—Aircraft Inventory Data—Small Air Carriers

(a) This schedule shall be filed annually by Group I air carriers with annual operating revenues below $10 million that do not receive section 406 subsidy.

(b) Each carrier shall insert in the space provided for "OAG Code" its carrier code as contained in the Official Airlines Guide (OAG). If the OAG does not contain a carrier code for the reporting carrier, a code will be provided by the Board's Information Management Division upon request. This code will then be inserted in the space provided for "carrier code."

(c) The indicated data shall be reported for each individual airframe, identified by type, model, and design of cabin as to use for passengers exclusively, cargo exclusively, or both passengers and cargo in combination. Data pertaining to aircraft engines shall be reported on a group basis by type of engine and by type of aircraft to which related.

(d) Data in this schedule shall be grouped and subtotaled as data pertaining to airframes and data pertaining to aircraft engines. Data pertaining to nonoperating airframes and aircraft engines shall be reported in a group below the data for operating equipment. Data pertaining to airframes and aircraft engines obtained under capital leases shall be reported in a separately captioned grouping below nonoperating airframes and aircraft engines and subgrouped within those groups according to operating and nonoperating equipment.

(e) The data to be reported shall include owned and capitalized leased airframes and aircraft engines currently in operation or in conversion. Data pertaining to airframes and aircraft engines obtained under capital leases shall be captioned separately from owned equipment.

(f) Column 6 "Acquired Cost or Capitalized Value" shall include (1) the acquisition cost of owned airframes and aircraft engines and (2) the total capitalized cost of obtaining airframes and engines under capital leases.

(g) Column 7 "Allowance for Depreciation or Amortization" shall include (1) the accumulations of all provisions for losses due to use and obsolescence that are applicable to owned airframes and aircraft engines and (2) the amount of amortization recorded for amortizing the value of airframes and engines obtained under capital leases.

(h) Column 8 "Depreciated Cost or Amortized Value" shall be calculated as (1) Acquired Cost (column 6) less the Allowance for Depreciation (column 7) and (2) Capitalized Value (column 6) less Amortization (column 7).

(i) Column 9 "Estimated Residual Value" shall state in dollars the residual value assigned to owned and leased airframes and aircraft engines, including any overhaul value not subject to depreciation.

(j) Column 10 "Estimated Depreciable or Amortizable Life (Months)" shall state the estimated depreciable or amortizable life from the date of acquisition of each airframe and each group of aircraft engines.

P. Revising the reporting instructions for Schedule B–46 to read:

Schedule B–46—Long-Term and Short-Term Nontrade Debt

(a) This schedule shall be filed by all Group III air carriers and Group I and Group II air carriers that receive section 406 subsidy.

(b) This schedule shall be filed for the overall corporate or other legal entity comprising the air carrier.

(c) Column 1 shall include a description of each particular issue of debt, such as "Sinking Fund Debentures," "Bank Notes," "Credit Agreement," *etc.* This column shall also include for each issue a brief description of the terms of payment and, where applicable, conversion privileges, including conversion periods, rates of conversions, and the securities into which convertible.

(d) Columns 2, 3 and 4 shall state the date of issue, date of maturity, and the interest rate per annum, respectively.

(e) Column 5 shall state the amount of bonds or other debt originally issued, as distinguished from the amount authorized.

(f) Column 6 shall state the face value or principal amount of debt securities issued or assumed which have not been retired or canceled, and are not payable within one year of the reporting date.

(g) Column 7 shall state the face value of all notes, drafts, acceptances or other similar evidences of indebtedness payable on demand or within one year, including the portion of long-term debt due within one year of the reporting date.

(h) Column 8 shall state the balance outstanding as of the end of the reporting period in account 2210 Long-Term Debt and the total in column 7 the sum of the balances outstanding in accounts 2000 Current Maturities of Long-Term Debt, 2005 Notes Payable—Banks, and 2015 Notes Payable—Others on Schedule B–1.

(i) Columns 8 and 9 shall state the name and address of each person holding more than 5 percent of the issue or $500,000, whichever is smaller, and the amount held by that person as of December 31.

Section 24 [Amended]

7. Section 24. *Profit and Loss Elements,* is amended by:

A. Adding separate reporting instructions for a revised Schedule P–1.1 to read:

Schedule P–1.1—Statement of Operations for Small Air Carriers

(a) This schedule shall be filed semiannually by Group I air carriers with annual operating revenues below $10 million that do not receive section

406 subsidy. Data reported on this schedule shall be for the overall or system operations of the air carrier.

(b) This schedule shall show the results of operations for six-month periods ending June 30 and December 31. Data reported in the "12 Months-to-Date" column shall represent for each individual item the sum of the amount reported in the "Current Period" column and the next previous six-month period.

(c) Each carrier shall insert in the space provided for "OAG Code" its carrier code as contained in the Official Airlines Guide (OAG). If the OAG does not contain a carrier code for the reporting carrier, a code will be provided by the Board's Information Management Division upon request. This code will then be placed in the space provided for "carrier code."

(d) "Operating Revenue" shall be put in categories as follows:

(1) "Transport Revenue" shall include the revenue generated by the performance of air transportation services. This category shall be subdivided as follows:

(i) "Scheduled Service" shall include all transport revenue derived from operations between pairs of points which are served on a regularly scheduled basis. Transport revenue received from scheduled service operations shall be subdivided as follows:

(A) Passengers. Revenue generated from the transportation of passengers shall be included in this category.

(B) Other. Revenue generated by the transportation of property and mail shall be included in this category.

(ii) "Nonscheduled Service" shall include all transport revenue derived from operations between pairs of points which are not served on a regularly scheduled basis.

(2) "Transport-Related Revenue" shall include monies received for providing air transportation facilities associated with the performance of services which flow from and are incidental to air transportation services performed by the air carrier. This category shall be subdivided as follows:

(i) Public Service Revenue. This category shall include amounts of compensation paid to the carrier under Section 419 of the Federal Aviation Act.

(ii) Other. This category shall include other transport-related revenue such as in-flight sales, restaurant and food service (ground), rental of property or equipment, limousine service, interchange sales, and cargo pick-up and delivery charges.

(e) "Operating Expense" shall be segregated as follows:

(1) "Flying Operations" shall include expenses incurred directly in the in-flight operation of aircraft and expenses incurred in the holding of aircraft and aircraft operation personnel in readiness for assignment to an in-flight status.

(2) "Maintenance" shall include all expenses which are specifically identifiable with the repair and upkeep of property and equipment used in the performance of air transportation.

(3) "General and Administrative" shall include that portion of all expenses of a general corporate nature and all other expenses not provided for elsewhere which are related to air transport operations either directly or indirectly.

(4) "Depreciation and Amortization" shall include all depreciation and amortization expenses applicable to property and equipment used in providing air transportation services. These expenses shall be segregated between those applicable to owned property and equipment and those applicable to property and equipment which is leased.

(5) "Transport-Related Expense" shall include all expenses associated with the transport-related revenues reported on line 5 of this schedule.

(f) "Operating Profit (Loss)" shall be computed by subtracting the total operating expenses from the total operating revenues.

(g) "Nonoperating Income and Expense" shall include all revenues and expenses resulting from commercial ventures which are not inherently related to the performance of air transport services. For example, the revenues and expenses related to operating a hotel or motel would be reported under this category. This category shall also include the total interest expense incurred from all sources and shall be subdivided as follows:

(1) Interest Expense.

(2) Other Nonoperating (Net).

(h) "Income Tax" shall reflect the provisions for accruals of Federal, State, local, and foreign taxes based upon taxable income, and computed at the normal and surtax rates in effect during the current accounting year.

(i) "Discontinued Operations, Extraordinary Items or Accounting Changes" shall reflect any earnings or losses from discontinued operations, the net of the tax amount of extraordinary items, and the cumulative effect of any changes in accounting principles.

(j) Any air carrier that does not file Schedule P–1(a) in accordance with the filing option described in Section 22—General Reporting Instructions shall, for the sixth month of any semi-annual period during which the option is exercised, type in the bottom margin of this statement of operations the total number of full-time and part-time employees to be labeled as such and calculated in accordance with paragraph (d) of the reporting instructions for Schedule P–1(a).

B. Establishing separate reporting instructions for Schedule P–1.2 to read:

Schedule P–1.2—Statement of Operations

(a) This schedule shall be filed by all Group II and Group III air carriers and Group I air carriers that receive section 406 subsidy or have annual operating revenues of $10 million or more.

(b) Route and charter carriers shall file separate statements of operations for each separate operating entity and for the overall, or system operations.

(c) Data reported on this schedule shall conform with the instructions pertaining to profit and loss classifications within this Uniform System of Accounts and Reports.

(d) Data reported in the "12 Months-to-Date" column shall represent for each item the sum of amounts reported in the "Quarter" column for the current and next previous three quarters. Data in the "Year-to-Date" column need not be provided when this schedule is not used for submission to the SEC. But when the schedule is used for SEC purposes, data reported in the "Year-to-Date" column shall represent, for the first three quarters of the carrier's fiscal year or calendar year, amounts from the beginning of the carrier's fiscal or calendar year to the end of the quarter for which the schedule is being submitted. For the fourth quarter of the air carrier's fiscal or calendar year, the "Year-to-Date" column shall be used for the comparative presentation of data for the prior year.

(e) Earnings-per-share data shall be filed on a quarterly basis by those air carriers that are required to file such data with the Securities and Exchange Commission.

(f) Any air carrier that does not file Schedule P–1(a) in accordance with the filing option described in Section 22—General Reporting Instructions shall, for the third month of any calendar quarter during which the option is exercised, type in the bottom margin of the system statement of operations the total number of full-time and part-time employees to be labeled as such and calculated in accordance with paragraph (d) of the reporting instructions for Schedule P–1(a).

C. Revising paragraphs (a) and (b) and removing and reserving paragraphs (l)

and (m) of the reporting instructions for Schedule P–2 to read:

Schedule P–2—Notes to CAB Form 41 Report

(a) This schedule shall be filed by all Group II and Group III air carriers and Group I air carriers that receive section 406 subsidy or have annual operating revenues of $10 million or more.

(b) Route and charter air carriers shall file this schedule for each separate operating entity and for the overall, or system operations of the carrier.

* * * * *

(l) (reserved)

(m) (reserved)

* * * * *

D. Removing the title and reporting instructions for *Schedule P–2(a)—Revenue Market Report.*

E. Removing the title and reporting instructions for *Schedule P–3.1—Transport Revenues.*

F. Revising paragraph (a) of the reporting instructions for Schedule P–3 to read:

Schedule P–3—Transport Revenues; Depreciation and Amortization; Nonoperating Income and Expense (Net)

(a) This schedule shall be filed by all Group II and Group III air carriers and Group I air carriers that receive section 406 subsidy or have annual operating revenues of $10 million or more.

* * * * *

G. Revising paragraphs (a) and (c) of the reporting instructions for Schedule P–3(a) to read:

Schedule P–3(a)—Income Taxes

(a) This schedule shall be filed by all Group III air carriers.

* * * * *

(c) Report in accounts 91.1 through 93.2, respectively, the amount for each as reflected in the books of account. Accounts 93.7, 93.8 and 93.9 shall state income taxes for the current period, income taxes on extraordinary items, and total income taxes, respectively.

H. Revising paragraph (a) of the reporting instructions for Schedule P–4 to read:

Schedule P–4—Transport-Related Revenues and Expenses; Explanation of Extrodordinary Items and Cumulative Effect of Accounting Changes in Prior Years; Explanation of Prior Period Adjustments and Dividends Declared

(a) This schedule shall be filed by air carriers receiving section 406 subsidy.

* * * * *

I. Revising the reporting instructions for Schedules P–5.1 and P–5.2 to read:

Schedules P–5.1 and P–5.2—Aircraft Operating Expenses

(a) Schedule P–5.1 shall be filed by all Group I air carriers that receive section 406 subsidy or have annual operating revenues of $10 million or more. Schedule P–5.2 shall be filed by all Group II and Group III air carriers.

(b) Route and charter air carriers shall file this schedule for each operating entity of the air carrier.

(c) Route air carriers shall file this schedule with quarterly data only for the first three quarters of each calendar year and shall file both quarterly and 12 months-to-date data for the period ended December 31. An "x" shall be inserted in the box designated "Qr" at the head of each column of the set covering quarterly data, and an "x" shall be inserted in the box designated "Yr" at the head of each column of the set covering 12 months-to-date data. Charter air carriers shall file this schedule for quarterly data only.

(d) Data applicable to each aircraft type operated by the air carrier shall be reported in separate columns of this schedule. Each aircraft type for which a report is being made shall be identified at the head of each column in the space provided opposite "Aircraft Type." All aircraft shall be separately reported as distinct aircraft types as established in the *Manual of ADP Instructions, Outputs, Codes and Related Material,* which is available from the Board's Information Management Division. For route air carriers, expenses of operating aircraft provided by other carriers under interchange agreements shall be separately reported in total for all such aircraft as if for a distinct aircraft type. Interchange expenses applicable to aircraft of the same type as those owned or operated by the air carrier shall be distributed in summary memo form as item 98.1 and 98.2 to each aircraft type owned or operated by that air carrier. Aircraft types not generally used in revenue services shall be separately reported. If more than one type of aircraft is involved, a separation of data relating to each type of aircraft shall not be required.

(e) "Aircraft Type" refers to models such as B–707–100, B–707–300, DC–9–30, etc. "Aircraft Code" refers to a four-digit aircraft code established in the *Manual of ADP Instructions, Outputs, Codes and Related Material.* Data applicable to aircraft designed primarily for cargo services and only incidentally used for passenger services shall be reported in separate columns, and the word "cargo" shall be inserted after the aircraft type at the head of the column. The prescribed reporting by aircraft types may be reviewed from time to time upon request by individual air carriers, or upon the initiative of the Board, and groupings of aircraft types for reporting purposes may be prescribed or amended in specific instances.

(f) Italicized codes and item titles do not constitute accounts or account numbers prescribed for air carrier accounting, but shall be used for reporting purposes only.

(g) Item 79.6 "Applied Maintenance Burden" shall reflect a memorandum allocation by each air carrier of the total expenses included in subfunction 5300 "Maintenance Burden" between maintenance of flight equipment, by aircraft type, and maintenance of ground property and equipment in accordance with item (g) of the instructions for Schedule P–6. The amount reported for this item, in aggregate for all aircraft types, shall agree with the amount reported for the same item reflected on Schedule P–6.

(h) Item 73.1 "Current Provisions" (for obsolescence and deterioration of flight equipment expendable parts) shall reflect the gross provisions for losses in value of expendable parts during the current accounting period.

(i) Item 73.2 "Inventory Decline Credits" shall reflect credits applicable to the current period for any adjustments for excess inventory levels determined pursuant to section 6–1311.

(j) The total of function 5100 "Flying Operations" reported on this schedule shall agree with corresponding amounts reported on Schedule P–1.2; the total of item 5278 "Total Direct Maintenance—Flight Equipment" shall agree with the corresponding amount reported in Schedule P–6; and the total of item 75.6 "Total Depreciation—Flight Equipment" shall agree with the corresponding amount in Schedule P–3.

J. Adding a schedule title and reporting instructions for a new Schedule P–5.1(a) immediately following the instructions for Schedules P–5.1 and P–5.2 to read:

Schedule P–5.1(a)—Statement of Aircraft Operating Expenses for Small Air Carriers

(a) This schedule shall be filed semiannually by Group I air carriers with annual operating revenues below $10 million that do not receive section 406 subsidy. Data reported on this schedule shall be for the overall or system operations of the air carrier.

(b) Each carrier shall insert in the space provided for "OAG Code" its carrier code as contained in the Official Airlines Guide (OAG). If the OAG does not contain a carrier code for the

reporting carrier, a code will be provided by the Civil Aeronautics Board's Information Management Division upon request. This code will then be inserted in the space provided for "Carrier Code."

(c) This schedule shall show the direct and indirect expenses incurred in aircraft operations. Direct expense data applicable to each aircraft type operated by the carrier shall be reported in separate columns of this schedule. Each aircraft type reported shall be identified at the head of each column in the space provided below "Aircraft Type." "Aircraft Type" refers to aircraft models such as Beech–18, Piper PA–32, etc. Aircraft Type designations are prescribed in the *Manual of ADP Instructions, Outputs, Codes and Related Material,* which is available from the Board's Information Management Division. In the space provided for "Aircraft Code" carriers shall insert the four digit code which is prescribed in the *Manual of ADP Instructions, Outputs, Codes and Related Material* for the reported aircraft type.

(d) Direct aircraft operating expenses shall be reported in the following categories:

(1) "Flying Operations" shall be subdivided as follows:

(i) "Fuel" expense shall include the cost of fuel used in flight operations.

(ii) "Oil" expense shall include the cost of oil used in flight operations.

(iii) "Other" expenses shall include pilots', copilots' and other flight personnel salaries, related employee benefits, pensions, payroll taxes and personnel expenses, and general (hull) insurance.

(2) "Total Flying Operations" shall agree with the amount reported on line 7 of Schedule P–1.1 "Statement of Operations for Small Air Carriers."

(3) "Maintenance" expense shall include the cost of labor and material expended by the carrier to maintain flight equipment, general services purchased for flight equipment maintenance from associated or other outside companies, and provisions for flight equipment overhauls.

(4) "Depreciation and Rental" expense shall include depreciation of flight equipment, amortization of capitalized leases for flight equipment, rental-expense, and provision for obsolescence and deterioration of spare parts.

(e) Indirect aircraft operating expenses shall be reported in total for all aircraft types only and shall be segregated according to the following categories:

(1) "Traffic Related Expenses" shall include traffic solicitor salaries, traffic commissions, passenger food expense, traffic liability insurance, advertising and other promotion and publicity expenses, and the fringe benefit expenses related to all salaries in this classification.

(2) "Capacity Related (Station) Expenses" shall include aircraft and traffic handling salaries, landing fees, clearance, customs and duties, and related fringe benefit expenses.

(3) "Capacity Related (Other) Expenses" shall include all other operating expenses not included in the above categories.

K. Revising paragraphs (a), (b) and (d) of the reporting instructions for Schedule P–6 to read:

Schedule P–6—Maintenance, Passenger Service and General Services and Administration Subfunctions

(a) This schedule shall be filed by all Group II and Group III air carriers and Group I air carriers that receive section 406 subsidy or have annual operating revenues of $10 million or more.

(b) Route and charter air carriers shall file this schedule for each separate operating entity.

* * * * *

(d) Charter air carriers shall file this schedule for quarterly data only.

* * * * *

L. Revising paragraphs (b) and (d) of the reporting instructions for Schedule P–7 to read

Schedule P–7 Aircraft and Traffice Servicing, Promotion and Sales and General and Administrative Expense Functions

* * * * *

(b) Route and charter air carriers shall file this schedule for each separate entity.

* * * * *

(d) Charter carriers shall file this schedule for quarterly data only.

* * * * *

M. Revising paragraphs (b) and (d) of the reporting instructions for Schedule P–8 to read:

Schedule P–8—Aircraft and Traffic Servicing, and Promotion and Sales Expense Subfunctions

* * * * *

(b) Route and charter air carriers shall file this schedule for each separate entity.

* * * * *

(d) Charter air carriers shall file this schedule for quarterly data only.

* * * * *

N. Revising paragraph (a) of the reporting instructions for Schedule P–10 to read:

Schedule P–10—Employment Statistics by Labor Category

(a) This schedule shall be filed by all Group II and Group III air carriers and Group I air carriers that recieve section 406 subsidy or have annual operating revenues of $10 million or more.

* * * * *

O. Removing the title and reporting instructions for Schedule P–12, *Fuel Inventories and Consumption.*

P. Revising paragraph (a) and removing paragraph (g) of the reporting instructions for Schedule P–12(a) to read:

Schedule P–12(a)—Fuel Consumption by Type of Service and Specific Operational Markets

(a) This schedule shall be filed by all Group II and Group III air carriers and Group I air carriers that receive section 406 subsidy or have annual operating revenues of $10 million or more.

* * * * *

(f) Where the amounts reported for a specific market include other than Jet A fuel, a footnote shall be added indicating the number of gallons and applicable costs of such other fuel included in the amounts reported for that market.

Section 25 [Amended]

8. Section 25 Traffic and Capacity Elements is amended by:

A. Revising paragraph (a) of the reporting instructions for Schedules T–1(a), T–1(b) and T–1(c) to read:

Schedule T–1(a)—Traffic and Capacity Statistics by Class of Service

Schedule T–1(b)—Traffic and Capacity Statistics by Class of Service-Scheduled Services

Schedule T–1(c)—Traffic and Capacity Statistics by Class of Service-Nonscheduled Services

(a) Schedule T–1 shall be filed monthly as follows:

Schedule No.	Applicability
T–1(a)	All air carriers.
T–1(b)	All Group II and Group III air carriers.
T–1(c)	All Group II and Group III air carriers.

* * * * *

B. Revising paragraph (a) of the reporting instructions for Schedules T–2(a) and T–2(b) to read:

Schedule T-2(a)—Traffic, Capacity, Aircraft Operations and Miscellaneous Statistics by Type of Aircraft

Schedule T-2(b)—Traffic, Capacity, Aircraft Operations and Miscellaneous Statistics by Type of Aircraft

(a) Schedule T-2 shall be filed quarterly as follows:

Schedule No.	Applicability
T-2(a)	All air carriers.
T-2(b)	All air carriers.

* * * * *

C. Revising paragraph (a) of the reporting instructions for Schedules T-3(a), T-3(b) and T-3(c) to read:

Schedule T-3(a)—Airport Activity Statistics

Schedule T-3(b)—Airport Activity Statistics-Revenue Service

Schedule T-3(c)—Airport Activity Statistics-Nonscheduled Revenue Service

(a) Schedule T-3 shall be filed quarterly as follows:

Schedule No.	Applicability
T-3(a)	All air carriers.
T-3(b)	All air carriers.
T-3(c)	All air carriers.

* * * * *

D. Removing the title and reporting instructions to Schedule T-3.1, *Statement of Traffic and Capacity Statistics.*

E. Revising paragraphs (a),(b), (c), (d) and (e) of the reporting instructions for Schedule T-8 to read:

Schedule T-8—Report of All-Cargo Operations

(a) This schedule shall be filed semiannually by all air carriers holding section 401 certificates that conduct all-cargo operations.

(b) Data reported on this schedule shall include only results of operations conducted in all-cargo aircraft. Data shall be segregated between domestic all-cargo operations conducted within the geographic limitations of section 418 certificates and all other all-cargo operations.

(c) "Total Operating Revenue" shall be segregated between transport and transport-related revenues.

(d) Transport revenues shall be subdivided between those generated by scheduled service operations and those generated by nonscheduled service operations. Scheduled service revenues shall be further subdivided between property and mail.

(e) "Operating Expenses" shall reflect the segregation of the all-cargo portion of the total operating expenses reported on line 13 of Schedule P-1.1 or line 7199 of Schedule P-1.2 for the overall or system operations of the air carrier.

* * * * *

F. Revising paragraphs (a) and (g) of the reporting instructions for Schedule T-9 to read:

Schedule T-9—Nonstop Market Report

(a) This schedule shall be filed monthly by all unsubsidized Group I and Group II air carriers providing scheduled service and may be used, with the approval of the Board's Comptroller, by new entrants and others without Automatic Data Processing capability that would otherwise be required to comply with the requirements of Section 19-3.

* * * * *

(g) In column 4, carriers shall disclose the aircraft type used in accordance with four-digit codes established in the *Manuual of ADP Instructions, Outputs, Codes, and Related Material,* which is available from the Board's Information Management Division.

* * * * *

9. Add a new Section 26 to read:

Section 26— General Corporate Elements.

Schedule G-41—Persons Holding More than 5 Per Centum of Respondent's Capital Stock or Capital

(a) This schedule shall be filed by all Group II and Group III air carriers and Group I air carriers that receive section 406 subsidy or have annual operating revenues of $10 million or more.

(b) Columns 1 and 2 shall reflect the names and addresses of all persons who hold, as of the end of any month of the year, more than five (5) per centum of the issued and outstanding capital stock or, in the case of an unincorporated business enterprise, more than five (5) per centum of the total invested capital of the reporting carriers.

(c) Column 3, "Held for Own Account" shall reflect by either of the words "yes" or "no", whether or not the interest is held for the account of the person named in column 1. In cases where the answer is "no," the name and address of the persons for whose account the interest is held shall be indicated by footnotes.

(d) Columns 4 through 7 shall pertain to the capital stock or the invested capital (exceeding 5 percent) held by the persons named in column 1. Column 4 shall reflect the class(es) of those shares held; column 5 shall reflect the maximum number of shares of each class of stock or the maximum amount of invested capital held as of the end of any month of the year; column 6 shall reflect the percent of total outstanding capital which such maximum shares or maximum invested capital represent; and column 7 shall reflect the number of such shares or amount of invested capital held at year end.

10. CAB Form 41 Report is amended as shown in Exhibits A through H attached.

By the Civil Aeronautics Board:

Phyllis T. Kaylor,

Secretary.

BILLING CODE 6320-01-M

Exhibit A

BALANCE SHEET
FOR SMALL AIR CARRIERS

(OAG Code)

Air Carrier (Corporate Name)_____

(Carrier code)

As at _____

ASSETS

Current assets:		
Cash and equivalents	1	
Notes and accounts receivable-net	2	
Other current assets	3	
Total current assets	4	
Property and equipment:		
Owned property and equipment	5	
Less accumulated depreciation	6	
Property and equipment obtained under capital leases	7	
Less accumulated amortization	8	
Total property and equipment	9	
Other assets	10	
Total assets	11	

LIABILITIES AND STOCKHOLDERS' EQUITY

Current liabilities:		
Notes and accounts payable	12	
Accrued taxes	13	
Other current liabilities	14	
Total current liabilities	15	
Long-term debt	16	
Other liabilities	17	
Deferred credits	18	
Stockholders' equity:		
Capital stock		
Preferred _____ shares outstanding	19	
Common _____ shares outstanding	20	
Other paid-in capital	21	
Retained earnings	22	
Total stockholders' equity	23	
Less: Treasury stock	24	
Net stockholders' equity	25	
Total liabilities and stockholders' equity	26	

I, the undersigned, (Title) _____ of the above-named air carrier certify that the above report and the attached Financial Schedules and Statements of Operations and Traffic and Capacity Statistics have been examined by me and to the best of my knowledge and belief are true, correct and complete reports for the period stated.

Date _____ Signature: _____

Name (Please Type or Print): _____

Schedule B-1.1 CAB Form 41

*Denotes inverse amount.

AIRCRAFT INVENTORY DATA

Air Carrier (Corporate Name) _____ _____ (OAG Code)

_____ (Carrier Code)

Year Ended December 31, 19 ___

LINE NO.	Airframe License Number	Date Placed in Service Month/Day/Year	Usual Seat Configuration	Manufacturer	Type, Model and Cabin Design	Acquired Cost or Capitalized Value	Allowance for Depreciation or Amortization	Depreciated cost or Amortized Value	Estimated Residual Value	Estimated Depreciable or Amortizable Life (Months)
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)

Schedule B-43.1

Exhibit B

Exhibit C

LONG-TERM AND SHORT-TERM NONTRADE DEBT

Air Carrier _____

As at December 31, 19 _____

Line No.	Description or Type of Obligation (1)	Date of Issue (2)	Date of Maturity (3)	Interest Rate per Annum (4)	Original Principal Amount Issued (5)	Balance Outstanding at December 31: Long-term Maturities (6)	Balance Outstanding at December 31: Current maturities of Long-term debt and Short-term debt (7)	Holders of More than 5% of Issue or $500,000, Whichever is Smaller: Name and Address (8)	Holders of More than 5% of Issue or $500,000, Whichever is Smaller: Amount Held at Dec. 31 (9)	Line No.
1										1
2	Debt issue	XXX	XXX	X	XXX					2
3	Unamortized Discount				XXX	XXX	XXX			3
4										4
5										5
6										6
7										7
8										8
9										9
10										10
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28										28
29										29
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31										31
32										32
33										33
34										34
35										35
36										36
37										37

Form 41

Exhibit D

STATEMENT OF OPERATIONS
FOR SMALL AIR CARRIERS

(OAG Code)

Air Carrier (Corporate Name)_____

(Carrier code)

Six Months Ended _____

		Current Period	12-Months To Date
Operating Revenue			
Transport Revenue			
Scheduled Service			
Passenger	1		
Other	2		
Nonscheduled Service	3		
Transport Related Revenue			
Public Service Revenue	4		
Other	5		
Total Operating Revenue	6		
Operating Expense			
Flying Operations	7		
Maintenance	8		
General and Administrative	9		
Depreciation and Amortization			
Owned Property and Equipment	10		
Leased Property and Equipment	11		
Transport Related Expense	12		
Total Operating Expense	13		
Operating Profit	14		
Non-operating Income and Expense:			
Interest Expense	15		
Other Nonoperating (Net)	16		
Income Tax	17		
Discontinued operations, extraordinary items or Accounting changes	18		
Net Income	19		

Schedule P-1.1

CAB Form 41

*Denotes inverse amount; on lines 16 and 18 denotes a debit amount.

Exhibit E

Air Carrier _____
Operation _____

STATEMENT OF OPERATIONS

	Account No.	Quarter Ended _____, 19__	12 Months Ended _____, 19__	☐ Calendar ☐ Fiscal Year to Date _____, 19__
OPERATING REVENUES				
Passenger	3901			
Mail	3905			
Property	3906			
Charter	3907			
Air transport—other	3919			
Public service revenues (Subsidy)	4808			
Transport related revenues	4898			
Total Operating Revenues	4999			
OPERATING EXPENSES				
Flying operations	5100			
Maintenance	5400			
Passenger service	5500			
Aircraft and traffic servicing	6400			
Promotion and sales	6700			
General and administrative	6800			
General and administrative ..	6900			
Depreciation and amortization	7000			
Transport related expenses	7100			
Total Operating Expenses	7199			
Operating profit or loss	7999			
NONOPERATING INCOME AND EXPENSE				
Interest income	8180			
Interest on long-term debt and capital leases	8181			
Other interest expense	8182			
Capitalized interest	8183			
Amortization of debt discount, premium and expense	8184			
Foreign exchange gains and losses	8185			
Equity in income of investor-controlled companies	8187			
Other income and expense-net	8189			
Nonoperating income and expense	8199			
Income before income taxes	8999			
INCOME TAXES FOR CURRENT PERIOD	9100			
Income before discontinued operations, extraordinary items and accounting changes	9199			
DISCONTINUED OPERATIONS	9600			
Income before extraordinary items and accounting changes	9699			
EXTRAORDINARY ITEMS	9796			
Income taxes applicable to extraordinary items	9797			
Income before accounting changes	9799			
ACCOUNTING CHANGES	9800			
Net income	9899			

*Denotes inverse amount; in accounts 8100, 9600, 9700, and 9800 denotes debit amount.

EARNINGS PER SHARE

Schedule P-1.2

CAB Form 41

Exhibit F

	Air Carrier _____ Operation _____ Period Ended _____		Air Carrier _____ Operation _____ Period Ended _____	
Item	Quarter		12 Months to date	
INCOME TAXES	9100		9100	
Income taxes before investment tax credits	91.1	_____	91.1	_____
Investment tax credits utilized	91.2	_____	91.2	_____
Deferred income taxes	92.9	_____	92.9	_____
Investment tax credits deferred	93.1	_____	93.1	_____
Amortization of deferred investment tax credits	93.2	_____	93.2	_____
Income taxes for current period (to Sch. P-1.2, Acc't 9100)	93.7	_____	93.7	_____
Income taxes on extraordinary items (to Sch. P-1.2, Acc't 97)	93.8	_____	93.8	_____
Total income taxes	93.9	_____	93.9	_____

*Denotes inverse amount

CAB Form 41
(Rev.)

SCHEDULE P-3(a)

SCHEDULE P-3(a)

SCHEDULE P-3(a)

STATEMENT OF AIRCRAFT OPERATING EXPENSES FOR SMALL AIR CARRIERS

Air Carrier (Corporate Name) _____ (OAG Code)

Six Months Ended _____ (Carrier Code)

	TOTAL-ALL AIRCRAFT TYPES	AIRCRAFT TYPE / CODE	AIRCRAFT TYPE / CODE	AIRCRAFT TYPE / CODE	AIRCRAFT TYPE / CODE
Direct Expense:					
Flying Operations:					
Fuel					
Oil					
Other					
Total Flying Operations					
Maintenance					
Depreciation & Rental					
Total Direct Expense					
Indirect Expense:					
Traffic Related					
Capacity Related (Station)					
Capacity Related (Other)					
Total Indirect Expense					

Schedule P-5.1(a)

CAB Form 41

*Denotes inverse amount.

Exhibit G

Exhibit H

REPORT OF ALL-CARGO OPERATIONS

Air Carrier Six-Months Ended _____		All-Cargo Operations Domestic (418) (A)	 Other Than Section 418 (B)
Operating Revenue and Expenses			
Transport			
Scheduled Service			
Property	1		
Mail	2		
Nonscheduled Service	3		
Transport-Related Revenues	4		
Total Operating Revenues	5		
Total Operating Expenses	6		
Traffic on Revenue Flights			
Revenue Ton-miles			
Scheduled Service:			
Property	7		
Mail	8		
Nonscheduled Service	9		
Total Revenue Ton-Miles	10		
Nonrevenue Ton-Miles	11		
Revenue Tons Enplaned	12		
Aircraft Capacity Operated			
Aircraft Ton-miles:			
Scheduled Service	13		
Nonscheduled Service	14		
Aircraft Miles Flown:			
Revenue	15		
Nonrevenue	16		
Aircraft Departures Performed:			
Revenue	17		
Nonrevenue	18		
Aircraft Hours (Airborne)			
Revenue	19		
Nonrevenue	20		

Schedule T-8 CAB Form 41

[FR Doc. 82-20407 Filed 7-29-82; 8:45 am]
BILLING CODE 6320-01-C

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 271

[Docket No. RM80-53]

Publication of Prescribed Maximum Lawful Prices Under Natural Gas Policy Act of 1978

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order of the Director, OPPR.

SUMMARY: Pursuant to the authority delegated by 18 CFR 357.307(1), the Director of the Office of Pipeline and Producer Regulation revises and publishes the maximum lawful prices prescribed under Title I of the Natural Gas Policy Act (NGPA) for the months of August, September and October, 1982. Section 101(b)(6) of the NGPA requires that the Commission compute and publish the maximum lawful prices before the beginning of each month for which the figures apply.

EFFECTIVE DATE: August 1, 1982.

FOR FURTHER INFORMATION CONTACT: Kenneth A. Williams, Director, OPPR, (202) 357-8500.

SUPPLEMENTARY INFORMATION:

Order of the Director, OPPR

Issued July 23, 1982.

Section 101(b)(6) of the Natural Gas Policy Act of 1978 (NGPA) requires that the Commission compute and make available maximum lawful prices and inflation adjustments prescribed in Title I of the NGPA before the beginning of any month for which such figures apply.

Pursuant to this requirement and § 375.307(1) of the Commission's regulations, which delegates the publication of such prices and inflation adjustments to the Director of the Office of Pipeline and Producer Regulation, the maximum lawful prices for the months of August, September and October, 1982 are issued by the publication of the price tables for the applicable quarter. Pricing tables are found in § 271.101(a) of the Commission's regulations. Table I of § 271.101(a) specifies the maximum lawful prices for gas subject to NGPA sections 102, 103, 106(b)(1)(B), 107(c)(5), 108 and 109. Table II of § 271.101(a) specifies the maximum lawful prices for sections 104 and 106(a) of the NGPA. Table III of § 271.102(c) contains the inflation adjustment factors. The maximum lawful prices and the inflation adjustment factors for the periods prior to August 1982 are found in the tables in §§ 271.101 and 271.102.

List of Subjects in 18 CFR Part 271

Natural gas.

Kenneth A. Williams,

Director, Office of Pipeline and Producer Regulation.

§ 271.101 [Amended]

1. Section 271.101(a) is amended by inserting the maximum lawful prices for August, September and October, 1982, in Tables I and II, as set out below.

§ 271.102 [Amended]

2. Section 271.102(c) is amended by inserting the inflation adjustment for the months of August, September and October, 1982 in Table III, as set out below.

TABLE I.—NATURAL GAS CEILING PRICES (OTHER THAN NGPA SECS. 104 AND 106 (A))

[Maximum lawful price per MMBtu for deliveries]

Subpart of Part 271	NGPA section	Category of gas	August 1982	September 1982	October 1982
B	102	New Natural gas, certain OCS gas	3.176	3.200	3.224
C	103	New, onshore production wells	2.662	2.674	2.686
F	106(b)(1)(B)	Alternative maximum lawful price for certain intrastate rollover gas	1.518	1.525	1.532
G	107(c)(5)	Gas produced from tight formations	5.324	5.348	5.372
H	108	Stripper gas	3.403	3.429	3.455
I	109	Not otherwise covered	2.204	2.214	2.224

TABLE II.—NATURAL GAS CEILING PRICES: NGPA SECS. 104 AND 106(A) (SUBPART D, PART 271)

[Maximum lawful price per MMBtu for deliveries made]

Category of natural gas	Type of sale or contract	August 1982	September 1982	October 1982
Post-1974 gas	All producers	2.204	2.214	2.224
1973-74 Biennium gas	Small producer	1.865	1.873	1.881
	Large producer	1.426	1.432	1.438
Interstate rollover gas	All producers	.817	.821	.825
Replacement contract gas or recompletion gas.	Small producer	1.047	1.052	1.057
	Large producer	.799	.803	.807
Flowing gas	Small producer	.529	.531	.533
	Large producer	.447	.449	.451
Certain Permian Basin gas	Small producer	.625	.628	.631
	Large producer	.549	.551	.553
Certain Rocky Mountain gas	Small producer	.625	.628	.631
	Large producer	.529	.531	.533
Certain Appalachian Basin gas	North subarea contracts dated after 10-7-69	.498	.500	.502
	Other contracts	.465	.467	.469
Minimum rate gas[1]	All producers	.275	.276	.277

[1] Prices for minimum rate gas are expressed in terms of dollars per Mcf, rather than MMBtu.

TABLE III.—INFLATION ADJUSTMENT

Month of Delivery 1982	Factor by which price in preceding month is multiplied
August	1.00447
September	1.00447
October	1.00447

[FR Doc. 82-20643 Filed 7-29-82; 8:45 am]

BILLING CODE 6717-01-M

18 CFR Part 282

[Docket No. RM79-14]

Order of the Director, OPPR of Publication of Incremental Pricing Acquisition Cost Thresholds Under Title II of the NGPA

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order prescribing incremental pricing thresholds.

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

EFFECTIVE DATE: August 1, 1982.

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

Order of the Director, OPPR

Issued: July 26, 1982.

Publication of prescribed incremental pricing acquisition cost threshold of the NGPA of 1978, Docket No. RM79–14.

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

Pursuant to that mandate and pursuant to § 375.307(1) of the Commission's regulations, delegating the publication of such prices to the Director of the Office of Pipeline and Producer Regulation, the incremental pricing acquisition cost threshold prices for the month of August 1982 is issued by the publication of a price table for the applicable month.

List of Subjects in 18 CFR Part 282

Natural gas.

Kenneth A. Williams,

Director, Office of Pipeline and Producer Regulation.

TABLE I.—INCREMENTAL PRICING ACQUISITION COST THRESHOLD PRICES

	January	February	March	April	May	June	July	August	September	October	November	December
Calendar Year 1980												
Incremental Pricing Threshold	$1.702	$1.738	$1.750	$1.762	$1.776	$1.790	$1.804	$1.819	$1.834	$1.849	$1.863	$1.877
NGPA Section 102 Threshold	2.358	2.381	2.404	2.428	2.453	2.478	2.504	2.532	2.560	2.588	2.614	2.640
NGPA Section 109 Threshold	1.786	1.799	1.812	1.825	1.839	1.853	1.857	1.883	1.899	1.915	1.929	1.943
130 Percent of No. 2 Fuel Oil in New York City Threshold	7.170	7.260	7.410	7.110	7.380	8.040	7.840	7.380	7.400	7.400	7.450	7.580
Calendar Year 1981												
Incremental Pricing Threshold	1.891	1.908	1.925	1.942	1.954	1.967	1.980	1.990	2.000	2.010	2.025	2.041
NGPA Section 102 Threshold	2.667	2.698	2.729	2.761	2.787	2.813	2.840	2.863	2.886	2.909	2.940	2.971
NGPA Section 109 Threshold	1.957	1.975	1.993	2.011	2.024	2.037	2.050	2.060	2.070	2.080	2.096	2.112
130 Percent of No. 2 Fuel Oil in New York City Threshold	7.610	7.760	8.260	9.010	9.510	9.430	9.360	9.260	8.860	8.700	8.930	8.990
Calendar Year 1982												
Incremental Pricing Threshold	2.057	2.071	2.085	2.099	2.106	2.113	2.120	2.129				
NGPA Section 102 Threshold	3.003	3.033	3.063	3.093	3.112	3.132	3.152	3.176				
NGPA Section 109 Threshold	2.128	2.143	2.158	2.173	2.180	2.187	2.194	2.204				
130 Percent of No. 2 Fuel Oil in New York City Threshold	9.180	9.340	9.470	9.340	9.280	8.000	8.170	8.670				

[FR Doc. 82–20686 Filed 7–29–82; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 404

[Regulations Nos. 4 and 16]

Federal Old-Age, Survivors, and Disability Insurance and Supplemental Security Income for the Aged, Blind and Disabled; Representative Payment

Corrections

In FR Doc. 82–18998 appearing on page 30468 in the issue for Wednesday, July 14, 1982, make the following changes:

(1) On page 30471, third column, immediately before the part heading, insert the following below "follows:" "Subpart U of Part 404 is revised to read as follows:"

(2) On page 30471, third column, second line from the bottom, "72" should read "42".

(3) On page 30473, first column, § 404.2021 (b)(7), first line, "unauthorized" should read "authorized"; second column, § 404.2030 (c), second line, insert "our" after "issue".

BILLING CODE 1505–01–M

Food and Drug Administration

21 CFR Parts 436, 446, and 546

[Docket No. 80N–0249]

Tetracycline Hydrochloride and Oxytetracycline Hydrochloride; Revised Dissolution Test for Human and Animal Drugs

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the antibiotic drug regulations by replacing the current procedure for evaluating dissolution test results for tetracycline hydrochloride tablets and capsules and oxytetracycline capsules with the dissolution acceptance table published in the official United States Pharmacopeia (U.S.P.). This action will provide a more reasonable interpretation of the dissolution test results.

DATES: Effective for all lots submitted for certification after August 30, 1982; comments, notice of participation, and request for hearing by August 30, 1982; data, information, and analyses to justify a hearing by September 28, 1982.

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

FOR FURTHER INFORMATION CONTACT: Joan Eckert, National Center for Drugs and Biologics (HFD–140), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4290.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 17, 1980 (45 FR 68971), FDA proposed to amend the antibiotic drug regulations by replacing the method for evaluating the dissolution test results for tetracycline hydrochloride (HCl) tablets and capsules for human and animal use, and oxytetracycline HCl capsules for human use, with the official U.S.P. dissolution acceptance criteria. The action was taken because the U.S.P. dissolution acceptance criteria provide a more reasonable interpretation of the

dissolution test results and a sounder statistical basis than the evaluation criteria in the regulations.

Interested persons were given 60 days to submit written comments on the proposed amendment. In response to the proposal, the agency received two comments, both from pharmaceutical manufacturers. The substantive comments received and the agency's response to each follow:

1. One comment said the proposed revision to the in vitro dissolution standard does not increase the surety that the covered products will be bioequivalent.

The October 17, 1980 proposal to replace the procedure for evaluating dissolution test results for tetracycline HCl and oxytetracycline HCl is not intended to increase the surety that the covered products will be bioequivalent. As stated in the preamble to that proposal, the agency viewed the U.S.P. interpretation of the dissolution test results as more appropriate than those required in the regulations because it is less rigid and has a sounder statistical basis. Therefore, the agency proposed to replace the method for evaluating the dissolution test results with the official U.S.P. dissolution acceptance criteria. These criteria are used for evaluating the dissolution test results for almost all other drug products in the U.S.P. which have a dissolution test requirement.

2. One comment, while endorsing the less rigid evaluation of the dissolution test results, said the current dissolution specifications should be reduced by 10 percent if the U.S.P. acceptance criteria are to be used. The comment said that because of the unrealistically high dissolution specification currently required for these products, firms would never be able to meet the acceptance criteria at stage 1, and would have to proceed to stage 2. (Stage 1 permits the testing of only 6 dosage forms if the dissolution of each dosage unit is at least 5 percent higher than the stated dissolution specifications. Stage 2 requires the testing of 12 dosage forms with the average of all the dosage forms required to be equal to or greater than the stated dissolution specifications with no dosage form having a dissolution less than the stated dissolution specification minus 15 percent.) Accordingly, the comment argued that it and other firms would routinely be required to test 12 dosage forms. This, according to the comment, would double the cost with no appreciable clinical benefit.

The agency acknowledges that for a product to meet the U.S.P. dissolution acceptance criteria at stage 1, the dissolution of each dosage unit would have to be at least 90 percent if the dissolution specification is set at 85 percent for the last specified time interval. The agency, however, is not aware of any data indicating that setting the dissolution specification at 85 percent would preclude any firm's product from meeting the U.S.P. acceptance criteria at stage 1. The agency asked the commentor in a previous letter to submit assay results for oxytetracycline HCl to consider fully the commentor's request to lower the dissolution specification. Because no supporting data were submitted, and without other data supporting the request, the agency concludes that the dissolution specifications for the covered products are reasonable and should, therefore, be finalized as proposed.

In addition, the agency received several comments that did not pertain to the October 17, 1980 proposal, but rather to the dissolution test itself and the specifications for these products established in a final rule published in the **Federal Register** of August 17, 1979 (44 FR 48186). In that final rule, the agency amended the antibiotic regulations to require dissolution testing for the covered products as a means to assure their bioequivalency. Although these comments are not within the scope of the October 17, 1980 proposal, they have been summarized and the agency's response to each follows:

3. In regard to the dissolution specifications, one comment objected to having to test tetracycline HCl capsules beyond a 30-minute interval if the dissolution results at that interval are equal to or greater than the required results at the 60- and 90-minute intervals.

The agency informed the commentor in a previous letter, a copy of which was placed on file in the Dockets Management Branch (address above), that the dissolution specifications in § 446.181e (21 CFR 446.181e) for tetracycline HCl capsules are not intended to require dissolution testing beyond the 30-minute interval if the test results at that interval are equal to or greater than the required results at the 60-minute interval, or the 90-minute interval for the 500-milligram capsules. The same is true for tetracycline HCl tablets, oxytetracycline HCl capsules, and chlortetracycline HCl tablets, that is, if the results of dissolution testing for these products at the first specified interval are equal to or greater than the required results at the later specified interval, no further testing is required. To clarify this in the regulations, the agency is revising the language in §§ 446.167, 446.181d, 446.181e and 546.110d (21 CFR 446.167, 446.181d, 446.181e, and 546.110d) where the dissolution specifications are set forth, to read "within" the specified time interval(s), rather than "in" the specified time interval(s).

4. Another comment said a dissolution test could ensure the bioequivalency of a product only if there was extensive evidence showing that the test was highly correlated with the rate and extent of absorption. The comment said that because there was no such evidence available showing this correlation for tetracycline products, a dissolution standard for the products is not warranted. The comment pointed out that some products, while not meeting the current dissolution requirements, were in fact, bioequivalent. The comment also said, however, that in other cases, a product might meet the in vitro requirement but would not provide the same bioavailability as the reference product. As an alternative to a dissolution standard, the comment said lot-to-lot bioavailability studies would be practical and would demonstrate lot-to-lot performance and provide unequivocal documentation.

This comment relates to the dissolution test itself and, therefore, should have been submitted in response to the September 26, 1978 proposal to require dissolution testing for tetracycline HCl tablets and capsules and oxytetracycline HCl capsules. In the preamble to that proposal, the agency discussed the evidence indicating that there is a bioequivalence problem for the covered products and the agency's basis for determining that an in vitro dissolution test is an accurate method for assuring the bioequivalency of these products. In addition, the preamble states that the in vitro dissolution test for tetracycline hydrochloride 250 milligram (mg) tablets and capsules had been correlated with human in vivo bioavailability data. The references relied upon by FDA in reaching these determinations were listed in the preamble of that proposal and were put on public display in the Dockets Management Branch, FDA. Based on this evidence and because no substantive comments were received contradicting the evidence, the agency concluded in its final rule of August 17, 1979 (44 FR 48186) that the dissolution test requirements will provide a method by which the bioequivalence of these products can be assured and provide adequate quality control for batch certification of the covered products. Thus, the agency did not believe that expensive lot-to-lot bioavailability

studies were necessary. The agency advises that if the commentor believes that the dissolution test requirements should be modified, a petition may be submitted to that effect under the citizen petition section of FDA's procedural regulations in § 10.30 (21 CFR 10.30).

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

The requirement for a regulatory flexibility analysis under the Regulatory Flexibility Act does not apply to this final rule because the proposed rule was issued prior to January 1, 1981, and is therefore exempt.

List of Subjects

21 CFR Part 436

Antibiotics.

21 CFR Part 446

Antibiotics, tetracycline.

21 CFR Part 546

Animal drugs, Antibiotics, Tetracycline.

Therefore, under the Federal Food, Drug and Cosmetic Act (secs. 507, 512(n), 59 Stat. 463 as amended, 82 Stat. 350–351 (21 U.S.C. 357, 360b(n))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Chapter I of Title 21 of the Code of Federal Regulations is amended as follows:

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

1. In Part 436, § 436.541 is amended by revising paragraph (a), the introductory text of paragraph (b), and paragraph (d), to read as follows:

§ 436.541 Dissolution test.

(a) *Equipment.* Use Apparatus 2 as described in the United States Pharmacopeia XX dissolution test with the following exception: A distance of 4.5±0.5 centimeters should be maintained between the lower edge of the stirring blade and the lowest inner surface of the vessel during the test.

(b) *Procedure.* For each dosage form listed in the table in this paragraph select the appropriate dissolution medium, stirring blade rotation rate, and sampling time and proceed as set forth in Apparatus 2 methodolgy of the United States Pharmacopeia XX dissolution test. Determine the amount of drug substance dissolved by performing the assay described in paragraph (c) of this section. The amount of dissolution medium removed for sampling purposes may be disregarded if the amount removed is not more than 15 milliliters. If more than 15 milliliters is removed, then correct for the volume removed.

* * * * *

(d) *Evaluation.* Use the dissolution acceptance table and interpretation in the United States Pharmacopeia XX.

PART 446—TETRACYCLINE ANTIBIOTIC DRUGS

2. In Part 446:

a. Section 446.167 is amended by revising the next-to-last sentence in paragraph (a)(1) and by revising paragraph (b)(3), to read as follows:

§ 446.167 Oxytetracycline hydrochloride capsules.

(a) * * *

(1) * * * It passes the dissolution test.

* * * * *

(b) * * *

(3) *Dissolution.* Proceed as directed in § 436.541 of this chapter. The quantity Q (the amount of oxytetracycline dissolved) is 60 percent within 30 minutes and 85 percent within 60 minutes.

b. Section 446.181d is amended by revising the fifth sentence in paragraph (a)(1) and by revising paragraph (b)(3), to read as follows:

§ 446.181d Tetracycline hydrochloride tablets.

(a) * * *

(1) * * * It passes the dissolution test.

* * * * *

(b) * * *

(3) *Dissolution.* Proceed as directed in § 436.541 of this chapter. The quantity Q (the amount of tetracycline hydrochloride dissolved) is 60 percent within 30 minutes and 85 percent within 60 minutes.

c. Section 446.181e is amended in paragraph (a)(1) by removing the sixth and seventh sentences and substituting a new single sentence, and by revising paragraph (b)(4) to read as follows:

§ 446.181e Tetracycline hydrochloride capsules.

(a) * * *

(1) * * * It passes the dissolution test.

* * * * *

(b) * * *

(4) *Dissolution.* Proceed as directed in § 436.541 of this chapter. The quantity Q (the amount of tetracycline hydrochloride dissolved), except for the 500-milligram capsule, is 60 percent within 30 minutes and 85 percent within 60 minutes. For the 500-milligram capsule, the quantity Q is 50 percent within 30 minutes, 70 percent within 60 minutes, and 85 percent within 90 minutes.

PART 546—TETRACYCLINE ANTIBIOTIC DRUGS FOR ANIMAL USE

3. In Part 546, § 546.110d is amended by revising the fifth sentence in paragraph (a)(1) and by revising paragraph (b)(4), to read as follows:

§ 546.110d Chlortetracycline hydrochloride tablets.

(a) * * *

(1) * * * If it is tetracycline hydrochloride tablets not exceeding 15 millimeters in diameter or not intended solely for use in preparing solutions, it passes the dissolution test.

* * * * *

(b) * * *

(4) *Dissolution.* Proceed as directed in § 436.541 of this chapter. The quantity Q (the amount of tetracycline hydrochloride dissolved) is 60 percent within 30 minutes and 85 percent within 60 minutes.

* * * * *

Any person who will be adversely affected by this regulation may file objections to it and request a hearing. Reasonable grounds for the hearing must be shown. Any person who decides to seek a hearing must file (1) on or before August 30, 1982, a written notice of participation and request for hearing, and (2) on or before September 28, 1982, the data, information, and analyses on which the person relies to justify a hearing, as specified in 21 CFR 430.20. A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for hearing that no genuine and substantial issue of fact precludes the action taken by this order, or if a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who request(s) the hearing, making findings and conclusions and denying a hearing. All submissions must be filed in three copies, identified with the docket number appearing in the heading of this order and filed with the Dockets Management Branch.

The procedures and requirements governing this order, a notice of

participation and request for hearing, a submission of data, information, and analyses to justify a hearing, other comments, and grant or denial of a hearing are contained in 21 CFR 430.20.

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

Effective date. This regulation is effective for all lots submitted for certification after August 30, 1982.

(Secs. 507, 512(n), 59 Stat. 463 as amended, 82 Stat. 350–351 (21 U.S.C. 357, 360b(n)))

Dated: July 22, 1982.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 82-20678 Filed 7-29-82; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 716 and 785

Surface Coal Mining and Reclamation Operations; Initial and Permanent Regulatory Programs: Prime Farmland

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

ACTION: Interim final rules.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement is publishing interim final rules which place a temporal limit on the prime farmland grandfather exemption contained in Section 510(d) of the Surface Mining Control and Reclamation Act of 1977. Pursuant to the initial program rule of § 716.7, the grandfather exemption is terminated on April 3, 1983. This termination date is also effective for the permanent program rule of § 785.17.

EFFECTIVE DATE: The amendments to §§ 716.7 and 785.17 are effective on August 30, 1982.

FOR FURTHER INFORMATION CONTACT: Donald F. Smith, Division of Engineering Analysis, Office of Surface Mining, U.S. Department of the Interior, 1951 Constitution Avenue NW., Washington, DC 20240; 202–343–5954.

SUPPLEMENTARY INFORMATION:

I. Background.
II. Discussion of Comments and Rules Adopted.
III. Procedural Matters.

I. Background

Section 510(d)(2) of the Surface Mining Control and Reclamation Act of 1977 (the Act), 30 U.S.C. 1260(d)(2), exempts some surface coal mining and reclamation operations on prime farmland from the special prime farmland permit approval requirements of Section 510(d)(1) and the prime farmland performance standards of Section 515(b)(7). Specifically, the so-called "grandfather exemption" provides that:

> Nothing in this subsection shall apply to any permit issued prior to the date of enactment of this Act, or to any revisions or renewals thereof, or to any existing surface mining operations for which a permit was issued prior to the date of enactment of this Act.

This special exemption does not mean that surface coal mining operations on prime farmlands are not required to be reclaimed. Rather, all the other stringent permit application and reclamation requirements apply, including the requirement to return land with a premining cropland use to the capability to support an equivalent or higher use after mining. Reclamation of grandfathered mines could, however, be planned and conducted without meeting certain soil reconstruction provisions developed with and approved by the U.S. Department of Agriculture for prime farmland soils. See Section 515(b)(7) of the Act. The grandfather clause also exempts certain operations from the special prime farmland permit application requirements.

A. Interim Final Rules

The interim final rule for the initial regulatory program under § 716.7(a)(2)(iv) requires a termination of the prime farmland grandfather exemption on April 3, 1983. The interim final rule for the permanent regulatory program under § 785.17(a)(5) requires the same cutoff date of April 3, 1983. These rules are being issued as interim final rules pending completion of a reconsideration of their environmental impacts in a supplement to OSM's Final Environmental Impact Statement OSM–EIS–1 and are issued at this time to give States and operators time to prepare for the termination of grandfathering on April 3, 1983. Following issuance of the final supplemental environmental impact statement, final rules will be issued.

B. Legislative History and Prior Rulemaking

The rulemaking history of the prime farmland grandfather issue as set out in the **Federal Register** is as follows:

—December 13, 1977 (42 FR 62693)—Initial program grandfather rule.
—September 18, 1978 (43 FR 41856)—Proposed permanent program rule.
—March 13, 1979 (44 FR 15373)—Final permanent program rule.
—December 31, 1979 (44 FR 77454)—Notice of grandfather rule suspension due to permanent program litigation.
—April 16, 1980 (45 FR 25992)—Proposed rule, revised regulation which provided a uniform grandfather clause.
—January 23, 1981 (46 FR 7894)—Final rule published to become effective February 23, 1981.
—January 29, 1981—Presidential memorandum postponing all pending regulations was signed (published on February 6, 1981, at 46 FR 11227).
—February 4, 1981 (46 FR 10707)—Extension of effective date for 60 days due to Presidential memorandum of January 29, 1981.
—March 23, 1981 (46 FR 18023)—Grandfather rule suspended pending outcome of State program approvals.
—April 3, 1981 (46 FR 20211)—Cancellation of March 23, 1981, notice; request for comment as to whether rules should be suspended indefinitely; and deferral of effective date.
—April 29, 1981 (46 FR 23924)—Deferral of effective date and reopening of public comment period due to request from public.
—June 15, 1981 (46 FR 31258)—Deferral of effective date to allow OSM time to analyze comments received.
—August 14, 1981 (46 FR 41046)—Deferral of effective date to allow OSM additional time to comply with the Presidential memorandum of January 29, 1981.
—September 29, 1981 (46 FR 47720)—Final grandfather rule published without a cutoff date.
—March 22, 1982 (47 FR 12310)—Proposed grandfather rule with cutoff date options.
—April 12, 1982 (47 FR 15605)—Extension of comment period at the request of the public.
—April 28, 1982 (47 FR 18134)—Extension of comment period at the request of the public.
—May 17, 1982—End of comment period.

This rulemaking history and several pertinent court decisions are briefly described in these past **Federal Register** documents. Members of the public are encouraged to review these related documents in order to obtain the complete history of the prime farmland grandfather issue.

In Congress' 10-year consideration of surface coal mining legislation, special standards for the preservation of prime farmland were not discussed until late 1976 and 1977 near the end of the process. The mining and reclamation of prime farmlands became a major issue when in 1977 the Secretary of the Interior, supported by President Carter, called for a moratorium of surface mining on prime farmland (House Report No. 95–218, 95th Cong., 1st sess., April 22, 1977, pages 157 and 185).

An interagency task force consisting of representatives from the Office of Management and Budget, Soil Conservation Service, Bureau of Mines, Federal Energy Administration, and Environmental Protection Agency was convened to address the issue of a moratorium of surface mining on prime farmland. This interagency task force concluded that the technological capability of restoring prime farmland had been demonstrated in three States, that a very small percentage of prime farmland would be affected by surface mining in the near future, and that the strippable coal reserve base of major sections of several States would be diminished by approximately 50 percent, thus causing extreme economic and social problems in those States. (See "Report of the Interagency Task Force on the Issue of a Moratorium or a Ban on Mining in Prime Agricultural Lands," 1977, available in OSM's Administrative Record as Accession No. 693D. The conclusions of this study, with respect to the impact of coal mining on agricultural production, were later supported in large part by the 1981 Rural Development Research Report No. 29 of the U.S. Department of Agriculture entitled "Coal Development in Rural America, The Resources at Risk," by Wallace McMartin, Virgil Whetzel, and P. R. Myers, on file in OSM's Administrative Record with this **Federal Register** notice.) In view of the findings of the Interagency Task Force, and also in view of testimony at hearings supporting the conclusion that reclamation was possible, Congress chose not to place a surface mining moratorium on prime farmland, but to allow mining where it could be demonstrated that the productive capability of prime farmland could be restored. It was suggested during discussions on the proposed moratorium of surface mining on prime farmland that several years might be needed to put this technological capability in place. The pre-Act legislative history does not provide any explicit guidance with respect to a cutoff date for the grandfather exemption, and what legislative history does exist contains conflicting views. (See discussion at 46 FR 7894, January 23, 1981.) Senators Percy, Culver, and others presented the grandfather exemption as an amendment to Senate Bill 7 (95th Cong., 1st sess., May 20, 1977; 123 Congressional Record S8103, daily ed.). Senator Percy described the action as follows:

> The administration proposal provided for case-by-case variances for new permits—and grandfathered all existing permits for stripping prime farmlands. We have retained the case-by-case variance procedure and the grandfather clause. * * * and we have written our amendment very carefully to indicate that we accept the coal companies' own contention that they can restore prime farmlands to full productivity.
>
> What we require is that they demonstrate—to the satisfaction of the State regulatory authorities—that they can and will do so before receiving any new permits. (123 Congressional Record S7871, daily ed., May 18, 1977).

The regulation adopted today responds to congressional concern for the protection of the Nation's prime farmland and the concern that mining operations in different States be accorded equal treatment. Since the passage of the Act, the Senate has moved to amend it and specifically to include a grandfather exemption cutoff date of August 3, 1982, under Senate Bill 2112 (96th Cong., 2d sess., August 22, 1980; 126 Congressional Record S11398, daily ed.). Congressional committees and individual Congressmen lent support to this effort and have expressed their desire to have a prime farmland grandfather cutoff date. Most importantly, the Senate's vote of 84 to 1 on August 22, 1980, to impose a 1982 cutoff date under S. 2112, is evidence of Congress' interpretation of the grandfather clause.

Additionally, the State of Illinois has considered the practical implication of the grandfather provisions of the Act and has limited the scope of the exemptions by having them expire on August 3, 1982. (See discussion at 46 FR 7895, January 23, 1981.) Illinois has relied upon this limit, but has indicated that if OSM were to fail to adopt a similar cutoff date, the Illinois provision may be unable to survive court challenge in the State. Illinois' action in adopting a cutoff date in its program has been one factor in OSM's decision to impose a nationally uniform cutoff date. As indicated later in response to comments, a period of time will be required before termination of the exemption to provide an opportunity for amendment of existing permits to include the special prime farmland requirements. For this reason the interim final rule provides an 8-month period for revising permits from August 3, 1982, and imposes a uniform cutoff date of April 3, 1983.

II. Discussion of Comments and Rules Adopted

OSM received comments from 121 commenters during the 56-day comment period of March 22, 1982, to May 17, 1982. One public hearing was held in Springfield, Ill., on April 15, 1982, at which 19 commenters voiced their concerns with respect to these prime farmland regulations. Those who expressed their concerns during the comment period included 37 members of Congress, the Secretary of Agriculture, three State regulatory agencies, and a variety of private citizens and organizations. The majority of these commenters supported a uniform cutoff date.

A. Comments of the Secretary of Agriculture

The U.S. Department of Agriculture is the Federal agency charged with the responsibility of protecting this Nation's farmlands. The Secretary of Agriculture, in his comments on this rulemaking, has reinforced his commitment to prime farmland conservation and protection. He and the Secretary of the Interior have solidified the cooperative partnership envisioned by Congress in carrying out the prime farmland provisions of the Act. The Department of Agriculture, through assignment to the Soil Conservation Service, and the Department of the Interior, through assignment to the Office of Surface Mining, stand ready to fulfill their responsibilities to meet the Act's requirements for reclamation of prime farmland soils.

One commenter pointed out that the Secretary of Agriculture did not concur in the prime farmland grandfather regulation promulgated on September 29, 1981, and stated that therefore those regulations are invalid. The same commenter also pointed out that the Secretary of Agriculture has historically supported the August 3, 1982, cutoff date and opposed any delay in its implementation. For this reason the commenter felt OSM should also support the August 3, 1982, cutoff date.

In his comments on this rulemaking, the Secretary of Agriculture reaffirms his commitment to the preservation of prime farmland through the adoption of an August 3, 1982, cutoff date. He also explains that while section 510(d)(1) of the Act requires concurrence by the Secretary of Agriculture in any OSM regulations dealing with section 510(d)(1) of the Act, Congress did not

extend this requirement of concurrence to regulations addressed solely to implementation of the grandfather exemption provided in section 510(d)(2).

OSM agrees with the Secretary of Agriculture in his evaluation of responsibilities under section 510(d)(2) of the Act. The concurrence of the Secretary of Agriculture for regulations implementing section 510(d)(1) of the Act is required to assure that his technical expertise is brought to bear on those rules to which it is applicable, such as defining and locating prime farmland and regulating its reclamation. Such technical expertise is not relevant to the policy decisions of Congress which are incorporated into section 510(d)(2) and which must be reconciled by the Secretary of the Interior. This is not a new position with respect to this issue. The working relationships developed over the past several years between OSM and the Soil Conservation Service involving regulation development and State programs have been formulated based upon this premise. The Soil Conservation Service has taken positive steps under the Act and regulations with respect to locating and identifying prime farmland soils (section 507(b)(16)), commenting on permit applications containing prime farmland (section 510(d)(1)), and establishing sepcifications for prime farmland soil reconstruction (section 515(b)(7)). OSM has developed all prime farmland rules with the assistance and concurrence, where appropriate, of the Soil Conservation Service.

B. General Comments

Several commenters asserted that there is no legal or technical justification to set a time frame for termination of the grandfather exemption. They indicated that time is not an appropriate vehicle to determine when grandfathering should cease and that the setting of an arbitrary cutoff date is beyond the power of the Secretary. They also felt that this determination must be made, if at all, based upon a case-by-case evaluation of the legal commitments, financial commitments, operational commitments, or a combination of these made as of August 3, 1977. This would be in keeping with the expressed intent of Congress to assure the continued operation of ongoing mines. These commenters went on to say that this is only fair to operators who designed mining operations, purchased equipment, analyzed economics, etc., based upon mining a certain area under specific requirements. Other commenters pointed out that there are too many differences among State practices and among mining operations to make any uniform termination date either practical or fair and that States which desire a cutoff date may establish one since a State regulatory program may always be more stringent than the Federal program. Another commenter pointed out that a termination date is not practical or reasonable because the technology exists to reclaim prime farmland and thus any such land disturbed would ultimately be returned to its premining capability. Several commenters also stated that the U.S. Court of Appeals of the District of Columbia rejected a previous OSM regulation that attempted to limit the section 510(d)(2) exemption to "revisions or renewals" of existing permits, saying:

> Our disposition of this issue reflects the recognition of Congress in section 510(d)(2) of the Act that when the statute was enacted, existing operations on prime farmlands had already made large investments in reliance on the requirements in effect at the time and that such existing mines should continue in operation independent of the fortuitous nature of the States' permit machinery. *In re: Surface Mining Regulation Litigation*, 627 F. 2d 1346, 1363 n. 18 (1980).

OSM believes that the proposed cutoff date is not arbitrary and is supported by the Act. Congress intended, and the Court of Appeals recognized, that the prime farmland exemption would not be limitless. See 46 FR 7895. The cutoff date insures that all mining operations will be required to meet the same standards, it will reduce potential variation in the application of the law in different States, and it will provide certainty to the public and the industry with regard to the scope of the prime farmland exemption. A case-by-case evaluation of each grandfathered mine to determine when the exemption should terminate for that mine could result in a different termination date for each operation. This variation would undermine the previously mentioned congressional desire for uniformity in regulations.

The majority of commenters recommended imposition of a uniform cutoff date based upon the belief that Congress did not expect the grandfathering of prime farmlands to continue long into the future. They further stated that lack of a cutoff date would allow circumvention of the prime farmland provisions of the Act, which must not be allowed to continue without end. These commenters generally expressed their support for alternative A in the March 22, 1982, proposal which would provide an August 3, 1982, termination date for the prime farmland grandfather exemption. The support expressed in these comments for alternative A has been a major factor in the decision to impose a uniform grandfather exemption cutoff date. OSM agrees with these comments to the extent that they support a cutoff date in the near future.

In this regard, several commenters who favored a uniform cutoff date pointed out the lack of time remaining for an August 3, 1982, cutoff date and therefore suggested December 31, 1982, and February 3, 1983, as alternative cutoff dates. One commentor suggested that the exemption terminate 8 months after the date on which the Secretary approves a State regulatory program (as derived from 30 CFR 771.11, general requirements for permits). These commenters were concerned with the time required by the regulatory authority permit approval process under the interim or permanent programs, coordination with the Soil Conservation Service in prime farmland soil surveys and reclamation plan review, and the time to obtain the information needed to establish proof of technological capability under section 510(d)(1) of the Act.

OSM agrees that the regulatory authority permit approval process under permanent regulatory programs is time consuming. Establishing reclamation plan coordination, soil surveys, and proof of technological capability with the Soil Conservation Service will be time consuming. The proof needed to assure technological capability to reclaim prime farmland will vary depending upon local conditions including soils, soil handling equipment, crop productivity requirements, and other reclamation plan requirements. Moreover, some commenters pointed out that this burden of proof delays the permitting process and could disrupt mining for operators capable and willing to meet the special prime farmland reclamation standards, but whose existing permit does not include specific approval under the permanent program to mine prime farmlands.

In response to these comments, OSM has selected a cutoff date of April 3, 1983. The selection of April 3, 1983, as the cutoff date is based upon the necessity of providing a period of time to allow for the amendment of existing permits to include the special standards applicable to prime farmlands. This date is consistent with the 8-month period provided in sections 502 and 506 of the Act and 30 CFR 771.11 for issuance of permanent program permits after approval of a State program.

Several commenters observed that imposition of a uniform cutoff date would be contrary to congressional

intent to ensure a transition for existing mines to the full requirements of the special prime farmlands performance standards of the permanent program. They noted that such a rule could impose harsh local and regional employment, energy, and other socioeconomic impacts in direct conflict with congressional intent in enacting section 510(d)(2). They added that such impacts could further be detrimental to the President's and the Nation's economic recovery goals and would only aggravate the Nation's record high unemployment levels.

OSM agrees that in enacting section 510(d)(2), Congress intended to provide for a transition period for existing operations and to help minimize adverse financial and socioeconomic impacts. The majority of commenters felt that the 5-year period from August 3, 1977, to August 3, 1982, has provided an adequate period for transition of preexisting, permitted prime farmland operations. Further, the termination date selected by OSM will encompass the 5-year transition period chosen by Illinois after that State carefully considered the condition of the mining industry there. As mentioned above, OSM determined that August 3, 1982, would not be fair to States and operators and therefore chose a date 8 months beyond the 5-year period from passage of the Act.

A few commenters have focused on the number of prime farmland acres potentially affected by surface coal mining and these grandfather regulations. OSM received widely varying estimates of the number of acres potentially affected. The State of Illinois estimates that approximately 14,000 acres of prime farmland have currently been grandfathered in Illinois, and of this amount only 12,000 acres are projected to be mined out prior to August 3, 1982. The State of Indiana estimates that 11,560 acres of prime farmland are grandfathered under current permits.

One of the largest coal companies in the country operating fourteen mines in areas where a high percentage of prime farmland exists estimates that no more than 22,000 acres of prime farmland would be subject to the grandfather clause at all fourteen of their mines including three mines in Illinois, five mines in Kentucky, and six mines in Indiana. Another coal company reported that approximately 11,764 prime farmland acres in Illinois would be affected by a termination date.

OSM is unable to resolve the variation in these comments and has not determined the precise number of acres potentially affected by this rule. However, the majority of commenters requested a uniform cutoff date regardless of the number of acres affected, and thus the selection of a uniform cutoff date is not based upon the number of acres potentially affected.

Prime farmland impacted by underground mines was of concern to some commenters because of the potential effects of surface support facilities and subsidence. Another commenter pointed out that a typical midwestern underground mine acquires a few hundred acres of surface area for support facilities to mine an entire block of coal (15,000–20,000 acres of coal).

Prime farmland affected by subsidence is protected under 30 CFR 784.20, 817.121, 817.122, 817.124, and 817.126 of the permanent program regulations. The permit application for underground mining operations must contain an analysis of whether or not there are renewable resource lands" (prime farmland included) potentially affected by subsidence and specify measures that will be taken to prevent material damage to the land surface. These regulations are not affected by this rulemaking and are the same for both grandfathered and nongrandfathered mines. For a discussion of proposed changes to the subsidence rules, see the proposed rule published on April 16, 1982 (47 FR 16604).

III. Procedural Matters

Executive Order 12291

OSM has determined that this rule is not a major rule under Executive Order 12291 and a regulatory impact analysis has not been prepared.

The Regulatory Flexibility Act

These rules have also been examined pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., and OSM has determined that the rules do not have a significant impact on a substantial number of small entities.

The National Environmental Policy Act

Revision of § 716.7 of the initial program regulations is deemed not to be a major Federal action within the meaning of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332, as stated in Section 501(a) of the Act, 30 U.S.C. 1251, and a detailed statement on the analysis of the environmental impacts of its revision is not required.

Revision of § 785.17, however, required OSM to prepare an environmental assessment (EA) on the impacts of this revision and the cumulative impacts of this revision in relation to revisions of certain other rules. In the finding of no significant impact (FONSI) of July 2, 1982, for those certain revisions whose cumulative impacts were analyzed, this revision of § 785.17 was considered to be in Category I, which contains those revisions for which the analysis of impacts is sufficiently certain to support a FONSI. However, this revised rule is also being reconsidered in the draft supplement to OSM's Final Environmental Statement OSM–EIS–1 and will be reconsidered in the final supplement to OSM–EIS–1. This rule is being issued as an interim final rule prior to completion of the supplement to OSM–EIS–1, due to the necessity of allowing States and operators time to prepare for the termination of grandfathering. OSM will issue a final rule after the environmental effects are completely analyzed in the supplemental EIS.

List of Subjects

30 CFR Part 716

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

30 CFR Part 785

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

Accordingly, 30 CFR Parts 716 and 785 are amended as set forth herein.

Dated: July 16, 1982.

Daniel N. Miller, Jr.,

Assistant Secretary, Energy and Minerals.

PART 716—SPECIAL PERFORMANCE STANDARDS

1. In § 716.7, paragraph (a)(2)(iv) is added to read as follows:

§ 716.7 Prime farmland.

(a) * * *

(2) * * *

(iv) The exceptions granted by Paragraphs (a)(2)(i)–(iii) of this section apply only to lands mined to the coal face and related benches prior to April 3, 1983.

* * * * *

PART 785—REQUIREMENTS FOR PERMITS FOR SPECIAL CATEGORIES OF MINING

2. In § 785.17, paragraph (a)(5) is added to read as follows:

§ 785.17 Prime farmland.

(a) * * *

(5) The exceptions granted by Paragraphs (a)(1)–(3) of this section apply only to lands mined to the coal

face and related benches prior to April 3, 1983.

* * * * *

(Pub. L. 95–87, 30 U.S.C. 1201, *et seq.*)

[FR Doc. 82–20688 Filed 7–29–82; 8:45 am]

BILLING CODE 4310–05–M

COPYRIGHT ROYALTY TRIBUNAL

37 CFR Part 304

Cost of Living Adjustment for Compulsory Royalty Rates Paid by Non-Commercial Broadcasting

AGENCY: Copyright Royalty Tribunal.

ACTION: Final rule.

SUMMARY: The Copyright Royalty Tribunal announces that the cost of living adjustment to be applied to the compulsory royalty rates paid by non-commercial broadcasting for the use of certain copyrighted works is 6.7 percent.

DATE: Effective: September 1, 1982.

FOR FURTHER INFORMATION CONTACT: Frances Garcia, Chairman, Copyright Royalty Tribunal, 202–653–5175.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 8, 1978 (43 FR 25068) the Copyright Royalty Tribunal published a final rule announcing the terms and rates of royalty payments to be paid by non-commercial broadcasting for the use of certain copyrighted works. In that rule § 304.10 stated that:

(a) On August 1, 1979 the CRT shall publish in the **Federal Register** a notice of the change in the cost of living as determined by the Consumer Price Index (all urban consumers, all items) from the first Index published subsequent to the effective date of this schedule of royalty payments to the last Index published prior to August 1, 1979.

On each August 1 thereafter the CRT shall publish a notice of the change in the cost of living during the period from the first Index published subsequent to the previous notice, to the last Index published prior to August 1 of that year.

(b) On the same date of the notices published pursuant to paragraph (a), the CRT shall publish in the **Federal Register** a revised schedule of rates which shall adjust those royalty amounts established in dollar amounts according to the change in the cost of living determined as provided in paragraph (a). Such royalty rates shall be fixed at the nearest dollar.

(c) The adjusted schedule of rates shall become effective thirty days after publication in the **Federal Register.**

Accordingly, it is announced that the change in the cost of living as determined by the Consumer Price Index (all urban consumers, all items) from the Index published June 23, 1981 to the last Index published prior to August 1, 1982, is 6.7% (Last year's May Index was published June 23, 1981 and was 269.0; and this year's May Index was published June 22, 1982 and was 287.1.) The rates published in the **Federal Register** on August 1, 1981 (46 FR 39139) are revised as shown below.

List of Subjects in 37 CFR Part 304

Copyright, Radio, Television.

37 CFR Part 304 is amended as follows:

§ 304.3 [Amended]

1. Section 304.3(a) is amended by removing the figure "1,739,715" and inserting "$1,856,276."

2. Section 304.3(d) is amended by removing the figure "$5,567" and inserting "$5,940."

§ 304.4 [Amended]

3. Section 304.4(a) is amended by removing the paragraph containing dollar amounts and inserting the following:

* * * * *

(a) * * *

For the performance of such a work in a feature presentation of PBS.....$148
For the performance of such a work as background or theme music in a PBS program.....37
For the performance of such a work in a feature presentation of NPR.....15
For the performance of such a work as background or theme music in a NPR program.....3
For the performance of such a work in a feature presentation of a station of PBS.....52
For the performance of such a work as background or theme music in a program of a station of PBS.....15
For the performance of such a work in a feature presentation of a station of NPR.....9
For the performance of such a work as background or theme music in a program of a station of NPR.....2

* * * * *

§ 304.5 [Amended]

4. Section 304.5(c) is amended by removing the paragraphs containing dollar amounts and inserting the following:

* * * * *

(c) * * *

For all such compositions in the repertory of ASCAP annually.....$133
For all such compositions in the repertory of BMI annually.....133
For all such compositions in the repertory of SESAC annually.....29
For the performance of any other such composition.....1

* * * * *

§ 304.6 [Amended]

5a. Section 304.6(c)(1) is amended by removing the paragraphs containing dollar amounts and inserting the following:

* * * * *

(c) * * *

(1) * * *

For all such compositions in the repertory of ASCAP annually.....$268
For all such compositions in the repertory of BMI annually.....268
For all such compositions in the repertory of SESAC annually.....60
For the performance of any other such compositions.....1

* * * * *

6. Section 304.6(c)(2) is amended by removing the paragraphs containing dollar amounts and inserting the following:

* * * * *

(c) * * *

(1) * * *

For all such compositions in the repertory of ASCAP annually.....$670
For all such compositions in the repertory of BMI annually.....670
For all such compositions in the repertory of SESAC annually.....148
For the performance of any other such compositions.....1

* * * * *

6. In § 304.7(b)(1)–(4) the paragraphs containing the dollar amounts are removed and the following inserted in lieu:

§ 304.7 Recording rights, rates and terms.

* * * * *

(b) *Royalty rate.* (1) * * *

Feature.....$74
Feature (concert) (per minute).....22
Background.....37
Theme: Single program or first series program.....37
Other series program.....15

(2) * * *

Feature.....15
Feature (concert) (per ½ hour).....22
Background and Theme.....3

(3) * * *

Feature.....29
Feature (concert) (per minute).....9
Background.....15
Theme: Single program or first series program.....15
Other series program.....9

(4) * * *

Feature.....9
Feature (concert) (per ½ hour).....11
Background and Theme.....2

* * * * *

7. Section 304.8(b)(1) is revised to read as follows:

§ 304.8 Terms and rates or royalty payments for the use of published pictorial, graphic, and sculptural works.

* * * * *

(b) *Royalty rate.* (1) The following schedule of rates shall apply to the use or works within the scope of this section:

For such uses in a PBS distributed program:

For a feature display of a work.....$45
For a background and montage display.....22
For use of a work for program identification or for thematic use.....89
For the display of an art reproduction copyrighted separately from the work of fine art from which the work was reproduced irrespective of whether the reproduced work of fine art is copyrighted so as to be subject also to payment or a display fee under the terms of this schedule.....29

For such uses in other than PBS distributed programs:

For a featured display of work.....29
For background and montage display.....15
For use of a work for program identification or for thematic use.....60
For the display of an art reproduction copyrighted separately from the work of fine art from which the work was reproduced, irrespective of whether the reproduced work of fine art is copyrighted so as to be subject also to payment of a display fee under the terms of this schedule.....15

Frances Garcia,

Chairman, Copyright Royalty Tribunal.

[FR Doc. 82-20689 Filed 7-29-82; 8:45 am]

BILLING CODE 1410-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6267

[I-8947]

Idaho; Withdrawal of Forest Service Lands

Correction

In FR Doc. 82-17085 appearing at page 27283 in the issue for Thursday, June 24, 1982, the description in section 14 is incorrect. The description should read as follows:

Sec. 14, S½SW¼SW¼NE¼, SW¼NE¼ NE¼NW¼, NW¼NW¼NE¼NW¼, SE¼SW¼SE¼NW¼, S½SE¼SE¼NW¼;

BILLING CODE 1505-01-M

Proposed Rules

Federal Register
Vol. 47, No. 147
Friday, July 30, 1982

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Ch. 1

Regulatory Agenda

AGENCY: Office of Personnel Management.

ACTION: Semiannual agenda of regulations.

SUMMARY: The following Office of Personnel Management regulations are scheduled for review or development during the 6-month period from May 1, 1982, through October 31, 1982. Publication of the agenda, originally scheduled for April 1982, has been delayed to allow OPM additional time to consider policy implications. This agenda carries out OPM's responsibilities to publish semiannual agenda under E.O. 12291, Federal Regulations, and the Regulatory Flexibility Act (5 U.S.C. Chapter 6). This publication in the **Federal Register** does not impose a binding obligation on the Office of Personnel Management with regard to any specific item on the agenda. Regulatory action in addition to the items listed is not precluded.

FOR FURTHER INFORMATION CONTACT: Beverly McCain Jones, Issuance System Office, Office of Planning and Evaluation, (202) 254–5966.

Office of Personnel Management,
Donald J. Devine,
Director.

REGULATIONS SCHEDULED FOR REVIEW OR DEVELOPMENT

[May 1, 1982 through Oct. 31, 1982]

CFR part (and subpart or section number if applicable) or other authority	Title of affected part	Brief description and update status	Knowledgeable official, responsible office, and telephone No.	Major rule; yes or no	Affect small entities; yes or no
1. 5 CFR Part 274	Corrective Actions	*Description:* Proposed new regulations to establish procedures for OPM or agency initiated corrective actions, in cases of violations of civil service rules and regulations. *Justification:* Establish regulatory base for compliance oriented corrective action. *Status:* Currently under review within OPM. *Revised Target Date:* Proposed regulation 8/82.	Terry Evans, Compliance Division, Agency Compliance and Evaluation, Compliance and Investigations Group, (202) 632–4540.	No	No.
2. 5 CFR Part 294 and 5 CFR Part 293.	Availability of Official Information.	*Description:* Guidance for obtaining information from OPM, under the Freedom of Information Act. *Justification:* The Freedom of Information Act requires agencies to publish regulations describing how to obtain information from them. Implementation of SES, questions about availability of data on members, and institution of performance evaluation raises a question of performance standards and/or evaluations. *Status:* Comments have been received from agencies through IAG and some changes made based on comments. Package currently under review within OPM. *Revised Target Date:* Proposed regulation 7/82.	William C. Duffy, Chief Information Systems Plans & Policies Branch, Administration Group, (202) 632–7714.	No	No.
3. 5 CFR Part 307, §307.105.	Veterans Readjustment Appointments.	*Description:* To clarify the right of VRAs to appeal from termination during their first year of service on the same basis as employees in the competitive service (5 CFR 315.804, 815, 806) and to include reference to the right of VRAs who have completed 1 year of service to appeal removal under 5 CFR 432 and 5 CFR 752C. *Justification:* To assure that VRAs have access to appeal rights to which entitled. If not issued, MSPB may continue to dismiss VRA appeals for lack of jurisdiction. *Status:* Package being revised to take into account issues raised during the internal review process. *Revised Target Date:* Proposed regulations 8/82.	John Schultz, Office of Policy Analysis and Development, Staffing Group, (202) 632–6817.	No	No.
4. 5 CFR Part 315 [1], Subpart I.	Probationary Period for Managers and Supervisors.	*Description:* Clarify the return rights of employees who are downgraded into supervisory positions and fail to satisfactorily complete the probationary period. *Justification:* This is a situation which was not contemplated when the law passed. It needs to be addressed. *Status:* Rescheduled due to higher priority work *Revised Date:* Proposed regulations 9/82	Ellen Russell, Office of Policy Analysis and Development, Staffing Group, (202) 632–6817.	No	No.
5. 5 CFR Part 317, Subpart G.	SES Career Appointment by Reinstatement.	*Description:* Final regulations on reinstatement to an SES career appointment following (a) a voluntary separation from SES, or (b) a Presidential appointment. *Justification:* These reinstatements are authorized by law. The regulations set the procedures for implementing the law. Interim regulations were issued on 12/5/80. Need to make regulations final based on comments on interim.	Jim Farley, Office of Executive Personnel, Administration Group, (202) 632–5446.	No	No.

REGULATIONS SCHEDULED FOR REVIEW OR DEVELOPMENT—Continued

[May 1, 1982 through Oct. 31, 1982]

CFR part (and subpart or section number if applicable) or other authority	Title of affected part	Brief description and update status	Knowledgeable official, responsible office, and telephone No.	Major rule; yes or no	Affect small entities; yes or no
		Status: Some delay anticipated due to higher priority work and staff reductions. *Revised Target Date:* Final regulations 10/82			
6. 5 CFR Part 317, Subpart H.	Career Appointees: Retention of SES Provisions Following a Presidential Appointment.	*Description:* Regulations to implement 5 U.S.C. 3392(c) regarding the right of SES career appointees to retain certain SES provisions while serving under a Presidential appointment made by and with the advice and consent of the Senate. *Justification:* Regulations are needed to insure uniformity in the implementation of the law. *Status:* Some delay anticipated due to higher priority work and staff reductions. *Revised Target Date:* Proposed regulations 10/82.	Jim Farley, Office of Executive Personnel, Administration Group, (202) 632-5446.	No	No.
7. 5 CFR Part 317 [1]	Appointment, Reassignment, Transfer and Reinstatement in the Senior Executive Service.	*Description:* Regulations to limit the unrestricted movement of individuals from noncareer SES & equivalent tenure to career SES status. *Justification:* These regulations are needed to formalize OPM policy posture that unrestricted movement from noncareer to career status runs counter to the spirit of Civil Service reform and the merit system. *Target Dates:* Proposed regulation 10/82; final regulations 1/83.	Michael Duggins, Office of Executive Personnel, Administration Group, (202) 632-4695.	No	No.
8. 5 CFR Part 339 (432, 752, and 831).	Medical Qualification Requirements.	*Description:* Proposed regulation governing medical examinations of Federal employees and agency filed disability retirement applications. *Justification:* Regulations are needed to correct problems that have resulted from misuse of mandatory fitness-for-duty examinations (particularly psychiatric examinations). Present procedures governing medical examination have received much criticism from Congress and employee organizations. *Target Date:* Proposed regulation 10/82.	Cynthia Field, Appellate Policies Division, OPE, (202) 254-5517.	No	No.
9. 5 CFR Part 351	Reduction In Force: Identification of Employees for Transfer of Function.	*Description:* Clarify existing OPM policy pertaining to the identification of employees with a transferring function. *Justification:* This proposed regulation is intended to clarify and simplify existing policy concerning employee retention rights. *Status:* Delayed in order to coordinate work with RIF Project. (See item 11) *Revised Target Date:* Proposed regulations 8/82.	Leota Shelkey, Office of Policy Analysis and Development, Staffing Group, (202) 632-6817.	No	No.
10. 5 CFR Part 352	Reemployment Rights After Service With Panama Canal Commission.	*Description:* Proposed Subpart I for reemployment rights for Federal employees who accept assignment with the Panama Canal Commission. *Justification:* To implement Pub. L. 96-70 which authorizes OPM to prescribe regulations to put reemployment rights into effect. *Status:* Delayed due to higher priority work. *Revised Target Date:* Proposed regulations published 1/82. Target date for final regulations 9/82.	Leota Shelkey, Office of Policy Analysis and Development, Staffing Group, (202) 632-6817.	No	No.
11. 5 CFR Part 352	Reemployment Rights After Service With U.S. Senate Committee on Appropriations.	*Description:* Add new subpart covering reemployment following service with the U.S. Senate Committee on Appropriations under provision of 2 U.S.C. 67a. Delete Subpart F covering reemployment after service in the Economic Stabilization Program because applicable law has been repealed. *Justification:* New subpart needed to implement 2 U.S.C. 67a. Deletion of Subpart F needed because statutory authority for it no longer exists.. *Status:* Undergroing final revisions. *Revised Target Date:* Proposed regulations 7/82.	Tracy Spencer, Noncompetitive Staffing and College Relations, Staffing Group, (202) 632-6000.	No	No.
12. 5 CFR Part 352 [1]	Reemployment Rights for SES Personnel.	*Description:* Extend reemployment rights under this Part to SES Personnel. *Justification:* Correct an oversight whereby SES'ers are not now covered. *Status:* Package currently being reviewed within OPM. *Target Date:* Proposed regulations 7/82.	*John Shultz, Office of Policy Analysis and Development, Staffing Group, (202) 632-6817.	No	No.
13. 5 CFR Part 353	Restoration to Duty	*Description:* The proposed changes would (1) give agencies greater flexibility in placing an employee entitled to restorations by exempting them (agencies) from the present requirement that they restore a veteran to his/her previous position even though it was occupied by an employee in the same retention subgroup under Part 351; (2) clarify an agency's rights and responsibilities in cases when the DOL takes excessive time to decide a claim or the claimant appeals DOL's decision to stop compensation; and (3) state an agency has discretion to carry an injured employee on LWOP for whatever period it considers appropriate, or separate the employee who is unable to work. *Justification:* Several recent MSPB cases have revealed gaps in the regulations on these issues which have led to undersirable decisions. *Status:* Recent MSPB and court decisions impact on the direction of this project. OPM awaiting DOL decision to appeal. *Revised Target Date:* Proposed regulations 7/82.	Ellen Russell, Office of Policy Analysis and Development, Staffing Group, (202) 632-6817.	No	No.

REGULATIONS SCHEDULED FOR REVIEW OR DEVELOPMENT—Continued

[May 1, 1982 through Oct. 31, 1982]

CFR part (and subpart or section number if applicable) or other authority	Title of affected part	Brief description and update status	Knowledgeable official, responsible office, and telephone No.	Major rule; yes or no	Affect small entities; yes or no
14. 5 CFR Part 359, Subpart H [1].	Removal, Reinstatement and Guaranteed Placement in the Senior Executive Service.	*Description:* Final regulations on furloughs of career members of the Senior Executive Service, including appeal rights to the Merit Systems Protection Board. *Justification:* Regulations prescribe procedures for making furloughs of career SES appointees to ensure that actions are taken fairly. Regulations are needed because title 5 does not specify procedures. Interim regs. were issued 1/15/82. *Status:* Comments have been received and are being reviewed. Some minor revisions are expected. *Target Date:* Final regulation 7/82.	Neal Harwood, Office of Executive Personnel, Administration Group, (202) 632-7676.	No	No.
15. 5 CFR Part 359	Removal, Reinstatement and Guaranteed Placement in the Senior Executive Service.	*Description:* Final regulations on (1) the removal of SES career appointees during probation or for less than fully successful executive performance, (2) the removal of other SES appointees, and (3) placement rights of certain SES career appointees. *Justification:* These actions are authorized by law. The regulations establish procedures for implementing the law. Interim regulations were issued on July 31, 1979. *Status:* Some delays anticipated due to higher priority work. *Revised Target Date:* Final regulation 10/82	Ann Ugelow, Office of Executive Personnel, Administration Group, (202) 632-3782.	No	No.
16. 5 CFR Part 410, § 410.508 and § 410.509.	Training: Agreement to Continue in Service and Failure to Fulfill Agreement to Continue in Service.	*Description:* Proposed regulations to clarify procedures governing continued service agreements and provide due process procedures when an agency recovers expenses from employee who fails to continue in service after training. *Justification:* Simplify the administration of continued service agreements making them less costly. In order to avoid having agency heads vulnerable to personal liability suits due process provisions have been added. *Status:* Proposed regulations published March 12, 1982. Comments have been received and are under review. *Revised Target Date:* Final regulations 9/82.	Constance Guitian, Training Policy Division, WED, (202) 653-6171.	No	No.
17. 5 CFR Part 430, Subpart B.	Performance Appraisal	*Description:* Publish amendments to include a statutory requirement regarding the use of performance standards in appraising employee performance on individual elements. *Justification:* Title 5, U.S.C., Section 4302(b)(1) requires that agencies establish performance standards which will, to the maximum extent feasible, permit the accurate evaluation of job performance. Since some agencies question this requirement it is essential that the requirement be specifically described in OPM regulations. See FPM Letter 430—dated 3/80. *Status:* Package currently under review within OPM *Revised Target Date:* Final regulations 7/82.	Nat Brown, Performance Appraisal Service Division, WED, (202) 632-8950.	No	No.
18. 5 CFR Part 432	Reduction in Grade and Removal Based on Unacceptable Performance.	*Description:* Proposed regulation clarifying agency's obligations when an employee's health is an issue. *Justification:* This amendment is intended to define agency and employee obligations to avoid harmful errors by agencies in taking actions based on unacceptable performance resulting in costly reversal by review bodies. *Status:* Package to be coordinated with item 10. Package currently under review within OPM. *Revised Target Date:* 10/82 for new proposed regulation.	Cynthia Field, Appellate Policies Division, OPE, (202) 254-5517.	No	No.
19. 5 CFR Part 451, Subpart B § 451.207.	Incentive Awards: Eligibility	Proposed revision to regulation would exclude members of the Senior Executive Service from eligibility for lump sum cash awards for sustained superior job performance. *Justification:* Cash awards for sustained superior performance authorized by Chapter 45 of title 5 U.S.C. are duplicative of performance bonuses for career SES members, authorized under 5 U.S.C. 5384. This has led to questions regarding possible misuse of incentive awards authorities to circumvent the intent of Congressional and OPM restrictions on performance bonuses to SES members. Revisions of the incentive awards regulations would preclude both misuse and speculation. *Revised Target Date:* Proposed regulations 8/30/82	Richard P. Brengel, Office of Productivity Programs, WED, (202) 632-4596.	No	No.
20. 5 CFR Part 470	Personnel Research Programs and Demonstration Projects.	*Description:* Add new Part 470 to implement programs for conducting research and demonstration projects.. *Justification:* Implement 5 U.S.C. 4706 (CSRA) *Status:* Proposed regulation was issued 9/81. Preparation of final regulations underway. *Revised Target Date:* Final regulation 7/82.	Donald Hill, Office of Planning and Evaluation, (202) 254-6486.	No	No.

REGULATIONS SCHEDULED FOR REVIEW OR DEVELOPMENT—Continued

[May 1, 1982 through Oct. 31, 1982]

CFR part (and subpart or section number if applicable) or other authority	Title of affected part	Brief description and update status	Knowledgeable official, responsible office, and telephone No.	Major rule; yes or no	Affect small entities; yes or no
21. 5 CFR Part 511: 511.605, 511.611, 511.701, 511.702 and 511.703.	Classification Under the General Schedule.	*Description:* Clarify retroactive effective date for employees with retained grade. *Justification:* OPM published final rules on classification appeals under the General Scehdules on 1/30/81. At that time it was decided that for employees in retained grade there would be no need for retroactive adjustments since their title, series, and grade would not be affected during the retained grade period. However several agencies have raised questions concerning the consequence of a classification action when the employee is eligible for retained grade and suffers a subsequent RIF. Under current regulations the correct title, series, and grade would be used for RIF purposes rather than the retained title, series, and grade. To deny employees in this situation the possibility of retroactive adjustment, if warranted, would place them at a disadvantage compared to other employees. *Status:* Currently under review within OPM *Revised Target Date:* Proposed regulation 8/82	Gust Pappas, Classification Appeals Office, Agency Compliance and Evaluation, Compliance and Investigations Group, (202) 632-6846.	No	No.
22. 5 CFR Part 531, Subparts B and C.	Pay Under the General Schedule.	*Description:* Proposed revised regulations on movement from non-General Schedule pay systems, use of highest previous rate, pay on promotion, pay schedule conversion rule, pay adjustments for supervisors, and merit pay administration rules. *Justification:* Revised regulations are necessary to clarify basic pay administration policies and to implement cost-effective solutions to basic pay administration problems. *Status:* Development continuing *Target Date:* Proposed regulations 7/82	Donald J. Winstead, Office of Pay and Benefits Policy, Compensation Group, (202) 632-4634.	No	No.
23. 5 CFR Part 534 [1]	Pay Under Other Systems	*Description:* Regulations to define an "annual pay adjustment" in the Senior Executive Service, and clarify the conditions under which they may be made. *Justification:* Regulations are needed to clarify the intent and application of 5 U.S.C. 5383(c). *Target Dates:* Interim regulations 10/82; final regulations 3/83.	Michael Duggins, Office of Executive Personnel, Administration Group, (202) 632-4695.	No	No.
24. 5 CFR Part 536	Grade and Pay Retention: Termination When Employee Transfers to Another Agency.	*Description:* Proposed revised regulations to clarify what effect a transfer to a new agency has on eligibility for grade or pay retention, and to clarify appeal rights when an employee loses eligibility for benefits by declining an offer of another position. *Target Date:* Proposed regulation 7/82	Roger Menke, Office of Pay and Benefits Policy, Compensation, (202) 632-4684.	No	No.
25. 5 CFR Part 540	Merit Pay Systems	*Description:* Revised regulations to clarify policies and implement changes prompted by merit pay program evolution and development. *Justification:* Modification required by program evolution and change to implementation status. *Status:* Original target date has slipped due to change in program priorities. *Revised Target Date:* Proposed regulation 7/82	Peter Rymshaw, Workforce Effectiveness and Development Group, (202) 632-6127.	No	No.
26. 5 CFR Part 550	Pay Administration General	*Description:* Final regulations on the installment collection of indebtedness because of erroneous payment made by an agency. *Justification:* Required to implement section 8(1) of E.O. 11609, 7/22/71, as revised by E.O. 12107, 12/28/78. *Target Date:* Final regulation 9/82	Patricia Rochester, Office of Pay Benefits Policy, Compensation, (202) 632-4634.	No	No.
27. 5 CFR Part 550, Subpart J.	Pay Administration, Adjustment of Work Schedules for Religious Observances.	*Description:* Proposed regulations to implement 5 U.S.C. 5550A.. *Justification:* Regulations will provide methods for an agency to control the adjustment of work schedules for this purpose and for conditions that constitute a basis for denying an employee's request due to interference with the agency's mission. *Target Date:* Proposed Regulations 7/82	Dwight W. Brown, Office of Pay and Benefits Policy, Compensation, (202) 632-4634.	No	No.
28. 5 CFR Parts 550 and 610.	Pay Administration and Hours of Work.	*Description:* Final regulations to clarify the definition of the phrase "regularly scheduled workweek" under chapter 55 and 61 of title 5, U.S.C. *Justification:* Regulations clarify the meaning of the phrase "regularly scheduled" and reestablish the proper relationship between an agency's responsibility to schedule work under chapter 61 and an employee's entitlement to premium pay for such work under subchapter V of chapter 55 of title 5, U.S.C. GAO has concurred in OPM's issuance of these regulations, which will greatly simplify this aspect of pay administration. *Revised Target Date:* Final regulations 7/82	Dwight W. Brown, Office of Pay and Benefits Policy, Compensation, (202) 632-4634.	No	No.
29. 5 CFR Parts 550 and 610.	Pay Administration and Hours of Duty.	*Description:* Proposed regulations to allow agencies to "round up" and "round down" to nearest quarter of an hour for crediting irregular, unscheduled overtime work. *Justification:* Regulation neeeded to equalize treatment of fractional hours of overtime work and time spent in preshift and postshift activities. *Target Date:* Proposed regulation 7/82, Final regs. 10/82	Mary Angel, Office of Pay and Benefits Policy, Compensation, (202) 632-4684.	No	No.
30. 5 CFR Part 551	Pay Administration Under the FLSA Exemptions.	*Description:* Proposed revised regulations to simplify the exemption determination process. *Justification:* These revisions would reduce the costs to agencies of administering the FLSA. *Status:* Proposed revisions currently under review within OPM.	Mario Caviglia, Compliance Division, Agency Compliance and Evaluation, Compliance and Investigations Group, (202) 632-4540.	No	No.

REGULATIONS SCHEDULED FOR REVIEW OR DEVELOPMENT—Continued

[May 1, 1982 through Oct. 31, 1982]

CFR part (and subpart or section number if applicable) or other authority	Title of affected part	Brief description and update status	Knowledgeable official, responsible office, and telephone No.	Major rule; yes or no	Affect small entities; yes or no
31. 5 CFR Part 551, Subpart F.	Pay Administration Under the FLSA Compliance.	*Revised Target Date:* Proposed regulation 8/82 *Description:* Proposed new regulation to implement the FLSA Compliance Program. *Justification:* Required by 29 U.S.C. 204(f) and by changes made by 5 USC 1103a5. *Status:* Currently under review within OPM	Mario Caviglia, Compliance Division, Agency Compliance and Evaluation, Compliance and Investigations Group, (202) 632-4540.	No	No.
32. 5 CFR Part 581 [1]	Processing Garnishment Orders for Child Support and/or Alimony.	*Revised Target Date:* Proposed regulation 8/82 *Description:* Clarification of which VA benefits are subject to garnishment. Also assorted revisions and updates. *Justification:* Request of the Veterans Administration	Murray Meeker, Office of the General Counsel, (202) 254-6586.	No	No.
33. 5 CFR Part 610, Subpart D. [1]	Hours of Work, Alternate Work Schedules.	*Revised Target Date:* Proposed regulation 7/82 *Description:* Proposed regulations to implement the anticipated 3 year extension of the alternate work schedules program. *Justification:* Present legislative proposal provides agencies and OPM greater management controls for the establishment and termination of alternative work schedules. *Target Date:* Contingent on enactment of legislation	Dwight W. Brown, Office of Pay and Benefits Policy, Compensation, (202) 632-4634.	No	No.
34. 5 CFR Part 630, Subpart I.	Leave	*Description:* Proposed revision of sick leave and home leave regulation, and FPM guidance. *Justification:* Needed for clarification and elimination of discrepancies in application. *Target Date:* Proposed regulation 7/82	Betty Roth, Office of Pay and Benefits Policy, Compensation, (202) 632-4684.	No	No.
35. 5 CFR Part 715	Actions in the Interest of the Employee.	*Description:* Final regulation covering voluntary personnel actions and other actions in the interest of the employee, including cancellation and correction of separations, reductions in pay, suspensions, furloughs, etc. *Justification:* The current regulation has an obsolete title and covers only the employee's right to resign and to withdraw a resignation before the effective date. Other requirements are contained in FPM Chapter 715 and FPM Supplement 831-1 which should be in regulations. Since the regulations and FPM chapter are used both by agencies and by MSPB (in adjudicating appeals of alleged involuntary actions), we believe it is necessary to reorganize the regulation and FPM chapter to place all mandatory requirements in the regulation, and only guidance, including court and MSPB decisions, in the FPM Chapter. *Status:* Have received comments on the proposed regulations. Final regulations delayed until 12/82 due to higher priority projects. *Revised Target Date:* Final regulations 12/82	Cynthia Field, Appellate Policies Division, OPE, (202) 254-5517.	No	No.
36. 5 CFR Part 720	Federal Equal Opportunity Recruitment Program (FEORP).	*Description:* Final regulations to revise Part 720 to simplify data requirements relating to FEORP. *Justification:* To make possible maximum consistency with data requirements contained in EEOC's "Final Instructions for Federal Agency Affirmative Action Plans" and therefore reduce paperwork and calculation burdens on agencies. *Status:* Anticipate meeting revised target date *Revised Target Date:* Proposed regulation 7/82	A. Diane Graham, Office of Affirmative Employment Programs, WED, (202) 632-4420.	No	No.
37. 5 CFR Part 731	Suitability for Federal Employment.	*Description:* Proposed new part to reflect possible changes in role of OPM and agencies in evaluating suitability. *Justification:* Part 731 suitability rating authority has been delegated by the OPM to a number of agencies upon request of those agencies. OMP's delegation experience is currently being studied. The proposed new part will reflect the results of the study. *Status:* Proposed regulation pending completion of delegation experience study. *Revised Target Date:* Proposed regulation 10/82	Robert Hubbard, Office of Personnel Investigations, Compliance and Investigations Group, (202) 632-6152.	No	No.
38. 5 CFR Part 732	Personnel Security and Related Programs.	*Description:* Proposed new part to address recent and possibly proposed changes in the personnel security program. *Justification:* There has been a lack of consistency among agencies in designating position sensitivity based on national security and ADP security considerations. Contributing to this problem is the fact that the designation standards appear as *guidance* in the FPM rather than as regulatory *requirements*. Part 732 needs revision to incorporate the designation standards as regulatory requirements. Subject to OPM approval of the five-level security designation standards for positions proposed by the interagency task force on GAO recommendations, new standards would be incorporated into Part 732 in lieu of the current criteria. *Status:* Completion pending agency discussion of task force report and decision on implementation. *Revised Target Date:* Proposed regulation 10/82	Robert Hubbard, Office of Personnel Investigations, Compliance and Investigations Group, (202) 632-6152.	No	No.
39. 5 CFR Part 733 [1]	Political Activity of Federal Employees.	*Description:* Final regulation expanding the definition of "employee" (§ 733.101) to include individuals in the competitive service, excepted service, Senior Executive Service, and United States Postal Service. Deletion of § 733.201, which provides that it is the employing agency's responsibility to investigate and decide allegations of prohibited political activities on the part of excepted service employees. Also assorted revisions and updates.	JoAnn Chabot, Office of the General Counsel, (202) 632-5421.	No	No.

REGULATIONS SCHEDULED FOR REVIEW OR DEVELOPMENT—Continued

[May 1, 1982 through Oct. 31, 1982]

CFR part (and subpart or section number if applicable) or other authority	Title of affected part	Brief description and update status	Knowledgeable official, responsible office, and telephone No.	Major rule; yes or no	Affect small entities; yes or no
		Justification: 5 CFR § 733.201 has been superseded by 5 U.S.C. §§ 1206 (e) and (g), and 1207, as added by the Civil Service Reform Act of 1978. Under the foregoing sections of title 5, United States Code, the Special Counsel of the Merit Systems Protection Board is the exclusive officer authorized to conduct investigations and bring charges under the Hatch Act. *Status:* Proposed revision being written by the Office of the General Counsel. *Target Date:* Proposed regulation 9/82			
40. 5 CFR Part 736	Investigations	*Description:* Proposed new part to reflect changes in the personnel investigations program. *Justification:* Investigative coverage for persons entering positions designated at the same level of sensitivity varies from agency to agency. Specific investigation requirements currently appear only as *guidance* in the FPM. In the interest of promoting greater uniformity in investigations, Part 736 needs to be revised to establish regulatory standards on investigative coverage at each level of sensitivity. Subject to OPM approval of the five levels of investigations proposed by the interagency task force on GAO recommendations, new investigative standards would be incorporated into Part 736 in lieu of the current coverage appearing in the FPM. *Status:* Completion pending agency discussion of task force report and decision on implementation. *Revised Target Date:* Proposed regulation 10/82	John Crandell, Office of Personnel Investigations, Compliance and Investigations Group, (202) 632-6180.	No	No.
41. 5 CFR Part 752	Adverse Actions	*Description:* Proposed regulation clarifying the agency's obligations when an employee's health is an issue. *Justification:* This regulation is intended to define agency and employee obligations in order to avoid harmful errors by agencies in effecting adverse actions which result in costly reversals by appeals bodies. *Status:* To be coordinated with item 10. Currently under review with OPM. *Revised Target Date:* Proposed regulation 7/82	Cynthia Field, Appellate Policies Division, OPE, (202) 254-5517.	No	No.
42. 5 CFR Part 752, Subpart F.	Regulatory Requirements for Taking Adverse Actions Under the Senior Executive Service.	*Descriptions:* Final regulations on (1) suspensions for more than 14 days and (2) removal from civil service of SES career appointees. *Justification:* These actions are authorized by law. The regulations establish procedures for implementing the law. Interim regulations were issued on July 31, 1979. Need to publish final regulations. *Status:* Some delay anticipated due to higher priority work *Revised Target Date:* Final regulations 10/82	Ann Ugelow, Office of Executive Personnel, Administration Group, (202) 632-3782.	No	No.
43. 5 CFR Part 790	Federal Employee Alcoholism and Drug Abuse Programs.	*Description:* This rule is to implement and clarify the requirements for Federal civilian employees alcoholism and drug abuse programs contained in Pub. L. 91-616 and Pub. L. 92-255. *Justification:* These proposed regulations are needed because MSPB no longer views FPM language as a firm legal basis for determining agency obligation in cases under appeal. MSPB recently overturned two agency actions for removal, citing that alcoholism and drug abuse are legal handicaps and that agencies must offer assistance to employees as a "reasonable accommodation" to their handicap. *Status:* Currently under review within OPM *Revised Target Date:* Proposed regulations 8/82	Frank Cavanaugh, Employee Health Services Branch, WED, (202) 523-4550.	No	No.
44. 5 CFR Part 831, 870, 871, and 890.	Retirement: Retention of Benefits upon Employment by Indian Tribal Organizations.	*Description:* To provide for retention of CSR, FEHB, and FEGLI coverage by certain Federal employees who transfer to tribal organization employment. *Justification:* Regulations implement Pub. L. 93-638 *Status:* Package currently being reviewed by HHS and Interior. *Revised Target Date:* Final regulations 8/82	Jane Lohr, Office of Pay and Benefits Policy, Compensation, (202) 632-4634.	No	No.
45. 5 CFR Part 831	Government Claims for Recovery of Indebtedness.	*Description:* Final regulations prescribing procedures for submission of agency claims for recovery of an indebtedness against benefits due from the Civil Service Retirement System. *Justification:* Required in conjunction with a pending court case—Rhinehart v. Seneca, et al. *Status:* Presently, awaiting input from GAO *Revised Target Date:* Final regulations 10/82	Patricia Rochester, Office of Pay and Benefits Policy, Compensation, (202) 632-4634.	No	No.
46. 5 CFR Part 831, Subpart S.	Withholding State Income Tax from Annuitants.	*Description:* Final regulations on withholding of state income tax. *Justification:* New item required to implement section 1705 of Omnibus Reconciliation Act of 1981, Pub. L. 97-35, to provide for withholding of state income taxes from civil service annuities. *Revised Target Date:* Final regulation 7/82	Eugene Littleford, Office of Pay and Benefits Policy, Compensation, (202) 632-4634.	No	No.

REGULATIONS SCHEDULED FOR REVIEW OR DEVELOPMENT—Continued

[May 1, 1982 through Oct. 31, 1982]

CFR part (and subpart or section number if applicable) or other authority	Title of affected part	Brief description and update status[a]	Knowledgeable official, responsible office, and telephone No.	Major rule; yes or no	Affect small entities; yes or no
47. 5 CFR Part 831, Subpart M.	Retirement; Recovery of Annuity Overpayments.	*Description:* Final regulation revising right to a hearing in certain situations when there has been an overpayment of annuity from the Civil Service Retirement System. *Justification:* As a result of Shannon v. U.S.C.S.C.; OPM is required to give a right to a hearing in certain annuity overpayment cases. The final court order in this case restricts the circumstances in which hearing must be offered. The regulatory change will reflect the final decision of the court. *Revised Target Date:* Final regulation 9/82	Patricia Rochester, Office of Pay and Benefits Policy, Compensation, (202) 632-4634.	No	No.
48. 5 CFR Part 831, Subpart E and L.[1]	Eligibility for Retirement; Disability Retirement on Application of an Agency and Reconsideration of Disability Retirement Decisions.	*Description:* Proposed conforming changes in Subpart E to reflect proposed changes in Part 339, Medical Qualification Requirements. Proposed revision of Subpart L to restrict agencies authority to file disability retirement applications on behalf of employees. *Justification:* Restriction on agency authority to file is needed to reduce number of unwarranted agency-filed applications. *Status:* to be coordinated with item 10. Currently under review within OPM. *Target Date:* Proposed regulation 10/82	Mary Sugar, Office of Pay and Benefits Policy, Compensation, (202) 632-4634.	No	No.
49. 5 CFR Part 831,[1] Various Parts—Miscellaneous Changes.	Retirement: Miscellaneous Update.	*Description:* Update and revision of existing regulations *Justification:* Needed to conform to law, other changes *Target Date:* Proposed regulation 7/82	Lauretta R. Hall, Office of Pay and Benefits Policy, Compensation, (202) 632-4684.	No	No.
50. 5 CFR Parts 870, 871, 872, and 873.	Life Insurance and Optional Life Insurance.	*Description:* Final regulations to implement the Federal Employees Group Life Insurance Act of 1980. Regulations were necessitated by enactment of Pub. L. 96-427. *Justification:* Final regulation must be issued for permanent operation of life insurance program.. *Revised Target Date:* Final regulations 7/82	John Landers, Office of Pay and Benefits Policy Compensation, (202) 632-4634.	No	No.
51. 5 CFR Part 890, Various Parts—Miscellaneous Changes. [1]	Health Benefits: Miscellaneous Update.	Update and revision of existing regulations *Justification:* Needed to conform to law, other changes *Target Date:* Proposed regulations 7/82	Lauretta R. Hall, Office of Pay and Benefits Policy, Compensation, (202) 632-4684.	No	No.
52. 5 CFR Part 890, Subpart C.	Federal Employee Health Benefits (FEHB) (Registration and Enrollment).	*Description:* Proposed change to enable Federal employees enrolled in high option FEHB coverage to switch to low option upon becoming eligible under the Civilian Health and Medical Program of the Uniformed Services. *Justification:* FEHB high option enrollees who become eligible for CHAMPUS coverage would not be able to switch to low option FEHB coverage until next open season which could be several months. During this time the enrollee as well as the Federal Government would be contributing to a high option premium rather than a lesser low option premium, while the enrollee would be overinsured. *Revised Target Date:* Final regulations 7/82	Mary Ann Mercer, Office of Pay and Benefits Policy, Compensation, (202) 632-4634.	No	No.
53. 5 CFR Part 900, Subpart F.	Intergovernmental Personnel Act Programs.	*Description:* Modification of the Merit Standards for Personnel Administration. *Justification:* To ease the administrative burden placed on State and local governments by the merit system standards for personnel administration. *Status:* Proposed regulations published on May 11, 1982 *Revised Target Date:* Final regulations 8/82	Michael Sanera, Office of Planning and Evaluation, (202) 254-3134.	No	No.
54. 5 CFR Part 930, Subpart B.	Appointment, Pay and Removal of Administrative Law Judges.	*Description:* Final regulations to outdated text in light of opinion of Attorney General dated 12/18/76; and add text to reflect procedures for appeals by ineligible applicants per advise of OGC. Will clarify procedures for applicants who are dissatisfied with their rating obtained from the Office of Administrative Law Judges after completion of the examination process. *Justification:* This change in the regulations is intended to assure greater availability of information concerning appeals procedure and to minimize any confusion concerning the subject. *Revised Target Date:* Final regulations 9/82	Marvin Morse, Assistant Director for Administrative Law Judges, Office of Administrative Law Judges, Staffing Group, (202) 632-4604.	No	No.
55. 5 CFR Part 1001	Regulations Governing Employees in the Office of Personnel Management: Employee Responsibilities and Conduct.	*Description:* Clarification of the scope of 5 CFR § 1001.735-205 on "Misuse of Information" and elimination of 5 CFR § 1001.735-208 on "Disagreements between Government Officials" in response to an MSPB order questioning whether these provisions inhibit legitimate "whistleblowing." Addition of a new section to highlight procurement restrictions on contracting with Government employees. Editorial changes to reflect OPM reorganization. *Revised Target Date:* Final regulation 9/82	Llewellyn M. Fischer, Office of the General Counsel, (202) 632-5506.	No	No.

[1] New item.

[FR Doc. 82-20672 Filed 7-29-82; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 103 and 248

Powers and Duties of Service Officers: Availability of Service Records, Change of Nonimmigrant Classification; Denial of Appeal

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: This is a proposal to change the regulation concerning the alien's right to appeal the denial of an application for change of nonimmigrant status by removing that right. In the case of denial, an alien has the opportunity to file a motion to reopen or reconsider, and a separate right to appeal merely creates delays in adjudicating the application.

DATE: Comments must be received on or before August 30, 1982.

ADDRESS: Please submit written comments in duplicate to the Commissioner of Immigration and Naturalization, Room 7100, 425 Eye Street, NW., Washington, DC 20536.

FOR FURTHER INFORMATION CONTACT:

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

For Specific Information: Teresa J. De Silva, Immigration Examiner, Immigration and Naturalization Service, 425 Eye Street, NW., Washington, D.C. 20536, telephone: (202) 633–3946.

SUPPLEMENTARY INFORMATION: This rule proposes to amend §§ 103.1(m)(15) and 248.3(d) of Title 8 to remove the right to appeal the denial of an application for change of nonimmigrant status. The majority of applications under section 248 of the Act are factual and easily disposed of. In many instances they are no more complex than an application for extension of stay which is not appealable. Service experience has shown that a large number of aliens who were admitted as B–2 visitors for pleasure use the Form I–506 application as a means of continuing their stay in the U.S., as evidenced by B–2 aliens applying for change of nonimmigrant status after their applications for extension of stay have been denied. A large proportion of these applications are frivolus and submitted merely in an attempt to prolong the alien's stay in the United States. The appeal provides a means for the nonimmigrant alien to gain that time which can no longer be obtained under section 214 (of the Act) procedure. Regional statistics support this fact, as an average 92% of section 248 appeals are dismissed by the Regional Commissioners.

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

This rule will not be a major rule within the meaning of section (b) of E.O. 12291.

List of Subjects

8 CFR Part 103

Administrative practice and procedure, Authority delegation, Organization and functions.

8 CFR Part 248

Administrative practice and procedure, Aliens.

Accordingly, Title 8 of the Code of Federal Regulations is proposed to be amended as follows:

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

§ 103.1 [Amended]

1. In § 103.1, paragraph (m)(15) is removed and paragraphs (m)(16) through (m)(22) are renumbered (m)(15) through (m)(21).

(Sec. 103, 248 of the Immigration and Nationality Act as amended; 8 U.S.C. 1103, 1258)

PART 248—CHANGE OF NONIMMIGRANT CLASSIFICATION

1. In § 248.3, paragraph (d) is revised to read as follows:

§ 248.3 Application.

* * * * *

(d) *Denial of application.* When the application is denied the applicant shall be notified of the decision and the reasons for the denial. There is no appeal from the denial of the application under this chapter.

(Sec. 103, 248 of the Immigration and Nationality Act as amended; 8 U.S.C. 1103, 1258)

Dated: July 20, 1982.

Alan C. Nelson,

Commissioner of Immigration and Naturalization.

[FR Doc. 82–20718 Filed 7–29–82; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 354

[Docket No. 80N–0228]

Drug Products for the Relief of Oral Discomfort for Over-the-Counter Human use; Advance Notice of Proposed Rulemaking; Extension of Time for Comments and Reply Comments

AGENCY: Food and Drug Administration.

ACTION: Advance notice of proposed rulemaking; extension of comment periods.

SUMMARY: The Food and Drug Administration (FDA) is extending to October 22, 1982, the comment period and to November 22, 1982, the reply comment period for the advance notice of proposed rulemaking to establish conditions for the safety, effectiveness, and labeling of over-the-counter (OTC) drug products for the relief of oral discomfort. This action is being taken in response to a request to allow more time for interested persons to address adequately several important issues raised by the Panel and to consult experts so that more informed comments may be submitted to FDA.

DATES: Written comments by October 22, 1982, and reply comments by November 22, 1982.

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

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, National Center for Drugs and Biologics (HFD–510), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4960.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 25, 1982 (47 FR 22712), FDA issued an advance notice of proposed rulemaking to establish conditions for the safety, effectiveness, and labeling of drug products for the relief of oral discomfort for OTC human use. This advance notice of proposed rulemaking, which was based on the recommendations of the Advisory Review Panel on OTC Dentifrice and Dental Care Drug Products, is part of the ongoing review of OTC drug products conducted by the agency. Interested persons were given until August 23, 1982, to comment on the advance notice of proposed rulemaking and until September 22, 1982, for reply comments.

In response to the proposal, The Proprietary Association requested a 60-day extension of the comment period in order to allow adequate time for the association to address several important issues raised by the Panel, including the Panel's combination drug policy and its definition of toothache. The Association stated that it plans to contact experts on these issues in the course of its preparation of comments on the proposal. The Association pointed out the difficulty of contacting such experts during the summer months.

FDA has carefully considered the request. The agency believes that information described in the request may be of assistance in establishing the safety and effectiveness of OTC drug products for the relief of oral discomfort and is in the public interest. The agency considers a general extension of the comment period for 60 days to be appropriate. Accordingly, the comment period for submissions by any interested person is extended to October 22, 1982, and the reply comment period is extended to November 22, 1982. Comments may be seen in the Dockets Management Branch, Food and Drug Administration, at the address noted above, between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 22, 1982.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 82-20475 Filed 7-29-82; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 356

[Docket No. 81N-0033]

Oral Health Care Drug Products for Over-the-Counter Human Use; Advance Notice of Proposed Rulemaking; Extension of Time for Comments and Reply Comments

AGENCY: Food and Drug Administration.

ACTION: Advance notice of proposed rulemaking; extension of comment periods.

SUMMARY: The Food and Drug Administration (FDA) is extending to November 22, 1982, the comment period and to December 22, 1982 the reply comment period for the advance notice of proposed rulemaking to establish conditions for the safety, effectiveness, and labeling of over-the-counter (OTC) oral health care drug products. This action is being taken in response to two requests to allow more time for interested persons to address adequately several important issues raised by the Panel and to consult experts so that more informed comments may be submitted to FDA.

DATES: Written comments by November 22, 1982, and reply comments by December 22, 1982.

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

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, National Center for Drugs and Biologics (HFD-510), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4960.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 25, 1982 (47 FR 22760), FDA issued an advance notice of proposed rulemaking to establish conditions for the safety, effectiveness, and labeling of oral health care products for OTC human use. This advance notice of proposed rulemaking, which was based on the recommendations of the Advisory Review Panel on OTC Oral Cavity Drug Products, is part of the ongoing review of OTC drug products conducted by the agency. Interested persons were given until August 23, 1982, to comment on the advance notice of proposed rulemaking and until September 22, 1982, for reply comments.

In response to the proposal, The Proprietary Association requested a 60-day extension of the comment period in order to allow adequate time for the association to address important issues raised by the Panel concerning antimicrobial agents and OTC mouthwash products. The Association stated that it plans to solicit the views of dental researchers and scientists who did not participate in the Panel's deliberations so that FDA may have the widest possible views regarding the Panel's recommendations. Warner-Lambert Co. requested a 90-day extension to permit careful and thorough evaluation of the Panel's report and to consult other oral health care experts in order to respond with meaningful comments. The company pointed out the difficulty of contacting such experts during the summer months.

FDA has carefully considered the requests. The agency believes that information described in the requests may be of assistance in establishing the safety and effectiveness of OTC oral health care drug products and is in the public interest. Because of the length of the Panel's report, the agency considers a general extension of the comment period for 90 days to be appropriate. Accordingly, the comment period for submissions by any interested person is extended to November 22, 1982, and the reply comment period is extend to December 22, 1982. Comments may be seen in the Dockets Management Branch, Food and Drug Administration, at the address noted above, between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 22, 1982.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 82-20476 Filed 7-29-82; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 600

[Docket No. 82N-0138]

Biological Products; Inspection Frequency of All Licensed Biological Establishments and Their Additional Location(s)

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend the biologics regulations by changing the required minimum frequency of inspections for all licensed biological establishments and their additional location(s) from at least once every year to at least once every 2 years. This action is being proposed (1) to provide flexibility for the agency to reduce the inspection burden on a specific portion of the regulated drug and device industry; (2) to provide the agency with greater flexibility in management of its resources; and (3) to provide a uniform requirement for frequency of inspection for all drugs and devices consistent with requirements in the Federal Food, Drug, and Cosmetic Act.

DATE: Comments by September 28, 1982.

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

FOR FURTHER INFORMATION CONTACT: Rada Proehl, National Center for Drugs and Biologics (HFB-620), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20205, 301-443-1306.

SUPPLEMENTARY INFORMATION: Since Congressional approval of the Biologics Control Act in 1902, biological products entering into interstate commerce have been required to be licensed under Federal law. In 1903, the Secretary of the Treasury approved the first regulations for the enforcement of the Biologics Control Act. The regulations, promulgated by a board consisting of the Surgeon General of the Public

Health and the Marine Hospital Service and the Surgeon General of the various armed forces, included the requirement that an establishment be inspected before receiving a license. Establishments were required to be inspected annually because the license was good for 1 year from the date of issue and was not reissued without a reinspection of the establishment. In 1919, this provision was changed and licenses were issued for indefinite periods of time. Nevertheless, inspections were conducted on an annual basis.

In 1944, the Biologics Control Act of 1902 became section 351 of the Public Health Service Act (42 U.S.C. 262). Today, biological products in interstate commerce are primarily regulated under the Public Health Service Act. Section 351(a) of the Public Health Service Act specifically defines a biological product as "any virus, therapeutic serum, toxin, antitoxin, vaccine, blood, blood component or derivative, allergenic product, or analogous product * * * applicable to the prevention, treatment, or cure of diseases or injuries of man * * *."

Section 351(c) of the Public Health Service Act authorizes the agency to inspect establishments that manufacture biological products. The frequency of such inspections is prescribed in regulations issued under authority of section 351(c). Specifically, § 600.21 (21 CFR 600.21) (originally codified as 42 CFR 22.31 (January 21, 1947; 12 FR 441)) requires that "An inspection of each licensed establishment shall be made at least once each year."

A biological product is also either a drug as defined in section 201(g)(1) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(g)(1)) or a device as defined in section 201(h) of the act. The term "drug" is defined as "(A) articles recognized in the official United States Pharmacopeia * * *; and (B) articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; and (C) articles (other than food) intended to affect the structure or any function of the body of man or other animals * * *" (21 U.S.C. 321(g)(1). The term "device" is defined as an "* * * in vitro reagent, or other similar or related article, * * * which is * * * (2) intended for use in the diagnosis of disease or other conditions, or in the cure, mitigation, treatment, or prevention of disease in man or other animals * * *" (21 U.S.C. 321(h)). Accordingly, each biological product defined in section 351 of the Public Health Service Act falls clearly within the definition of a drug or a device. Therefore, in addition to regulation under the Public Health Service Act, biological product establishments and their additional location(s) are also subject to the provisions of the Federal Food, Drug, and Cosmetic Act, whether or not they are licensed.

Section 510 of the act (21 U.S.C. 360) requires that every establishment engaged in the manufacture, preparation, propagation, compounding, or processing of a drug or device be registered with FDA. Section 510(h) of the act requires that such establishments be inspected at least once in each 2-year period beginning with the date of registration. Accordingly, although biological product establishments are required to be inspected at least once each year as a minimum, all other drug and device establishments are required to be inspected at least once every 2 years as a minimum.

The agency believes that the same flexibility for inspection frequency that is provided for all nonbiological drugs and devices should be extended to biological drugs and devices to (1) reduce the inspection burden on biological product manufacturers when, in the judgment of the agency, such action is warranted; (2) facilitate efficient management of the agency's resources; and (3) provide a uniform minimum requirement concerning inspection frequency of all drugs and devices. As an example, FDA performed an analysis of the number of reports classified as "Official Action Indicated" (OIA) to determine compliance rates of licensed blood banks. The OIA consisted of the number of regulatory letters, license suspensions, license revocations, seizures, injuctions, and prosecutions covering the four years from fiscal year (FY) 1977 through FY 1980. This analysis demonstrated an average 98.4 percent rate of compliance (defined as 100 minus the percentage ratio of the number of approved OIA, and the number of inspection reports filed or planned) for licensed blood banks covering these 4 fiscal years. Because of this demonstrated high rate of compliance and other relevant material, the agency determined that the benefits to be derived from the continuation of an annual inspection program for licensed blood banks were not commensurate with the resources expended. The agency believes that a reduced inspection frequency for licensed blood banks will have no adverse effect on the safety of donors, on the manufacture of safe, pure, and potent blood products, or on the compliance performance of such establishments. Consequently, this is a segment of the blood industry for which annual inspections are not required.

To provide flexibility that will permit the agency to conduct less frequent inspections of biological product establishments, the agency is proposing to amend § 600.21 by changing the required minimum inspection frequency of all licensed biological product establishments and their additional location(s) from at least once every year to at least once every 2 years.

In addition to the licensed blood banks discussed above, the agency would be provided with the flexibility, under the proposed amendment to § 600.21, to reduce the inspection frequency of licensed plasma centers and licensed manufacturers of blood derivatives, bacterial and allergenic products, and viral and rickettsial products when the compliance rate is consistently high and when, in the judgment of the agency, such action would have no adverse effect of donor safety or on the manufacture of safe, pure, and potent biological products.

Pertinent background data on which the agency relied in proposing this amendment are on public display in the Dockets Management Branch (address above).

The agency has examined the economic consequences of this proposed rule and has determined that it does not require either a regulatory impact analysis, as specified in Executive Order 12291, or a regulatory flexibility analysis, as defined in the Regulatory Flexibility Act (Pub. L. 96–354). Specifically, the proposal would reduce the minimum required frequency of inspection of all licensed biological establishments and their additional location(s) from at least once every year to at least once every two years. Reducing the required minimum frequency of inspection will not change the standards to which these licensed manufacturers of biological products must adhere, but it will reduce the burden associated with the actual conduct of an inspection. Because this is believed to be insignificant, the agency certifies that the proposed rule, if implemented, will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act.

The agency has determined under 21 CFR 25.24(b)(12) (proposed December 11, 1979; 44 FR 71742) that this proposed action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an

environmental impact statement is required.

List of Subjects in 21 CFR Part 600

Biologics.

PART 600—BIOLOGICAL PRODUCTS: GENERAL

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201, 510, 701, 704, 52 Stat. 1040–1042 as amended, 1055–1056 as amended, 67 Stat. 477 as amended, 76 Stat. 794–795 as amended (21 U.S.C. 321, 360, 371, 374)) and the Public Health Service Act (sec. 351, 58 Stat. 702 as amended (42 U.S.C. 262)) and under 21 CFR 5.11 as revised (see 47 FR 16010; April 14, 1982, it is proposed that Part 600 be amended in § 600.21 by revising the third sentence, to read as follows:

§ 600.21 Time of inspection.

* * * An inspection of each licensed establishment and its additional location(s) shall be made at least once every 2 years * * *

Interested persons may, on or before September 28, 1982, submit to the Dockets Management Branch (address above), written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 7, 1982.

Mark Novitch,

Acting Commissioner of Food and Drugs.

Dated: July 8, 1982.

Richard S. Schweiker,

Secretary of Health and Human Services.

[FR Doc. 82-20477 Filed 7-29-82, 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 2

[Docket No. 2512-96]

Trademark Applications and Examination Proceedings; Trademark Interference, Concurrent Use, Opposition and Cancellation Proceedings; Trademark Post-Registration Proceedings

Correction

In FR Doc. 82-17525, appearing as Part VI, at page 28324, in the issue of Tuesday, June 29, 1982, make the following changes:

1. On page 28324, in the second column, the fourth paragraph, the forth line, change "in" to "of";

2. On page 28324, in the third column, the sixth paragraph, the first line, change "2.83" to "2.88". In the same paragraph, line five, change "July 19," to "July 29,";

3. On page 28326, in the second column, the fifth paragraph, the first line, change "2.1120" to "2.120";

4. On page 28328, in the second column, the sixth paragraph, the first line, change "2.142" to "2.146";

5. On page 28328, in the third column, the fifth paragraph, the first line, change "2.145" to "2.165";

6. On page 28328, in the third column, the sixth paragraph, the first line, change "2.145" to "2.165";

7. On page 28329, in the second column, change the last word of the Part Heading from "COVERS" to "CASES";

8. On page 28329, in the third column, in § 2.63(a), the sixth line, change "requirements" to requirement";

9. On page 28331, in the first column, § 2.99(c), the first line should read "(c) ►Upon receipt of the copies required by";

10. On page 28334, in the second column, § 2.120(b), line 17, change "of Rule" to "or Rule";

11. On page 28334, in the second column, § 2.120(c), the first line, change "disposition" to "deposition";

12. On page 28334, § 2.120(c)(2), the 25th line, change "39" to "30";

13. On page 28336, in the second column, § 2.121(a)(2), the third line, remove the word "no";

14. On page 28336, in the second column, § 2.121(b)(1) should as follows:

(b) ►(1)The Trademark Trial and Appeal Board will schedule a testimony period for the plaintiff to present its case in chief, a testimony period for the defendant to present its case and to meet the case of the plaintiff, to present evidence in rebuttal.

15. On page 28336, in § 2.121(b)(2) in the 20th line, change "representing" to "presenting";

16. On page 28336, in the second column, in § 2.121, paragraph (c) should read as follows:

►(c) A testimony period which is solely rebuttal will be set for fifteen days. All other testimony periods will be set for thirty days. The periods may be extended by stipulation of the parties, approved by the Trademark Trial and Appeal Board, or, upon motion, by order of the Board.◄

17. On page 28338, in the second column, in § 2.124(d)(2), Line 13, change "be" to "by";

18. On page 28338, in the third column, in § 2.124(e), the 8th line, change "office" to "officer";

19. On page 28338, in the third column, change the section heading for § 2.125 to read as follows:

§ 2.125 ►Filing and Service◄ [Copies] of testimony.

20. On page 28339, in the third column, in § 2.128(b), remove the third sentence;

21. On page 28339, in the third column, in § 2.129(b), the first sentence, change "of time" to "or time".

22. On page 28340, in the first column, in § 2.131, in line 31, change "to" to "of";

23. On page 28340, in the first column, in § 2.132(a), line 8, change "more" to "move";

24. On page 28340, in the second column, in § 2.132(b), the first line, change "of" to "or";

25. On page 28340, in the third column, in § 2.134(b), the last line, change "be" to "by";

26. On page 28342, in the first column, in § 2.165(a)(1), in the second line, change "2.612" to "2.162".

BILLING CODE 1505-01-M

POSTAL SERVICE

39 CFR Part 10

International Express Mail Service to Mexico; Delay in Commencement of Service

AGENCY: Postal Service.

ACTION: Notice of delay in proposed commencement of service.

SUMMARY: International Express Mail Service with Mexico was proposed to begin on August 16, 1982, published June 29, 1982, 47 FR 28111. Mexican authorities have informed the Postal Service that they wish to postpone the beginning of this service. Accordingly, the announced beginning date of August 16, 1982 for this proposed service is delayed. A new date will be published when it has been determined.

FOR FURTHER INFORMATION CONTACT:

J. Duane Redic, (202) 245–4414.

List of Subjects in 39 CFR Part 10

Foreign relations.

(39 U.S.C. 401, 404, 407).

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 82-20706 Filed 7-29-82; 8:45 am]

BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-5-FRL 2178-4]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking; extension of comment period.

SUMMARY: On June 1, 1982 (47 FR 23773) the Environmental Protection Agency (EPA) proposed rulemaking on the revisions to the Indiana State Implementation Plan to control particulate matter emissions from coke batteries. Public comments were due by July 1, 1982. On June 15, 1982, Indiana requested a 45-day extension of the public comment period. In addition, Citizens for a Better Environment requested a 15-day extension of the public comment period on June 25, 1982. EPA is extending the public comment period until August 15, 1982.

DATE: Comments on the revisions to the Indiana State Implementation Plan (SIP) to control particulate matter emissions from coke batteries and on EPA's proposed action must be received by August 15, 1982.

ADDRESS: Comments on the proposed revisions should be addressed to: Mary Langer, Regional Hearing Clerk, Office of Regional Counsel, EPA, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Anne Swofford, Office of Regional Counsel, EPA, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 353-2094.

Dated: July 16, 1982.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 82-20705 Filed 7-29-82; 8:45 am]

BILLING CODE 6560-50-M

LEGAL SERVICES CORPORATION

45 CFR Part 1601

Rescheduling of Meetings

AGENCY: Legal Services Corporation.

ACTION: Proposed Rule.

SUMMARY: This document proposes to change the regular meeting dates for the Board of Directors from March, June, October, and December to March, June, September, and December. October was disfunctional because of budget decisions necessary in conjunction with the fiscal year.

DATE: Comments must be received on or before August 30, 1982.

ADDRESS: Comments should be sent to LeaAnne Bernstein, Executive Office, Legal Services Corporation, 733 Fifteenth Street NW., Washington, D.C. 20005.

FOR FURTHER INFORMATION CONTACT: LeaAnne Bernstein, (202) 272-4040.

SUPPLEMENTARY INFORMATION:

List of Subjects in 45 CFR Part 1601

By-laws.

PART 1601—BY-LAWS OF THE LEGAL SERVICES CORPORATION

It is proposed to amend 45 CFR Part 1601 by revising § 1601.15(a) as follows:

§ 1601.15 Regular meetings

(a) Regular meetings of the Board shall be held at least four times a year, on the first Friday of March, June, September, and December, if not a legal holiday, or if a legal holiday then on the next business day following, at 10 a.m., or at such other date and time as shall be determined by a majority of the members of the Board. Such regular meetings shall be held in the District of Columbia unless a majority of the members of the Board otherwise determine. Notice of the place of a regular meeting shall be mailed to each director at least seven days before the date of the meeting unless a majority of the members determines that Corporation business requires a meeting on fewer than seven days notice. In that event, notice shall be mailed at the earliest practicable time.

(Sec. 1008(e), 88 Stat. 387 (42 U.S.C. 2996g(e))

Dated: July 26, 1982.

Gerald M. Caplan,

Acting President

[FR Doc. 82-20691 Filed 7-29-82; 8:45 am]

BILLING CODE 6820-35-M

45 CFR Part 1601

Establishment of Board Positions and Procedures

AGENCY: Legal Services Corporation.

ACTION: Proposed Rule.

SUMMARY: This document proposes to establish the position of Vice Chairman of Board of Directors, and what constitutes qualification and meeting of the organization. The previous By-law did not provide for a Vice Chairman, and the position is needed. The rule will allow for orderly direction of the Corporation in case of a Chairman's incapacity.

DATE:: Comments must be received on or before August 30, 1982.

ADDRESS: Comments should be sent to LeaAnne Bernstein, Executive Office, Legal Services Corporation, 733 Fifteenth Street NW., Washington, D.C. 20005.

FOR FURTHER INFORMATION CONTACT: LeaAnne Bernstein, (202) 272-4040.

SUPPLEMENTARY INFORMATION:

List of Subjects in 45 CFR Part 1601

By-laws.

PART 1601—BY-LAWS OF THE LEGAL SERVICES CORPORATION

It is proposed to amend 45 CFR Part 1601 by revising 1601.9, 1601.10, and 1601.20 as follows:

§ 1601.9 Chairman and vice Chairman of the board.

(a) Annually or at such other time as there may be vacancies in such offices, the Board shall elect a Chairman and a Vice Chairman of the Board from among its voting members who shall serve in such capacities until their successors have been duly elected and qualified, or until they shall resign or otherwise vacate their offices of Board membership.

(b) The Chairman of the Board shall, if present, preside at all meetings of the Board, shall carry out all other functions required of him by the Act and these By-laws, and shall perform such other duties as from time to time may be assigned to him by the Board.

(c) The Vice Chairman of the Board shall, in the absence of the Chairman, preside at meetings of the Board and shall, for purposes of these By-laws, be considered the Chairman of any meeting at which he so presides. In addition, the Vice Chairman shall carry out all other functions required of him by these By-laws, and shall perform such other duties as from time to time may be delegated to him by the Chairman or assigned to him by the Board.

§ 1601.10 Qualification.

A person shall be deemed to have qualified as a Director, or as the Chairman or Vice Chairman of the Board, when upon his appointment or selection, as the case may be, he has affirmed or executed a statement, in a form provided by the Board, to discharge his duties faithfully.

* * * * *

§ 1601.20 Organization of directors meetings.

At each meeting of the Board, the Chairman of the Board, or in his absence the Vice Chairman, shall preside. The Secretary of the Corporation shall act as secretary at all meetings of the Board. In the absence from any such meeting of the Secretary, the Chairman of the meeting shall appoint a person to act as secretary of the meeting.

(Sec. 1008(e), 88 Stat. 387 (42 U.S.C. 2996g(e))

Dated: July 26, 1982.

Gerald M. Caplan,

Acting President.

[FR Doc. 82-20692 Filed 7-29-82; 8:45 am]

BILLING CODE 6820-35-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[BC Docket No. 82-374; FCC 82-305]

Amendment of the Commission's Rules With Regard to Additional City Identification

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes to change the Commission's procedures by which broadcasters may obtain permission to idenfity by communities in addition to their community of license. Currently licensees must file an informal application for such permission. The proposed change would eliminate the application aspect and would merely require licensees meeting the signal coverage criteria for additional city identification to certify to the Commission that they provide such coverage and inform the Commission that they will commence additional city identification on a particular date.

DATES: Comments must be filed on or before September 17, 1982, and reply comments on or before October 15, 1982.

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

FOR FURTHER INFORMATION CONTACT: Roger D. Holberg, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television and radio broadcast.

Adopted: July 1, 1982.

Released: July 23, 1982.

1. The Commission herein is proposing to alter its existing rule regarding multi-city identification by broadcasters. Currently, Section 73.1201 of the Commission's Rules requires that broadcast stations be identified at the beginning and ending of each time of operation, and hourly (or as close to the hour as feasible at a natural break in the programming) by the broadcast of the station's call letters immediately followed by the community or communities specified in the station's license as its station location. Television stations may make these announcements visually or aurally. However, § 73.1201(b)(2) provides:

Where given specific written authorization to do so, a station may include in its official station identification the name of an additional community or communities, but the community to which the station is licensed must be named first.

(i) Such applications for additional-community idenfitication will be considered only if the community or communities are within the station's principal-city contours as defined by § 73.188(b) for AM stations; § 73.315(a) for FM stations and § 73.685(a) for TV stations.

2. Stations must thus apply for permission to use a multi-city identification. Most requests are routinely granted upon a showing of the requisite coverage. It is well established, however, that "at least in contested cases, the Commission has gone beyond merely looking at signal strength in making its decisions." [1] Thus the Commission has considered such criteria as: (a) Whether the station is also proposing to move its transmitter or studio to—or to add a new studio in—the added city;[2] (b) "mutuality" (*i.e.*, whether the opposing station would be eligible for dual city identification); (c) the viability of the opposing station; and (d) the viability of the station requesting multi-city identification permission. The vast majority of applications for permission to engage in multi-city identification, whether contested or uncontested, are granted. However, there have been instances when the Commission has denied such requests.[3]

3. Generally stations seek dual-city identification "to enhance their attractiveness to national advertisers by recognition of the fact that their principal-city service contour encompassed the larger community." (Citation omitted.) [4] The current procedure for obtaining permission requires that a written request be filed with the Commission.[5] That request is treated as an informal application [6] and is assigned a file number by the Broadcast License Division of the Broadcast Bureau. Additionally, each application and subsequent grant is entered into a computer. Currently the Commission handles approximately 100 multi-city identification requests annually. Most of these are routinely granted within 30 to 45 days of filing. Only a small percentage of requests are opposed.

4. In order to alleviate the processing burdens that this procedure places on the Commission's resources, we propose to consider a change in the Commission's rules with regard to multi-city identification. Under the proposal, Section 73.1201(b)(2) would permit an eligible station to certify to the Commission that it completely encompasses the other community or communities within its principal-city contour and to notify us that it will commence multi-city identification upon a certain date.[7] It would not have to file an application for permission to do so and the Commission would be relieved of the burdens currently associated with processing such applications. In addition to easing the burdens the current processing procedure imposes on the Commission, the proposed change would have a beneficial impact on eligible stations which will have the

[1] *Sudbrink Broadcasting, Inc. of Florida* v. *FCC*, 509 F. 2d 418 (D.C. Cir. 1974).

[2] The grant of an application for dual city identification does not modify a license, change the station's community of license or location, or change the station's service obligation to its principal community in any way. *WTSP-TV, Inc.*, 48 RR 2d 1289 (1981). Thus, the Commission looks at whether a change in studio location is involved to determine whether the request for dual city identification is part and parcel of an attempt at *de facto* reallocation.

[3] *Sudbrink Broadcasting, Inc. of Florida* v. *FCC, supra; Wometco Enterprises, Inc.*, 1 RR 2d 699 (1963); *Ponce Television Corp.*, 18 FCC 2d 543 (1969).

[4] *Radio Corporation of the Southwest*, 42 RR 2d 876 (1978).

[5] "Requests for 'multi-city identification,' (are) usually denominated as requests for waiver of the station identification regulation * * *" *Sudbrink Broadcasting, Inc. of Florida* v. *FCC, supra*, at p. 420. When viewed in this light, Section 73.1201(b)(2)(i) merely provides an indication of the minimal showing necessary to obtain a waiver of Section 73.1201(b)(1).

[6] Section 73.3511(b) of the Commission's Rules.

[7] We recognize that there may be instances in which the predicted coverage under estimates actual coverage area. The certification process proposed would be based upon predicted coverage. Should we adopt this procedure, we would retain the informal application process for those licensees whose actual coverage completely encompasses the additional community even though such coverage is not predicted. In cases where subsequent to certification it was demonstrated that the additional community was not encompassed by the requisite level of service, whether or not such coverage was predicted, we would retain the ability to terminate the certification. Comments on procedures for doing so are specifically solicited.

opportunity to commence multiple city identification immediately.

5. While the instant proposal would appear to be one of a strictly procedural nature, obviating the need for a notice and comment rule making proceeding,[8] we feel that the proposed change will also affect substance. As indicated above, under the current scheme opponents can contest requests for multi-city identification authorization. While objections to such authorizations generally fail, there have been several instances where the Commission has determined that opponents were correct and that the authorization should not be given.[9] The instant proposal would permit eligible stations to certify to the Commission that they are eligible, to notify the Commission of the intent to commence multi-city identification on a particular date, and to do so without any prior Commission action. This would eliminate the opportunity for opponents to contest the multi-city identification prior to its commencement and would, therefore, eliminate the non-technical criteria from consideration at least in cases where predicted coverage indicates encompassment of the additional city. (See footnote 7, *supra*.) Under the principal proposal the only relevant criteria would be the extent of principal city coverage. Such factors as mutuality, the viability of the opposing station, *etc.* would no longer be considered. We believe this change to be of sufficient substantive import to warrant a notice and comment rule making proceeding. Accordingly, we seek comment on the Commission's initial assessment of the detriments and benefits in this area, as well as comment on whether the public interest is better served by modification or retention of the subject rule.

6. As an option to the certification procedure proposal noted above, we will consider the elimination of both the application requirement and the coverage requirement. This option would permit broadcast stations to identify their transmissions by the community of license followed by any additional community or communities that they wished to be identified with irrespective of their coverage of such additional communities. This would not alter the station's obligations to its community of license but would give broadcasters additional flexibility in their identification. There may be sufficient market forces to inhibit stations from identifying by additional communities that they do not provide coverage to.[10] We believe that this option, too, is worth being explored in this proceeding.

7. *Regulatory Flexibility Analysis:*

I. *Reason for Action:* The existing regulation requires that stations seeking multi-city identification permission file a request with the Commission. This requires the Commission to mechanically process the request and to issue an authorization. The proposed change will eliminate these steps and reduce burdens on the Commission at a time when its resources are limited. It will also speed the procedure to the benefit of those licensees requesting multi-city authorization, or, depending upon the option eventually adopted, could eliminate those procedures altogether.

II. *The Objective:* The Commission proposes to change the subject regulation in order to reduce the costs to the Commission of processing multi-city identification authorization requests, to speed that process, and to reduce or eliminate possibly unnecessary regulation.

III. *Legal Basis:* The enhancement of the Commission's efficiency, the streamlining of its procedures, and the elimination of unnecessary regulation all promote the public interest. The legal basis for the Commission's engaging in rule making is contained in Sections 4 (i) and (j) and 303(r) of the Communications Act of 1934, as amended.

IV. *Description, Potential Impact and Number of Small Entities Affected:* The proposed rule change would conceivably affect all broadcast stations wishing to engage in multi-city identification. As of February 28, 1982, there were 10,174 broadcast stations on the air in the United States.[11] How many of these wish to engage in such identification is unknown.

V. *Recording, Record Keeping and Other Compliance Requirements:* The proposed rule change would not impose any additional recording or record keeping requirements. To the contrary, it would streamline or eliminate current procedures and would reduce paperwork by licensees who currently must file an informal application for permission to engage in multi-city identification. Such applications would be eliminated by the proposed amendment.

VI. *Federal Rules Which Overlap, Duplicate or Conflict With This Rule:* None.

VII. *Any Significant Alternative Minimizing Impact on Small Entities and Consistent with Stated Objective:* The alternatives to the certification proposal that could further minimize the impact on broadcasters would be to permit stations of freely identify without certifying to the Commission that they met the principal-city coverage criteria or to eliminate the coverage criteria altogether. These options are proposed herein as alternatives to the principal proposal.

8. Accordingly, it is proposed, That § 73.1201(b)(2) of the Commission's rules be amended.

9. Authority for the institution of this proceeding is contained in Sections 4(i) and 303 of the Communications Act of 1934, as amended.

10. Pursuant to the procedures set forth in § 1.415 of the Commission's Rules, interested persons may file comments on or before September 17, 1982, and reply comments on or before October 15, 1982. The Commission will consider all relevant and timely comments and may also consider other relevant information before it prior to taking further action in this proceeding.

11. In accordance with the provisions of Section 1.419 of the Commission's Rules, an original and five copies of all comments, replies, briefs, and other documents shall be furnished the Commission. Participants wishing each Commissioner to have a personal copy of their comment should file an original and 11 copies. Further, members of the general public who wish to participate informally in the proceeding may submit one copy of their comments, specifying the docket number in the heading. All filings in this proceeding will be available for examination by interested persons during regular business hours in

[8] Section 553(b)(3)(A) of the Administrative Procedure Act (5 U.S.C. 553(b)(3)(A)) does not require notice and comment rule making proceedings where the subject rule is interpretative, a rule of agency organization, procedure, or practice, or is a general statement of policy.

[9] *Sudbrink Broadcasting, Inc. of Florida* v. *FCC, supra; Ponce Television Corp., supra.*

[10] As indicated above, the subject multi-city identification matter is inextricably bound up with commercial advertising. In some sense both § 73.1201(b) procedures and other Commission rules and policies (such as that concerning the use of fraudulent coverage maps in connection with the sale of commercial time (see, *Universal Communications of Pittsburgh*, 74 FCC 2d 617 (1969))) appear designed to protect advertisers. We question whether and to what, if any, extent the federal government should be engaged in such policies especially where the parties can take steps to protect themselves and where private civil remedies exist when abuses do occur. Commenters may wish to address this issue herein.

[11] FCC News Release, "Broadcast Station Totals for Februaty 1982," issued March 23, 1982, Mimeo No. 2925.

the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C. 205554.

12. For purposes of this non-restricted notice and comment rule making proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a notice of proposed rule making until the time a public notice is issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting or until a final order disposing of the matter is adopted by the Commission, whichever is earlier. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments/pleadings and 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; on the day of oral 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 by docket number the proceeding to which it relates. See generally, § 1.1231 of the Commission's rules, 47 CFR 1.1231.

13. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information or a writing indicating the nature and source of such information is placed in the public file, and provided that the fact of the Commission's reliance on such information is noted in the Report and Order. For further information concerning this proceeding, contact Roger D. Holberg, Broadcast Bureau, (202) 632-7792.

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

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR. Doc. 82-20677 Filed 7-29-82; 8:45 am]

BILLING CODE 6712-01-M

47 CFR PART 73

[BC Docket No. 82-345; FCC 82-300]

Amendment of the Commission's Syndication and Financial Interest Rule

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission notes that the market for television programming has changed since adoption of the syndication and financial interest rule. These changes may obviate the need for Commission oversight in this area. Also, the networks may now be at a competitive disadvantage as a result of this rule. Therefore, the Commission proposes to review the impact of this rule and to eliminate it if retention does not serve the public interest.

DATES: Comments must be filed on or before January 26, 1983, and reply comments on or before April 26, 1983.

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

FOR FURTHER INFORMATION CONTACT: Israel Teitelbaum, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION: .

List of Subjects in 47 CFR Part 73:

Television.

Adopted: June 23, 1982.

Released: July 21, 1982.

By the Commission: Commissioners Fowler, Chairman; and Fogarty issuing separate statements; Commissioners Quello, Washburn, and Rivera concurring and issuing statements.

In the matter of amendment of 47 CFR 73.658(j); the Syndication and Financial Interest Rule BC Docket No. 82-345.

1. In 1977, this agency instituted a wide-ranging inquiry into commercial television network business practices.[1] We sought information concerning the effect of our rules on network conduct and whether more or less regulation was warranted. At that time, we observed that almost two decades had passed since the Commission completed its last overall study of network business practices and that developments in recent years suggested that a new inquiry was warranted. A special staff (hereinafter, the "Network Inquiry Special Staff," or "Special Staff"), responsible directly to the Commission, was empaneled to conduct this inquiry.

2. Today, we issue this *Notice of Proposed Rule Making* to review the impact of one of these network rules, our syndication and financial interest rule, 47 CFR 73.658(j), which limits network participation in the broadcast aftermarket profits of network programming. The Special Staff argued that this rule was not necessary when adopted, and in any event, could not possibly deter the practices that this rule was designed to reach. We will evaluate these contentions in this proceeding. In addition, and of equal import, we will determine in this rulemaking whether changes in market conditions over the past decade may have obviated the need for this rule.

History of Commission Interest in Networking [2]

3. A review of the history of Commission interest in network conduct demonstrates that over the years this agency has devoted significant energies to the regulation of network business practices. In 1938, just prior to the dawn of the commercial television era, the Commission instituted a wide-ranging inquiry into the structure and operations of the commercial radio networks. At that time, network competition was largely between CBS and NBC, the latter operating two radio networks, the "Red" and the "Blue." The Mutual Broadcasting System, a distant competitor, had begun four years earlier as a program consortium with radio progamming supplied to the system by its affiliates. The 1938 inquiry culminated with the release of the *Report on Chain Broadcasting* in which the Commission concluded that the networks engaged in practices designed to restrict the formation of rival networks and also engaged in anticompetitive behavior which restricted the abilities of their affiliates to exercise independent programming judgments. In this regard, the Commisison noted that after the

[1] *Commercial Television Network Practices, Docket No. 21049*, 62 F.C.C. 2d 548 (1977) (hereinafter *"Notice of Inquiry"*). Conclusions and recommendations were presented to the Commission by the Special Staff referenced below in October and December 1980, respectively, and that inquiry was terminated. The conclusions and recommendations were not adopted or rejected by the Commission.

[2] A detailed review of this subject, including a discussion concerning the development of the broadcast networks, can be found in the following reports issued by the Network Inquiry Special Staff in Docket No. 21049: The Historical Evolution of the Commercial Network Broadcast System (October, 1979); A Review of the Proceedings of the Federal Communications Commission Leading to Adoption of the Prime Time Access Rule, the Financial Interest Rule, and the Syndication Rule, Dockets 12782 and 19622 (October 1979); and, New Television Networks: Entry, Jurisdiction, Ownership and Regulation (October 1980). The historical section of this *Notice* largely summarizes the discussion found in the Historical Evolution of the Commercial Network Broadcast System.

formation of the Mutual System, NBC altered its standard practice of requiring a one-year affiliation contract to demanding a five-year contract. Presumably this was done to avoid affiliate defection to Mutual. The Report also found that NBC had an added competitive advantage by simultaneously operating two networks. NBC offered discounts to advertisers buying time on both of its networks and, the Report concluded, that by scheduling the stations and programs for each of its networks, NBC used the Blue network as a buffer to protect the highly successful Red network from competition.

4. Responding to these concerns, in 1941 the Commission adopted the chain broadcasting rules providing that: (1) networks could not bind affiliates' programming choices through exclusivity and option time clauses; (2) affiliation contracts were limited to one year terms; (3) networks could not contract with licensees for control of station rates; (4) affiliation agreements which prevented an affiliate from rejecting any network program which they believed was not in the public interest were prohibited; (5) chain broadcasters were prohibited from owning more than one station in each market; and (6) a standard broadcast station could not affiliate with any network organization that owns more than one network.[3]

5. In 1955, the FCC initiated a broad examination into television network practices.[4] The "Network Inquiry" invovled an extensive analysis of network affiliate relations, option time, network ownership of stations and advertising revenues. As a consequence of the report issued at the conclusion of the Network Inquiry, the Commission took several steps, including the promulgation of rules requiring that network affiliation contracts be made public,[5] banning option time [6] and prohibiting networks from representing their affiliates in the national spot market.[7]

6. In 1959, the Commission instituted another investigatory proceeding designed to obtain information relating "to the policies and practices pursued by the networks and others in the acquisition, ownership, production, distribution, selection, sale and licensing of programs for television exhibition * * *." [8] In a *Notice of Proposed Rule Making*, 45 FCC 2146, adopted in 1965, the Commission stated:

> The information and data before the Commission appear to establish that network corporations, with the acquiescence of their affiliates, have adopted and pursued practices in television program procurement and production through which they have progressively achieved virtual domination of television program markets. The result is that the three national network corporations not only in large measure determine what the American people may see and hear during the hours when most Americans view television, but also would appear to have unnecessarily and unduly foreclosed access to other sources of programs.

In 1970, after an extensive inquiry, the Commission found that its concerns were justified. We, therefore, promulgated the syndication, financial interest and prime time access rules. 47 CFR 73.658(j)(i), (j)(ii) and (k). *Network Television Broadcasting*, 23 F.C.C. 2d 382, *modified on recon.*, 25 F.C.C. 2d 318 (1970).

7. In 1972, the Justice Department, voicing similar concerns, filed antitrust suits against the three networks. The suits were dismissed on procedural grounds, but were refiled in 1974. DOJ asserted that: [9]

(a) ownership and control of television entertainment programs broadcast during prime evening hours were concentrated among the three networks;

(b) competition in the production, distribution, and sale of television entertainment programs, including feature films, has been unreasonably restrained;

(c) competition in the sale of television entertainment programs to the three networks by outside suppliers has been unreasonably restrained; and,

(d) the viewing public has been deprived of the benefits of free and open competition in the broadcasting of television entertainment programs.

The three networks have entered into consent decrees with the Department of Justice. These decrees impose restraints on network practices that both include and surpass restrictions imposed by the Commission.[10] A discussion of the consent decrees' applicability to the type of practices affected by the syndication and financial interest rule is set out below (see para. 24, *infra.*).

8. In 1977, the Commission reversed its trend of increased regulation of network activities by repealing most rules dealing with radio network conduct. We concluded that a tremendous increase in the number of radio stations coupled with, among other things, a decline in the economic importance of networks as an aspect of radio service justified relaxation of FCC regulation of network conduct. *Network Broadcasting by Standard AM and FM Stations*, 63 F.C.C. 2d 674, 677 (1977). The rules pertaining to exclusive affiliation, term of affiliation, time optioning, station right to reject programs, network control over station rates, and dual networking were repealed.[11] The rules pertaining to territorial exclusivity and the filing of network agreements with the Commission were retained.

The Latest Network Inquiry—Docket 21049

9. The latest inquiry into network dominance was instituted on January 14, 1977.[12] We explained in our *Notice of Inquiry*, that this proceeding was not intended to supplant the DOJ antitrust suits even though common ground may be covered. The Commission's concern that anticompetitive practices may be at work stemmed from allegations that during a period coinciding with significant increases in affiliate scheduling and clearance of network programs, the rate of network profitability was increasing dramatically over the rate of affiliate profitability.

10. Also, an inquiry was said to be warranted because "almost two decades have elapsed since the Commission completed its last overall study of network practices." [13] The premise supporting Commission interest in this matter was the need to assure that network practices did not improperly compromise or restrict the programming discretion of broadcast licensees. Since licensee discretion can be meaningfully and effectively exercised only in circumstances where the network-affiliate and network-program producer

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[3] These rules were largely repealed for radio broadcasters in 1977. *Network Broadcasting by Standard AM and FM Stations*, 63 F.C.C. 2d 674 (1977). The Commission noted that the proliferation of radio stations obviated the need for these rules. See paragraph 8, *infra.*

[4] House Committee on Interstate and Foreign Commerce, *Network Broadcasting*, H.R. Rep. No. 1297, 85th Cong., 2d Sess. 1 (1958).

[5] *Public Inspection of Network Affiliation Contracts*, 16 F.C.C. 2d 973 (1969).

[6] *Option Time*, 34 F.C.C. 1103 (1963).

[7] *Network Representation of Stations in National Spot Sales*, 27 F.C.C. 697 (1959).

[8] *Order for Investigatory Proceeding, Docket 12782*, 24 FR 1605, published March 4, 1959.

[9] *United States* v. *National Broadcasting Co.*, Civil Action No. 74–3601, Complaint at 8 (C.D. Calif., 1974).

[10] *United States* v. *National Broadcasting Co.*, 449 F. Supp. 1127 (C.D. Cal. 1978), *aff'd mem.*, No. 77–3381 (9th Cir. April 12, 1978), *cert. denied sub nom, CBA* v. *U.S. District Court for Central Division of Calif.*, 48 U.S.L.W. 3186 (1979); *United States* v. *CBS, Inc.*, Civ. No. 74–3599–RJK (C.D. Cal. July 31, 1980), *reprinted in* 45 FR 34,463, 34,466 (1980); *United States* v. *ABC, Inc.*, Civil No. 74–3600 RJK (C.D. Cal.) *reprinted in* 45 FR 58,441 (1980).

[11] The "small market policy," which limited the number of AM affiliates that a network could have in a single market, was also repealed. 63 F.C.C. 2d at 685.

[12] *Notice of Inquiry, supra.*

[13] *Id.*

markets are in a healthy competitive state and offering alternative sources of programming, Commission inquiry into these relationships was deemed to be necessary. Ultimately, we sought to determine whether the networks have maintained anticompetitive policies which unduly restrict the development of other programming sources.

11. The Commission's inquiry was structured to analyze both network-affiliate and network-program supplier relationships. An understanding of both of these areas was held essential in reaching a determination concerning network dominance over the exercise of licensee discretion in program selection. The analysis of network-affiliate relations was subdivided into three areas: (1) Our concern over whether network affiliates are adequately informed of the nature and content of forthcoming network programs and provided with an adequate opportunity to preview network programs; (2) whether there has been an increase in network use of station time and, if so, whether these increased clearances are other than voluntary, manifest an undermining of licensee discretion, or detract from licensees' abilities to serve their local communities; and, (3) whether the networks' present station compensation plans are consistent with the Commission's established principle that no graduated payment plan is permissible if it has the effect of requiring affiliates to take the majority of their programming from the same network without regard to the merits of the programming offered. The Commission has determined that graduated payment plans lock an affiliate into network programming because decreases in affiliate clearance of network programming adversely affect the affiliate's overall compensation rate. *National Broadcasting Co.*, 17 RR 449; *American Broadcasting Co.*, 17 RR 458; *Columbia Broadcasting System, Inc.*, 17 RR 439 (1958), *recon. denied*, 24 RR 513 (1962).

12. Analysis of the network-program producer relationship was subdivided into the following lines of inquiry: (1) The efficacy of our syndication rule; (2) whether the absence of any regulatory restriction on network in-house program production gives the networks an anticompetitive advantage over potential competitors or otherwise works to limit the supply of independently produced programs; (3) whether networks agree to purchase programs on condition that producers use network-owned production facilities or grant the network options on exhibition rights for several succeeding years, and if so, whether such practices adversely affect competition in the market for television programming by limiting the range of alternatives available to program suppliers and the supply of programs available to local stations through the syndication market; (4) whether the network practice of purchasing exhibition rights to more programs than they can use and "warehousing" those programs unnecessarily limits the number of first-run programs available for syndication, and thus reduces the competition which the networks must face; (5) whether a restriction against joint negotiation for initial and rerun presentations are needed and how the acquisition of rights to reruns affects the supply of first-run and off-network programming available to local stations; and (6) whether there is joint purchasing of programs by members of each network O and O group,[14] whether producers of first-run programs bought for the O and O's are required to use network-owned production facilities, and whether a contract for exhibition on an O and O group is a prerequisite for the success of a first-run program sold in the syndication market.

13. This proceeding was temporarily suspended in June 1977, to allow consideration by the incoming administration.[15] On October 19, 1978, the Commission issued a *Further Notice of Inquiry*, 69 F.C.C. 2d 1524, which, initially, restated the two guiding principles of this proceeding:

> First, in judging the performance of the industry, we are primarily concerned with "protect(ing) the interest of the public in receiving the best possible programming service * * *" (para. 14). The economic well-being of networks, stations or program suppliers is, thus, important only to the extent that it affects their ability to serve the public. Second, with a variety of specific practices identified for analysis, we are centrally concerned about whether these practices enable the existing major commercial networks in their relations with affiliates and program suppliers, to limit the opportunity for others to compete for station broadcast time and thereby to exert an anti-competitive influence upon the industry's behavior.

Id., at paragraph 18.

14. Moreover, the scope and cast of this inquiry were broadened to provide for a structural analysis of current and future industry trends. The Commission gave recognition to the current existence of only three commercial networks which "now offer virtually full-time, nationwide, interconnected programming." *Id.*, at paragraph 22. However, we also determined to consider "future developments, some arising from changes in regulation and others stemming from market forces, [which] may have the effect of altering the structure of the broadcasting industry and affecting the extent of concentration in networking." *Id.* In considering the structural approach to network concerns, the *Further Notice* explained:

> It is often difficult to regulate commercial practices in order to affect industry performance. Firms that are subjects of the regulations are, by definition, being told to do that which they believe is contrary to their self-interest. Further, the regulation of one practice (e.g., station compensation plans) may be effectively avoided by alterations in another (e.g., the number of availabilities and adjacencies offered in network shows.) For this reason, it is frequently preferable to adopt policies that protect or foster an industry structure that may obviate or reduce the need to supervise its practices * * *.

15. The enhanced purview of the Commission's analysis would, therefore, include consideration of such matters as: the impact of improvements in satellite technology together with the Commission's policies promoting entry into the provision of satellite services, and the development of user-owned stations; the development of relatively low-cost devices for recording and playback of television programs, including videocassettes, recorders and videodiscs; improvements in the design of television receivers; substantial increases in the demand for television advertising which have resulted in large increases in advertising rates and in industry profits; rejection of the Commission's pay cable rules by the D.C. Circuit Court of Appeals; and elimination of the Commission's leapfrogging rules for cable retransmission.

16. The Commission believed that these developments provided opportunities for broadcasters to choose programs from existing networks, or possibly, new over-the-air networks or to engage in joint ventures directly with program suppliers. Similarly, the Commission believed that program suppliers may have new outlets, both over-the-air and by direct sale to viewers. In such a climate network bargaining power may not be as potent as it was found to be when the network rules were adopted. After extensive review and after obtaining comment on preliminary reports, the Special Staff issued its "Final Report"in October 1980 (hereinafter "Final Report"), and its

[14] Each of the three networks own and operate television stations. These stations are referred to as "O and Os."

[15] *Commercial Television Network Practices*, 67 F.C.C. 2d 136 (1977).

"Recommendations" (hereinafter "Recommendations") to the Commission in December 1980. Their views on the syndication and financial interest rule are discussed below.

The Syndication and Financial Interest Rule

17. As noted above, the Commission's syndication and financial interest rule is an outgrowth of the Commission's 1959 "Program Inquiry." Facts acquired in that inquiry demonstrated a shift in television program procurement practices. The *Notice of Proposed Rule Making,* 45 F.C.C. 2146 (1965) leading to adoption of the prime time access, and syndication and financial interest rule commented that "(t)he total potential market available to independent producers of programs for network *exhibition* (emphasis in original text) is restricted to network corporations and network advertisers (footnote omitted). Formerly, many network television programs were developed and brought to the market in 'pilot' form by independent producers at their own account and risk. A reasonably broad market was then available to such producers (footnote omitted). It was composed of a large number of sponsors and potential sponsors of network programming in addition to the three network corporations. The first run exhibition rights to many such programs were sold by independent producers directly to sponsors and, subject to network approval as to scheduling, suitability, good taste, decency, etc., were exhibited as network offerings. Sponsors chose programs in accordance with their diverse needs from a program market provided by independent producers (footnote omitted). Up until six or seven years ago, a third to a half of network evening schedules consisted of such independent programs." *Id.* at 2150.

18. After reviewing comments filed in that proceeding the Commission concluded that the market was unbalanced to the disadvantage of independent producers and a freer, more diversified television production and distribution process. *Network Television Broadcasting,* 23 F.C.C. 2d 382, 387 (1970). This inequality in the marketplace was found to affect the terms of market entry even for such major motion picture companies as Metro-Goldwyn Mayer, Paramount, Screen Gems, Twentieth Century Fox, United Artists, Universal Pictures, Walt Disney and Warner Bros., *Id.,* at 388. The Commission found that the networks' abilities to acquire subsidiary interests in the programs chosen for network distribution posed a conflict of interest for the networks in selecting between programs in which such rights could be obtained and potentially better programs in which such rights were not available. Similarly, we concluded that the presence of networks as significant domestic syndicators was inherently undesirable since it was thought that networks would thereby be in the position of selling programs to independent stations which would be competing for audience with local network affiliates. *Id.* at 394.

19. We concluded that it was not desirable for so few entities to have such a degree of power over what the American public may see and hear over so many television stations; and, that a diversification of economic interest and power in this area was a cardinal principle of the public interest standard of the Communications Act. Therefore, the Commission believed that a rule was needed to: broaden competition in the market supplying television programming; remove the networks from the syndication market; and limit the networks' abilities to acquire financial interest in programs they select for presentation. This, the Commission believed, would promote a healthy independent production industry as well as diversify the sources of program production.

20. The Commission was not concerned with the allocation of profits. This agency's concerns over these practices were summarized in the staff report, the Second Interim Report of the Office of Network Study, as follows:

> The dominant position which the networks have achieved in their effective control of the program market has serious consequences for the public interest in the wider and more effective use of television channels and the ability of licensees to serve the public interest in community broadcast service. The public interest in a nationwide competitive television industry requires as broad a base as is feasible from which programs necessary to enable licensees to serve the public interest in television service may be selected. In a healthy, competitive television industry, that base should comprise as many diverse and antagonistic sources as possible, so that spiritual, cultural, and economic aspirations generated in our society may have the opportunity, in competition with each other, to reach the public and to vie for acceptance in a free market for ideas. Present policies and practices in network television program procurement, particularly in the entertainment area, are not adequate for these purposes. Hence, they require modification so that they may conform to the public interest in network television broadcasting.

Printed in the Report of the Committee on Interstate and Foreign Commerce, House Report No. 281, 88th Cong., 1st Sess. (1963).

21. To meet these concerns the Commission proposed rules, which, with some modifications, have become our syndication, financial interest and prime time access rules. 47 CFR 73.658 (j) and (k). Paragraph (j), in pertinent part, provides that no television network shall:

> (i) * * * sell, license, or distribute television programs to television station licensees within the United States for nonnetwork television exhibition or otherwise engage in the business commonly known as "syndication" within the United States; or sell, license, or distribute television programs of which it is not the sole producer for exhibition outside the United States; or reserve any option or right to share in revenues or profits in connection with such domestic and/or foreign sale, license, or distribution; or (ii) * * * acquire any financial or proprietary right or interest in the exhibition, distribution, or other commercial use of any television program produced wholly or in part by a person other than such television network, except the license or other exclusive right to network exhibition within the United States and on foreign stations regularly included within such television network * * *.[16]

The Commission also proposed limitations on the amount of network programming that could be presented during prime time. As adopted, this last rule is referred to as the prime time access rule. We are not proposing to review this rule in this *Notice.*

22. Paragraph (j)(i), the syndication rule, prohibits network involvement in the business of program syndication, and prohibits the reservation of a right to share in the profits from syndication. This rule prohibits the acquisition of domestic and foreign syndication rights to all programming produced in this country by an independent program producer. *Network Television Broadcasting,* 25 F.C.C. 2d 318, 331 (1970). The networks are not barred from the acquisition of syndication rights and interests to foreign distribution of foreign-produced programs. *Network Television*

[16] The balance of the rule states:

* * * *Provided,* That if such network does not timely avail itself of such license or other exclusive right to network exhibition within the United States, the grantor of such license or right to network exhibition may, upon making a timely offer reasonably to compensate the network, reacquire such license or other exclusive right to exhibition of the program.

We do not propose the elimination of this portion of the rule. Paragraphs (j) (2) and (3), which relate to the syndication and financial interest rule, will be deleted if this rule is abolished. Section (j)(4), which defines a network for use in connection with § 73.658 (j) and (k) would continue to apply to the remaining portions of these subsections.

Broadcasting, 26 F.C.C. 2d 28, 31 (1970) at n. 3.

23. Paragraph (j)(ii), the financial interest rule, was designed to assure that the networks could not circumvent the restrictions of the syndication rule. As the Commission noted in adopting this rule:

> We prohibit networks from acquiring subsidiary program rights and profit shares, as little would be accomplished in expanding competitive opportunity in television program production if we were to exclude networks from active participation in the syndication market and then permit them to act as brokers in acquiring syndication rights and interests and reselling them to those actively engaged in syndication. 23 F.C.C. 2d 382, 398.

The rule bars only the acquisition of "broadcast" rights. The rule does not bar network acquisition of nonbroadcast rights to television programs. *Declaratory Ruling on Section 73.658(j)(ii)*, 87 F.C.C. 2d 30 (1981), *aff'd sub. nom. Viacom International, Inc.* v. *FCC*, No. 81–4119 (2nd Cir. Feb. 9, 1982.

Comparison of the Network Consent Decrees and the Syndication and Financial Interest Rule

24. The consent decrees paid particular attention to possible network involvement in the business practices covered by the syndication and financial interest rule. NBC was the first of the three major networks to enter into a consent decree with the Department of Justice. In discussing the terms of the decree the Court noted:

> Section IV of the proposed judgment prohibits NBC from acquiring syndication and other distribution or profit shares in television programs produced by others. Thus, in negotiating the purchase of television programs from independent producers and suppliers, NBC would be permitted to acquire only the right of first-run exhibition and certain rights incidental to the licensing and use of programs. The network would be prohibited from acquiring "financial interests" in a television program produced by an outside source which would earn revenues and profits for NBC beyond the network run of the program. Syndication is the most significant of these secondary rights, and NBC would be prohibited from acquiring any domestic syndication rights. The judgment permits foreign syndication of NBC-produced programs and certain foreign programs.
>
> The relief provided for in this section of the judgment parallels the restrictions placed on all three television networks by the FCC's financial interest and syndication rules.

United States v. *National Broadcasting Co., Inc.*, 449 F. Supp. 1127 (1978).

25. While the Court correctly noted the parallels between the consent decrees and our syndication and financial interest rule, there are some differences in the scope of these restrictions. The consent decrees and our syndication rule bar network involvement in domestic syndication. The syndication rule permits foreign syndication of foreign produced programs as well as foreign syndication of programs wholly produced by the networks. The consent decrees permit the latter consistent with our syndication rule but permit the former only if such syndication rights are acquired in separate negotiations from the acquisition of domestic syndication rights. Thus, the syndication requirements of the consent decrees appear to be more restrictive on this matter than the requirements of our syndication rule.

26. Concerning other aspects of the rule and the decrees, the restriction of the consent decrees and of our financial interest rule appear to be consistent in all significant respects, except for the consent decrees' imposition of similar separate transaction requirements to cover other transactions. It, therefore, appears that in all significant respects, the requirements of the consent decrees are more restrictive than or equivalent to the restrictions of our syndication and financial interest rule.

Special Staff Report

27. The Special Staff noted the difficulty in generalizing about the process leading to a decision to air a particular program during prime time. However, it is clear that network involvement in the process often occurs with review of a program idea or concept presented to it by an independent producer. See An Analysis of Television Program Production, Acquisition, and Distribution, Preliminary Report in Docket No. 21049, June, 1980. If the network decides to seek further development of a concept it usually will finance the development of a "treatment", a script outline for a pilot or a script for a pilot. The license fees for a pilot were found to fluctuate widely. "With respect to pilots commissioned for series to debut in the 1977–78 season, the fees paid by the networks for a 60 minute pilot in most cases ranged between $500,000 and $1,000,000 and between $200,000 and $450,000 for a 30 minute pilot." *Id.* at 62.

28. The Special Staff found such contract provisions as the sharing of syndication revenues, to be efficient devices to distribute the risk of failure between suppliers and networks and to act as an inducement for networks to participate in the costly development process. A successful network run would make these rights valuable. A poor run would diminish the value of these syndication rights. Establishing this value in advance is, however, more an art than a science. A significant risk of failure is an inherent aspect of the television broadcasting business. The Special Staff argued that the natural aversion to this risk by networks and producers places a value on the potential for failure, as well as a value on the potential for success. If the networks cannot expect to reap the benefits of a successful run through syndication, and additional cost for the risk of failure will be shifted to the program producer.

29. In addition, the Special Staff disagreed with the Commission's previous conclusion concerning concentration in the program supply market, arguing that the market for first-run and off-network syndicated programming was competitively structured at the time that this rule was adopted. *Id.* at 476–481. The Staff found that there were adequate sources of first-run and off-network syndicated programs to forestall any network efforts to extract undue concessions in bargaining for the purhcase or sale of these rights. *Id.* at 477. Indeed, the Special Staff found that it would be contrary to the networks' own interest to engage in conduct which would decrease the sources of network programs. The Special Staff stated that this would increase concentration among remaining suppliers and enhance their market power in dealing with the networks. *Id.* at 470.

30. Thus, the Special Staff argued that the syndication and financial interest rule does not affect the potential for network exercise of undue influence in the purchase of network programming. The impact of this prohibition is, instead, to reduce the amount that the networks will pay for development of a program. Indeed, the Special Staff concluded that this rule could increase concentration in the program supply market by limiting involvement only to those entities large enough to bear the great risks involved; risks which otherwise would be borne by the networks.

31. The Special Staff found that the syndication and financial interest rule therefore is, at best, misguided. This rule was deemed to have disrupted an efficient risk-sharing arrangement between the networks and their program suppliers. No new outlets or viewing options are encouraged by this rule and an already competitive market has been restrained. Thus, this rule was deemed to have done little to further the Commission's goals of diversity, localism or increased competition. Since this rule was held to be inconsistent

with these criteria used by the staff to determine whether the rule serves the public interest, the Special Staff urged that the Commission abandon it.[17]

The Commission's Proposal

32. Our professed goals of protecting licensees from the exercise of anticompetitive network practices and fostering a healthy independent production industry were established during a period when the gateway to presentation of television programming virtually required use of over-the-air facilities. The Commission became concerned when the acquisition of programming became centralized in the hands of only the three major television networks. However, the market for television programming has undergone significant change since adoption of the syndication and financial interest rule. Over the past few years, the rate of technological change in television program service has increased in a fashion which could not have been anticipated by us a decade ago. In addition the pacer appears to be increasing with no peak in sight. Therefore, our concern over the abilities of the networks to act as monopsonists in the purchase of television programming may no longer be justified.

33. In 1964, only 26 percent of all television households received seven or more signals and 78 percent received four or more. Today, about 90 percent of all television households receive four or more television signals.[18] Nielsen figures indicate that 65 percent of all television households receive seven or more signals.

34. Growth in television viewing outlets available to the public has not been limited to expansion of over-the-air facilities. In the last few years we have witnessed significant growth of other services. In 1964, there were 1,200 operating cable systems with 1,085,000 subscribers. Today there are nearly 4,800 systems serving 23 million subscribers.[19] Concerning the future, the percentage of homes that subscribe to cable television is predicted to increase from a currently estimated 27 percent of all television households in the United States to at least 50 percent by 1985.[20]

35. Over-the-air pay channels also offer alternative programming to the consumer. Subscription television is now available on 27 stations in the United States. Subscribers to this service now number at least 1.3 million and are expected by some to reach 4.9 million by the end of 1986. Multipoint Distribution Service (MDS), a common carrier service, also delivers pay service to television viewers. There are 73 MDS stations serving approximately 550,000 MDS subscribers at this time and subscribership can be expected to grow in the future.[21]

36. In addition, the advent of video cassette and video-disc technology has opened a new viewing option to the consumer. There are an estimated 2.1 million homes with video recorders, approximately 2.6 percent of U.S. households. Some observers expect this to rise to 50 percent by 1990.[22]

37. It is also likely, that in the future consumers will receive service from new technologies. Over 6,000 applications are pending at this agency for licenses to operate low power television stations. These stations, spread thoughout these United States, may provide significant sources of local and special interest programming in addition to the currently available program fare. Applications are also pending to provide direct broadcast satellite (DBS) service to the entire country.

38. Thus, the number of outlets for programming has increased significantly since the rule was adopted, particularly in the past few years, and those outlets may be expected to expand further in the forseeable future. There is also some evidence that these new outlets may be taking their toll on the networks in terms of audience loss.[23] In this regard, Nielsen reports indicate a steady decline in network audience share over the past three years, from 88 in 1979 to 81 in 1981.[24] In addition, our own financial data indicate that broadcast income of the three major networks has declined steadily from $406.1 million in 1977 to $325.6 million in 1980,[25] and there is some indication that pay programmers are now outspending the networks in the acquisition of feature films for presentation.[26] In these circumstances, interested parties are asked to comment on the present state of the program marketplace, and whether there is any continued need for a Commission restriction based on a 1964 view of the networks as the overwhelming force in that marketplace.

39. Even beyond the perceived changes in the program marketplace, we believe it is appropriate to question the ability of the financial interest and syndication rule to accomplish its stated goals. We believe that the Special Staff has made a case warranting review of the ability of this rule to achieve its intended result. For all these reasons the Commission finds it appropriate to consider whether the public interest would be served by the deletion or modificiation of the syndication and financial interest rule. To this end, we solicit comments on a number of questions. We solicit comments concerning the Special Staff's determination that the rule is misguided and therefore should be eliminated. Further, the producers the rule was designed to protect are themselves powerful actors in today's program marketplace. The top ten prime time network program suppliers during the 1977–78 season were Universal, Warner, Spelling Goldberg, Lorimar, MTM, Columbia, MGM, Paramount, Aaron Spelling and Twentieth-Century Fox.[27] Commenters are requested to address themselves to the need to protect such entities from the possibility of the exercise of undue influence by the networks.

40. Even in situations unlike those above, where the independent producer is not so powerful an actor in the program marketplace, there are legitimate questions regarding the ability of the rule to create any reasonable balance in the bargaining positions of the parties. In essence, the negotiations between producers and the

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[17] Recommendations, at 10.

[18] FCC Staff Report on Cable TV Cross Ownership Policies, November 17, 1981, p. 62–64. A. C. Nielsen Co. reports that 97 percent of all television households receive four or more television signals. *Nielsen Television Report, 1980.*

[19] Television Digest, *Cable Action Update,* June 21, 1982, reports a total of 4,765 operating cable systems; Cablevision, May 10, 1982, p. 436, reported 22,821,167 subscribers as of March 1, 1982.

[20] The National Journal, October 24, 1981, *The Cable Revolution-Tought Choices for the Industry and Government,* Michael Wines, p. 1892.

[21] Paul Kagan Associates, *The Kagan Census of Cable and Pay TV* (as of December 31, 1981), June 1982; Paul Kagan Associates, *Pay TV Newsletter,* No. 205, November 10, 1981, p. 1; Paul Kagan Associates, *Census of MDS Pay TV* (as of December 31, 1981); *Multicast,* March 22, 1982, pp. 6–7. At that time MDS stations served 544,713 subscribers.

[22] The National Journal, October 24, 1981. *The Cable Revolution-Tough Choices for the Industry and Government,* Michael Wines, p. 1891.

[23] See, *e.g.,* Washington Post, *TV Technology Altering Medium,* Feb. 11, 1979, at G–1; Advertising Age, *Net Viewing Dips,* April 6, 1981, at 1; and Broadcasting Magazine, *Turner Interprets Nielsen Numbers,* April 26, 1982, at 82.

[24] Nielsen Report on Television, 1982. See also, Advertising Age, *New Media to Co-exist with Old, DOB Reports,* March 29, 1982, p. 64, in which one authority predicts that the three major "networks should lose about 20 share points in prime time by 1990, as CATV subscribers account for 57,300,000 homes, or 60 percent of all TV households and pay cable subscribers reach 44 percent * * *."

[25] Public Notice August 10, 1981. This is the last officially available data on this subject. The decline is shown before payment of Federal Income Taxes and does not take into account any erosion of the value of these profits due to inflation.

[26] New York Times, *Hollywood Millions Hidden by Accounting Method,* Jan. 19, 1982, Business Se., p. 1.

[27] Network Inquiry Special Staff Report, at 304. Table 3.

networks for programming provide a framework in which programs are conceived, developed and produced, and the financial arrangements that are ultimately agreed upon provide a method for the distribution of the risks of failure and the rewards of success of the program. Our financial interest and syndication rule restricts the ability of the parties to allocate those risks and rewards. Thus, because the network cannot require such future interests in the programming, the producer cannot sell them to the network in exchange for some increase in its up-front compensation, even if the producer desires to do so. Thus, the rule limits the actions of producers as well as the networks, and it may interfere with the ability of the parties to spread the financial risks and rewards in an appropriate manner after arms length negotiations. Accordingly, we solicit comments on this conception of the network/producer relationship and the restriction of the rule on both the networks and the producers. We further seek comments on whether the rule does in fact achieve any balancing of bargaining power between the parties involved.

41. As previously noted, today's programming marketplace includes many potential nonnetwork customers for the producers' ideas, talent and ability; customers that are not fettered by the limitations of our rule.[28] Because other outlets can acquire rights to subsequent runs, they may be able to risk more program failures than the networks on the chance that a successful program will yield significant syndication or aftermarket profits; profits which may cover the losses of the programs that failed, thereby providing an acceptable rate of return. Thus, the rule estabishes an imbalance in the ability of networks and nonnetwork outlets to compete for the products of independent producers.

42. Moreover, we note that some of the producers we have sought to protect with the rule are themselves engaged in acquiring programming for their cable, video disc and/or video cassette enterprises. Companies like Twentieth-Century Fox, MCA, Inc., Walt Disney and Warner Communications therefore appear to be reaping unforeseen benefits when they negotiate with other producers for programming with a freedom denied their network competitors. Thus, with the rapid development of alternative outlets for television viewing, it is now possible that the syndication and financial interest rule, adopted in the past to protect the public interest of television viewers by promoting competiton, may operate against those interest by unnecessarily restraining the networks' abilities to compete. This could result in a disservice to the public interest by limiting hearty competition in the provision of alternative forms of programming. We seek comments on the bargaining imbalance between competing delivery systems created by the rule and the effect of those inequities on the ability of the various network and nonnetwork outlets to acquire different types of programs and to make that programming available to the American public through their various delivery modes. Comments should also address the issue of the impact that deletion of this rule would have upon independent televisions stations, where networks, acting as syndicators, would be in the business of selling program rights to be used in competition with their network fare. In addition, we seek the views and comments of interested parties on the interrelationship between our finacial interest and syndication rule and the provisions of the network consent decrees discussed at paragraphs 24 through 26 above. Finally, we ask for comments addressing the issue of whether protection of program producers from undue influence is an appropriate subject of Commission concern.

43. Regulatory Flexibility Act Initial Analaysis—

I. *Reason for action.*—If the Commission determines that the syndication and financial interest rule should be deleted our action could result in removal of a regulatory burden sustained by the networks, and to the extent that programming choices may be affected by this rule, all of our commercial television licensees. The increase in new program outlets may have changed market conditions. In addition, it appears that the syndication and financial interest rule, 47 CFR § 73.658(j), may operate to prejudice the major networks' abilities to compete for programming and/or may be ineffective in achieving its purpose. Therefore, we believe that a review of the need for this rule is warranted.

II. *Objective.*—This action, as proposed, is taken consistent with our desire to eliminate unnecessary regulatory burdens and to permit unfetterred competition. Such competition is likely to serve the public interest by making the best possible program service available to the public. Unnecessary restraints on competition are likely to disserve the public interest by limiting the quantity and quality of available program choices.

III. *Legal basis.*—Authority for the issuance of this *Notice* is contained in Sections 4(i) and 303 (i) and (r) of the Communications Act of 1934, as amended.

IV. *Description, potential impact and number of small entities affected.*—The syndication and financial interest rule imposes direct restrictions only on the three major networks (see paragraph 42, *supra*) which are not "small entities" under the Regulatory Flexibility Act. Elimination of this rule may also affect independent producers and television licensees, some of which may be "small entities." At this time we are unable to predict what those effects might be.

V. *Recording, record keeping and other compliance requirements.*—No recordkeeping burdens are imposed directly by this rule and no recordkeeping burdens will be added by this action.

VI. *Federal rules which overlap, duplicate or conflict with this rule:* None.

VII. *Any Significant alternatives minimizing impact on small entities and consistent with stated objective.* The alternatives available are elimination, modification or retention of the rule.

44. For purposes of this non-restricted notice and comment rule making proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the time a public notice is issued stating that a substantial disposition of the matter is to be considered at a forthcoming meeting or until a final order disposing of the matter is adopted by the Commission, whichever is earlier. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments, pleadings and 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; on the day of oral presentation, that written summary must be served on the Commission's

[28] The Commission has interpeted the syndication and financial interest rule to apply only to the three major networks. See *Christian Broadcasting Network, Inc.*, FCC 81-471, released October 9, 1981.

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 1.1201 of the Commission's Rules.

45. Pursuant to procedures set out in § 1.415 of the Commission's rules, interested parties may file comments on or before January 26, 1983, and reply comments on or before April 26, 1983. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information or a writing indicating the nature and source of such information is placed in the public file, and provided that the fact of the Commission's reliance on such information is noted in the Report and Order.

46. In accordance with the provisions of § 1.419 of the rules, formal participants shall file an original and 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 11 copies. Members of the general public who wish to express their interest by participating informally may do so by submitting 1 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, Room 239, 1919 M Street, N.W., Washington, D.C. 20554.

47. For further information concerning this proceeding, contact Israel Teitelbaum, Broadcast Bureau, (202) 632–7792.

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

Federal Communications Commission.

William J. Tricarico,

Secretary.

Separate Statement of Chairman Mark S. Fowler

Re: Financial Interest and Syndication Rules

I endorse the Commission's decision to issue this *Notice of Proposed Rulemaking* to reexamine the financial interest and syndication rules. Over a decade has passed since the rules' adoption. During that time the old, familiar video environment has undergone a series of fundamental changes with the growth in multichannel cable television systems, the proliferation of broadcast and nonbroadcast pay services, and the development of home video technologies. The future development of low power television and DBS augur even more profound changes to the network-dominated video work we have been accustomed to. As these new technologies work their changes on the old order, they challenge us to rethink the public policy determinations that were premised on it.

But it would be inaccurate to say that the changing video environment constitutes the only reason for reexamining these rules. The intervening years have also brought forth a torrent of economic analysis and commentary on these rules, beginning almost as soon as the rules were issued and culminating a decade later in the issuance of the Network Inquiry Special Staff *Report*. The *Report* is the product of the Special Staff's analysis of comments received in a 1977 *Notice of Inquiry* and a 1978 *Further Notice of Inquiry*. As such it represents two years' work by a select staff of interdisciplinary experts who drew together and evaluated the latest available information.

The issuance of this *Notice of Proposed Rulemaking* does not represent a final institutional determination to abolish these rules. The issues involved are so numerous and so varied that each of us, including myself, has different questions and therely end this decade-long debate. Given the continuing and areas of special concern that will demand particular attention before reaching a final conclusion. The data collected in response to the *Notice of Proposed Rulemaking* hopefully will provide a firm factual predicate upon which we may definitely resolve these questions debate on the central issue of where the public interest ends and private interests begin, and the almost total inconsistency in the facts and assumptions advanced by the opposing interests, it has become incumbent upon us to do so.

Concurring Statement of Commissioner Abbott Washburn

Re: Financial Interest Rule

I am concurring because the item as drafted calls for an impartial full review of the situation and does not recommend abolishing the rule unless evidence developed during the rulemaking supports the view of the Special Staff. This gives all parties an opportunity to make their best case and the Commission a chance to weigh the facts, figures and agruments in a formal structured proceeding. In the words of the Chairman, "Our minds are open."

The report of the Special Staff, it should be remembered, was rendered to us but as yet no part of it has been endorsed by the Commission. In my opinion, the rule, up to now, has served the public interest. Rather than being concentrated in the three commercial networks, control of entertainment television production and distribution has been dispursed among multiple power centers. This has resulted in an increase in the number of strong independent producers and the birth of new firms engaged in distribution and syndication. The viewing public has benefitted by a wider choice of prime time TV fare.

Thus the programming market, in my view, during the decade of the rule's existence, has achieved a healthy balance. All parties involved have been busy and prosperous. The amount and diversity of programming available to the viewing audience has steadily increased.

Therefore, one question which the rulemaking hopefully will shed light on is: Is this a wise moment to disturb the present balance by eliminating the rule? I urge full public comment on this point, backed by factual evidence.

Another key question: what adverse effect could abolition of the rule have on the health and growth of independent commercial television stations? During my eight years on the Commission, we have been much concerned with fostering UHF television. Today, approximately 135 out of the 155 independent commercial stations are U's. During that period, the independents have grown significantly in importance, in income, and in service to their communities. Accordingly, in reaching its decision at the close of the rulemaking, the Commission must have in its possession valid, up-to-date information on what the rule has done to assist the progress of the "indies" and what the consequences to them of the elimination of the rule would be. I urge and hope that the responses to the rulemaking will produce a full record in this regard.

A third question relates to the new media outlets. Has their emergence, as is averred, indeed stimulated competition and significantly altered the networks' influence over general entertainment programming? Or is "getting the show on the network" still so important that concessions can be wrung from producers? If so, would abolition of the rule exacerbate that potential since the networks would them control production and syndication of programming as well as the ownership and operation of major market broadcast stations. Comments with specifics, not rhetoric, are solicited.

At the close of this proceeding, the Commission, with all the evidence before it, must decide whether, if the rule were eliminated, there would be less competition in the programming market or more competition, whether the public would have fewer viewing choices or more viewing choices. Unless abolition of the rule is clearly seen, at that time, to bring more competition and more diversity, such action would not accomplish any deregulation purpose.

The comment period of 180 days, with 90 days for reply comments, is long enough for all parties to develop thoroughly documented filings and to make special studies of key aspects.

At the end of the comment period, an Oral Argument, as has been suggested, would be helpful by permitting Commissioners to ask questions of spokesmen on both sides.

Separate Statement of Commissioner Joseph R. Fogarty

In Re: Amendment of the Syndication and Financial Interest Rule (47 CFR

73.658(j))—Notice of Proposed Rule Making.

I join in the issuance of this Notice of Proposed Rule Making (NPRM) to review the continuing validity and necessity of the syndication and financial interest rule and, in particular, to move the current debate on this rule into the public record.

While this action is styled a "Notice of Proposed Rule Making" and encompasses the alternative of deleting the rule in its entirety, it bears emphasizing that the Commission is not now expressing any view on the final result of this proceeding. We are indicating no tentative or preliminary preferred course of action; we are not assigning any burden of justification or persuasion.

I think this posture of strict neutrality is entirely warranted and proper at this juncture. While it is clear where the respective private interests of the parties lie with respect to the deletion or retention of the rule, it is for me far from self-evident where the *public interest* lies in resolving this question. On the one hand, the FCC Network Inquiry Staff Report has challenged the theoretical wisdom and practical efficacy of the rule; on the other, members of the program production industry have argued that the networks are already far too dominant and that the rule is essential to contain that dominance. Full public comment on the record has yet to be heard.

In this regard, I note that the restrictions of the Commission's syndication and financial interest rule are duplicated and, in some respects, exceeded by antitrust consent decrees which the Department of Justice has entered into with each of the three major television networks. In view of the Justice Department's tradition of filing comments in FCC proceedings whenever and wherever it perceives the spectre of anticompetitive structure or conduct (with or without consideration of larger public interest considerations), I especially look forward to its comments in this proceeding.

Concurring Statement of FCC Commissioner James H. Quello

In re: Deletion of the Syndication and Financial Interest Rule

June 23, 1982.

I concur—reluctantly. I am concurring rather than dissenting because the notice will provide the opportunity to gather updated facts and to thoroughly ventilate and study the issues of this controversial proposal as they apply to communications services of the 80's.

My vote for the rulemaking should not be construed as favoring the final result. I am reserving final judgment and believe there is a heavy burden of proof on the networks to show that deletion of the syndication and financial interest rule (1) is in the public interest and (2) will enhance rather than reduce competition.

I am also concerned with the effect deletion of this rule will have on many already disadvantaged independent stations who rely on syndicated features to gain audience shares and remain competitive.

I am concerned, too, that it may be too early to conclude that the technological inroads of cable, teletext, low power TV, MDS, and STV have significantly diluted network dominance. According to recent public statements of CBS and NBC, network TV will continue to dominate audience shares and programming into 1990.

In May, the President of the NBC Television Network stated to an affiliates annual convention:

Today, the commercial television networks are the largest and most dynamic entertainment, information and advertising medium to ever exist. And they will remain the dominant communications medium of the future * * * (T)he future is not passing us by. The future is ours to take. The lion's share (of the video business) will be our business.

Later in May, the President of CBS, Inc. was quoted at the CBS affiliates meeting:

I am increasingly convinced that there is less change on the horizon than most are predicting. That is a theme that may sound a little different (these days). I suggest that (changes in the media universe) will be not as large, not as threatening and not as soon as most predict.

The CBS/Broadcast Group VP in charge of research was paraphrased in *Broadcasting* stating:

Television network affiliates have nothing to worry about. They are now and will remain—at least until 1990—the dominant video medium of the United States. Indeed, in absolute audience and dollar terms, their dominance will be greater than ever eight years from now.

I am thus concerned that the proposal to repeal this rule may be premature. My concern is heightened by the fact that the Justice Department embraced the rule and even went beyond it in fashioning consent decrees with the three networks beginning in 1978.

It must also be kept in mind that the rule does not bar network acquisition of nonbroadcast rights to television programs. Thus, the networks are free to bargain for rights involving cable television, video tape, video disc, etc. *Declaratory Ruling on Section 73.658(j)(ii)*, 87 FCC 2d 30 (1981), *Aff'd sub nom. Viacom International, Inc.* v. *FCC*, No. 81–4119 (2d Cir. Feb. 9, 1982). Arguments that the networks are somehow preempted from participation in the new video delivery systems are, therefore, not totally persuasive.

While the Commission's Network Inquiry Special Staff concluded that the rule did not and could not serve its intended purpose of increasing diversity and competition, the present syndication market appears to be working well and the number of participants appears to have grown significantly since the rule was first adopted. I am very interested in examining the practical consequences of this rule to determine how well the economic theories of the Special Staff are supported by the facts.

I have misgivings about whether an adequate record can be developed upon which to base such far-reaching action as is proposed today. I could favor repeal if it could be shown that there is a need for such relief and if it would not place significant anti-competitive burdens upon program producers or independent TV stations. Many of the new video markets cited by those who favor repeal have not yet developed and may never fully develop. It is somewhat illogical to base actual market projections solely on what is technologically possible. It is conceivable that by the time this rulemaking is completed there will be greatly increased competition to obtain programming. This could provide the basis for repeal, a basis which does not appear to exist at the present time.

Therefore, I am concurring and looking forward to carefully evaluating the comments of all parties.

Concurring Statement of Commissioner Henry M. Rivera

In re: Notice of Proposed Rulemaking on Financial Interest and Syndication Rules

My acquiescence in this Notice of Proposed Rulemaking should not be interpreted as an indication that I support rescission of the financial interest and syndication rules at this time. I also remain to be convinced that the public interest is served by devoting a full-blown proceeding to examine these two rules. Nevertheless, some of my fellow commissioners strongly favor such an examination and I am reluctant to deny them that opportunity.

I do question, however, whether the structure of the television industry has changed materially since these rules were adpoted. There may be a greater number of programming outlets today, but the mere existence of some additional competition for viewers does not mean that the dominant players no longer can exercise undue leverage in program procurement. There is considerable prospect for change, but today the three networks are still the most pervasive television programming outlets; no other entity even approaches their audience levels or their buying power. Given that reality, I am troubled by the contention that repeal of the rules would jeopardize the viability of the independent television stations and other video service providers, by making it again possible for the networks to unreasonably withhold programs from general distribution.

If, as some have argued, the rules do nothing more than ordain the level of return on private investments in this arena, they have no business on our books. Based on the debate thus far, I am not convinced that this is so. It may be, too, that while the rules are conceptually valid, they should be revised.

The myriad issues raised by this NPRM will doubtless be exhaustively ventilated by all concerned. I will be particularly interested in the Justice department's views on whether the circumstances that ultimately led to entry of consent decrees against the networks have changed.

[FR Doc. 82–20690 Filed 7–29–82; 8:45 am]

BILLING CODE 6712–01–M

Notices

Federal Register
Vol. 47, No. 147
Friday, July 30, 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

Agricultural Stabilization and Conservation Service

Proposed Determinations Regarding 1983 Upland Cotton Program; Correction

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Proposed determinations: correction.

SUMMARY: This document corrects a notice of proposed determinations published at 47 FR 31025 on Firday, July 16, 1982. A section of text was inadvertently omitted under "For Further Information Contact:" of the Proposed Determinations with Regard to the 1983 Upland Cotton Program, column 1, line 46. The entire section is reprinted below as it should have appeared.

DATE: Comments on the proposed determinations must be received on or before September 13, 1982, in order to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Charles V. Cunningham, Deputy Director, Analysis Division, USDA–ASCS, P.O. Box 2415, Washington, D.C. 20013 or call (202) 447–7954. The information and program options included in this notice were developed using acreage, production, and economic data available as of May 11, 1982. The projections of supply and utilization of the 1982 crop of upland cotton contained herein do not reflect either the estimates of planted acreage issued by the Department of Agricultural Crop Reporting Board on June 29, 1982 or any crop damage caused by weather conditions in the Southwest United States or elsewhere after mid-May 1982. The Preliminary Regulatory Impact Analysis will be amended after July 13, 1982 to include projections of the proposed program options based on current data. The Preliminary Regulatory Impact Analysis is available on request from the above-named individual.

Signed at Washington, D.C. on July 23, 1982.

Everett Rank,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 82-20455 Filed 7-29-82; 8:45 am]

BILLING CODE 3410-05-M

Commodity Credit Corporation

1982 Peanut Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice of determination—1982-crop peanut price support differentials for warehouse and farm-stored loan program.

SUMMARY: On February 26, 1982 (47 FR 8388), the Commodity Credit Corporation (CCC) announced the national average levels of price support for 1982-crop quota and additional peanuts. With respect to such crop of peanuts, this notice of determination sets forth specific adjusted loan and purchase rates for quota and additional peanuts which reflect adjustments for differences in type, quality, location and other factors. These adjusted loan and purchase rates apply to both warehouse-stored loans and farm-stored loans.

EFFECTIVE DATE: July 30, 1982.

FOR FURTHER INFORMATION CONTACT: David L. Kincannon, Tobacco and Peanuts Division, ASCS, USDA, Room 5718 South Building, P.O. Box 2415, Washington, D.C. 20013, (202) 382–0154.

The Final Impact Analysis describing the options considered in developing this determination and the impact of implementing each option is available upon request from David L. Kincannon.

SUPPLEMENTARY INFORMATION: This notice of determination has been reviewed under USDA procedures required by Executive Order 12291 and Secretary's Memorandum No. 1512–1 and has been classified "not major". It has been determined that this determination will not result in: (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local governments, or geographical regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal assistance program that this determination applies to are: Commodity Loans and Purchases, 10.051, as found in the Catalog of Federal Domestic Assistance. This proposed action will not have a significant impact specifically on area and community development. Therefore, review as established by OMB Circular A–95 was not used to assure that units of local Government are informed of this action.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice of determination since the Commodity Credit Corporation is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this determination.

The 1982-Crop Peanut Loan and Purchase Program is authorized by the Agricultural Act of 1949, as amended, (hereinafter referred to as the "Act"), and the Commodity Credit Corporation Charter Act, as amended. The program is intended to stabilize market prices and to protect producers, handlers, processors and consumers. The 1982-Crop Peanut Loan and Purchase Program, which was announced on February 12, 1982, established the national average support values for the 1982 crop at $550 per ton for quota peanuts and $200 per ton for additional peanuts. Section 403 of the Act provides that appropriate adjustments may be made in such levels for type, quality, location and other factors. Section 403 also provides that the average of any such adjustments shall, insofar as practicable, be equal to the level of support for peanuts for the applicable crop year. The alternative options considered for determining the 1982 crop differentials were as follows: (1) Virginia type Sound Mature Kernels (SMK) 2 percent and Spanish type SMK one-half percent above Runner type SMK, and (2) Virginia type SMK 3.9 percent above Runner type and Spanish type SMK.

It has been determined that the premiums, discounts, quality and location adjustments and other factors applicable to the support price for 1982

crop quota and additional peanuts shall remain the same as for the 1981 crop. Therefore, the sound mature kernel (SMK) value of Virginia type peanuts shall be 2 percent and Spanish type one-half percent above the SMK value of Runner type peanuts.

The objective of price support differentials is to offer to eligible producers price support levels by type, quality, and location that are representative of the differences in market values between these types and qualities of peanuts. As previously noted, Section 403 of the Act provides that if any adjustments are made in the support level for any commodity for type, quality, or location, such adjustments shall, insofar as practicable, be made in such manner that the average support for the commodity will, on the basis of the anticipated incidence of such factors, be equal to the national average support level. The type, quality, and location differentials set forth below have been established in accordance with this requirement.

In addition, it has been determined that the method of calculating price support rates by type for warehouse storage loans should be adopted for farm-stored loans so that all producers will be treated fairly. Accordingly, unless otherwise indicated, the basic rates and discounts set forth in this notice are applicable to both warehouse and farm-stored loans.

It has been further determined that the percentage factor used in calculating the loan value for the 1982 crop of additional peanuts will be 36.36 percent of the loan value calculated for quota peanuts. This percent represents the ratio between the 1982 national average quota support level and the national average additional support level and compares with a percentage factor of 54.95 percent for the 1981 crop.

Since the national average levels of support for the 1982 crop quota and additional peanuts have been previously announced and published in the **Federal Register** and the differentials set forth herein reflect those levels, it has been determined that no further public rulemaking is required. Accordingly, this notice shall become effective upon date of publication in the **Federal Register.**

Determination

(a) *Average 1982 support values by type per average grade ton of peanuts.*

(1) *Support Value for Warehouse-Stored Loans:*

Type	Per average grade ton
Virginia	$544.39
Runner	553.82
Spanish	535.43
Valencia:	
Southwest area—suitable for cleaning and roasting	544.39
Southwest area—not suitable for cleaning and roasting	535.43
Areas other than Southwest	535.43

(2) *Support Value for Farm-Stored Loans:*

Type	Per average grade ton
Virginia	$544
Runner	554
Spanish	535
Valencia;	
Southwest Area	544
Areas Other Than Southwest	535

(b) *Calculation of support values for quota peanuts.* The support price per ton for 1982-crop quota peanuts of a particular type and quality shall be calculated on the basis of the following rates, premiums, and discounts (with no value assigned to damaged kernels), except that the minimum support value for any lot of eligible peanuts of any type shall be 8 cents per pound of kernels in the lot:

(1) *Kernel value per ton excluding loose shelled kernels.*

(i) The price per ton for each percent of sound mature and sound split kernels shall be:

Type	Per percent
Virginia	$7.976
Runner	7.820
Spanish	7.859
Valencia:	
Southwest area—suitable for cleaning and roasting	8.209
Southwest area—not suitable for clearning and roasting	7.859
Areas other than Southwest	7.859

(ii) The price per ton for each percent of other kernels shall be: All types, per percent, $1.40.

(iii) The premium per ton for each percent of extra large kernels in Virginia shall be: Virginia extra large kernels, per percent, $0.45.

However, no premium for extra large kernels shall be applicable to any lot of such peanuts containing more than 4 percent damaged kernels.

(2) *Value of loose shelled kernels per pound.* The price for each pound of loose shelled kernels shall be: All types, per pound, $0.07.

(3) *Foreign material discount.* For all types of peanuts, the discount per ton for foreign material shall be as follows:

Percent	Discount
0 to 4	$0
5	1.00
6	2.00
7	3.00
8	4.00
9	5.00
10	6.00
11	7.00
12	8.50
13	10.00
14	11.50
15	13.00
16 and over	(1)

[1] For each full percent in excess of 15 percent deduct an additional $2.

(4) *Sound split kernel discount.* for all types of peanuts, the discount per ton for sound split kernels shall be as follows:

Percent	Discount
1 through 4	$0
5	1.00
6	1.60
7 and over	(1)

[1] For each full percent in excess of 6 percent deduct an additional $0.80.

(5) *Damaged kernel discount.*

(i) For all types of peanuts, the discount per ton for damaged kernels shall be as follows:

Percent	Discount
1	$0
2	3.40
3	7.00
4	11.00
5	25.00
6	40.00
7	60.00
8 to 9	80.00
10 and over	100.00

(ii) Notwithstanding the above discount schedule, the damaged kernel discount for Segregation 2 peanuts transferred from additional to quota loan pools shall not exceed $25 per ton.

(6) *Price adjustment for peanuts sampled with other than a pneumatic sampler.* The support price per ton for Virginia-type peanuts sampled with other than a pneumatic sampler shall be reduced by $0.10 per every percentage point of sound mature and sound split kernels.

(7) *Mixed type discount.* Individual lots of farmer stock peanuts containing mixtures of two or more types in which there is less than 90 percent of any one type will be supported at a rate which is $10 per ton less than the support price available to the type in the mixture having the lowest support price.

(8) *Location adjustments.*

(i) Farmers stock peanuts delivered to the associations for a warehouse stored loan for price support advances in the States specified, where peanuts are not customarily shelled or crushed, shall be discounted as follows:

State	Per ton
Arizona	$25.00
Arkansas	10.00
California	33.00
Louisiana	7.00
Mississippi	10.00
Missouri	10.00
Tennessee	25.00

(ii) Farmers stock peanuts placed under farm stored loan for price support advances in the States specified, where peanuts are not customarily shelled or crushed, shall be discounted as follows:

(a) In States specified in paragraph (8)(i), the peanuts shall be discounted as specified therein.

(b) In Puerto Rico and all other States (excluding those specifed in paragraph (8)(i) and Alabama, Florida, Georgia, New Mexico, North Carolina, Oklahoma, South Carolina, Texas, and Virginia), the peanuts shall be discounted at $40.00 per ton.

(9) *Virginia Type Peanuts.* Virginia type peanuts, to receive peanut price support as Virginia type, must contain 40 percent or more "fancy" size peanuts, as determined by a presizer with the rollers set at 31/64 inch space. Virginia type peanuts so determined to contain less than 40 percent "fancy" size peanuts will be supported (but not classed) as through they were Runner type.

(10) *Discount for Asperigillus flavus mold (Segregation peanuts).* There will be no discount applied to segregation 3 peanuts for Asperigillus flavus mold when such peanuts are placed under loan at the additional loan rate. Should such peanuts later transferred to a quata loan pool under 7 CFR 1446.66, they will be discounted at the rate of $25 per net ton from the quota price support loan rate.

(c) *Calculation of support values for additional peanuts.* The support price per ton for 1982-crop additional peanuts of a particular type and quality shall be calulated on the basis of 36.36 percent of the same rates, premiums, and discounts as are applicable to quota peanuts. This percentage was computed by dividing the national average support rate per ton for additional peanuts by the national average support rate per ton for quota peanuts.

Signed at Washington, D.C. on July 27, 1982.

C. Hoke Leggett,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 82-20652 Filed 7-27-82; 11:52 am]

BILLING CODE 3410-05-M

Federal Grain Inspection Service

Request for Voluntary Cancellation of Designation of Guymon Grain Inspection, Inc., and Interim Assignment of Geographic Area to Amarillo Grain Exchange, Inc.

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces voluntary cancellation of designation of Guymon Grain Inspection, Inc. Amarillo Grain Exchange, Inc., will provide official inspection services in this geographic area on an interim basis until the termination of its designation.

EFFECTIVE DATE: August 1, 1982.

ADDRESS: James R. Conrad, Chief, Regulatory Branch, Compliance Division, Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 2405 Auditors Building, Washington, DC 20250, telephone (202) 447-8525.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447-8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Secretary's Memorandum 1512-1; therefore the Executive Order and Secretary's Memorandum do not apply to this action.

Guymon Grain Inspection, Inc., Guymon, Oklahoma (Guymon), requested voluntary cancellation of its designation. Amarillo Grain Exchange, Inc. (Amarillo), an official agency, has purchased the Guymon agency's assets. Amarillo will provide official inspection services to this geographic area, on an interim basis, effective August 1, 1982, until the termination of Amarillo's designation on November 30, 1983.

Accordingly, pursuant to section 7(g)(2) of the U.S. Grain Standards Act, as amended (7 U.S.C. 79(g)(2)) (Act), the Administrator of the Federal Grain Inspection Service has determined that interim assignment of geographic area to Amarillo is consistent with the provisions and objectives of the Act in that this action will facilitate providing official inspection services in the specified geographic area. Guymon had also been designated to provide official weighing services, but there have been no recent requests for this type service. As a result, Guymon's weighing designation will terminate effective August 1, 1982. If there would be any future requests for official weighing services in this area, the Plainview Federal Grain Inspection Service Field Office will provide such service.

The geographic area being assigned on an interim basis to Amarillo includes the Counties of Beaver, Cimmaron, and Texas, all located within the State of Oklahoma.

A specified service point for the purpose of this notice is a city, town, or other location specified by an agency for the conduct of official inspection and where the agency and one or more of its licensed inspectors is located. In addition to the specified service points within the assigned geographic area, the agency will provide official services not requiring a licensed inspector to all locations within its geographic area.

There will be two specified service points maintained by Amarillo; they are as follows:

Amarillo Grain Exchange, Inc., 1300 South Johnson Street, Amarillo, TX 79101

Amarillo Grain Exchange, Inc., Highway 54 East, Guymon, OK 73942

(Sec. 8, Pub. L. 94-582, 90 Stat. 2873 (7 U.S.C. 79))

Dated: July 23, 1982.

J. T. Abshier,

Director, Compliance Division.

[FR Doc. 82-20588 Filed 7-29-82; 8:45 am]

BILLING CODE 3410-EN-M

Request for Comments on Applicants for Designation in the Areas Currently Assigned to the Idaho Grain Inspection Service, Lewiston Grain Inspection Service, Inc., and Utah Department of Agriculture

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This notice requests comments from interested parties on the applicants for designation as the official agency in the areas currently assigned to the Idaho Grain Inspection Service (Idaho), Lewiston Grain Inspection Service, Inc. (Lewiston), and Utah Department of Agriculture (Utah). The designations terminate November 30, 1982.

DATE: Comments to be postmarked on or before September 13, 1982.

ADDRESS: Comments must be submitted in writing, in duplicate, to Lewis Lebakken, Jr., Regulations and Directives Management Staff, Federal Grain Inspection Service, U.S. Department of Agriculture, Room 1642, South Building, 1400 Independence Avenue, SW., Washington, DC 20250, telephone (202) 382–0231. All comments received will be made available for public inspection at the above address during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., telephone (202) 382–0231.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Secretary's Memorandum 1512–1; therefore the Executive Order and Secretary's Memorandum do not apply to this action.

The June 4, 1982, issue of the **Federal Register** (47 FR 24375) contained a notice from the Federal Grain Inspection Service requesting applications for designation to perform official inspection services under the U.S. Grain Standards Act, as amended (7 U.S.C. 71 *et seq.*) (Act), in the areas currently assigned to Idaho, Lewiston, and Utah, respectively. Applications were to be postmarked by July 6, 1982.

One applicant, Idaho Grain Inspection Service, requested designation for all of the geographic area currently assigned to Idaho. One applicant, Lewiston Grain Inspection Service, Inc., requested designation for all of the geographic area currently assigned to Lewiston. One applicant, Utah Department of Agriculture, requested designation for all of the geographic area currently assigned to Utah. Idaho, Lewiston, and Utah each applied for a renewal of designation for an additional 3-year period.

In accordance with § 800.206(b)(2) of the regulations under the Act, this notice provides interested persons the opportunity to present their views and comments concerning the applicants for designation. All comments must be submitted to the Regulations and Directives Management Staff, specified in the address section of this notice, and postmarked not later than September 13, 1982.

Consideration will be given to comments filed and to other information available before a final decision is made with respect to this matter. Notice of the final decision will be published in the **Federal Register** and the applicants will be informed of the decision in writing.

(Sec. 8, Pub. L. 94–582, 90 Stat. 2873 (7 U.S.C. 79))

Dated: July 23, 1982.

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 82–20586 Filed 7–29–82; 8:45 am]

BILLING CODE 3410–EN–M

Renewal of Designation of Kansas State Grain Inspection Department

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces the renewal of designation of Kansas State Grain Inspection Department (Kansas) as an official agency responsible for providing inspection services under the U.S. Grain Standards Act, as amended (7 U.S.C. 71 *et seq.*) (Act).

EFFECTIVE DATE: September 1, 1982.

ADDRESS: James R. Conrad, Chief, Regulatory Branch, Compliance Division, Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 2405 Auditors Building, Washington, DC 20250, telephone (202) 447–8525.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Secretary's Memorandum 1512–1; therefore the Executive Order and Secretary's Memorandum do not apply to this action.

The March 1, 1982, issue of the **Federal Register** (47 FR 8730) contained a notice from the Federal Grain Inspection Service (FGIS) announcing that Kansas' designation would terminate on August 31, 1982, and requesting applications for designation as the agency to provide official inspection services within its specified assigned area. Applications were to be postmarked by March 31, 1982.

FGIS announced the name of the applicant for designation for the agency and requested comments on same in the May 17, 1982, issue of the **Federal Register** (47 FR 21113). Comments were to be postmarked by July 1, 1982. No comments were received regarding the renewal of designation of Kansas (the ony applicant for the designation) as the official agency in the area cited in the March 1 issue of the **Federal Register.**

After considering all available information in relation to the criteria for designation in section 7(f)(1)(A) of the Act, and in accordance with section 7(f)(1)(B), it has been determined that Kansas is able to provide official services in the geographic area for which its designation is being renewed. The assigned area is the entire geographic area as described in the March 1 issue of the **Federal Register.**

Effective September 1, 1982, and terminating August 31, 1985, the responsibility for providing official inspection services in the geographic area as specified above will be assigned to Kansas.

A specified service point for the purpose of this notice is a city, town, or other location specified by an agency for the conduct of official inspection and where the agency and one or more of its licensed inspectors is located. In addition to the specified service points within the assigned geographic area, the agency will provide official services not requiring a licensed inspector to all locations within its geographic area.

Interest persons may contact the Regulatory Branch, specified in the address section of this notice, to obtain a list of the specified service points. Interested persons may also obtain a list of the specified service points by contacting the agency at the following address: Kansas State Grain Inspection Department, 535 Kansas Avenue, 8th Floor, Topeka, KS 66603.

(Sec. 8, Pub. L. 94–582, 90 Stat. 2873 (7 U.S.C. 79))

Dated: July 23, 1982.

J. T. Abshier,

Director, Compliance Division.

[FR Doc. 82–20585 Filed 7–29–82; 8:45 am]

BILLING CODE 3410–EN–M

Request for Applicants for Designation To Perform Official Services in the Geographic Area Currently Serviced by Lima Grain Inspection Service and Virginia Department of Agriculture and Consumer Services

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of the U.S. Grain Standards Act, as amended (Act), designations of official agencies shall terminate not later than triennially and may be renewed in accordance with the criteria and procedures provided in the Act. This notice announces that the designations of two official agencies will terminate, in accordance with the Act and requests applications from parties, including the agencies currently designated, who are interested in being designated as official

agencies to conduct official services in the geographic areas currently serviced by each of the specified agencies. The official agencies are the Lima Grain Inspection Service and Virginia Department of Agriculture and Consumer Services.

DATE: Applications to be postmarked on or before September 13, 1982.

ADDRESS: James R. Conrad, Chief, Regulatory Branch, Compliance Division, Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 2405 Auditors Building, Washington, DC 20250, telephone (202) 447–8525. All applications submitted pursuant to this notice will be made available for public inspection at the above address during regular business hours.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Secretary's Memorandum 1512–1, therefore the Executive Order and the Secretary's Memorandum do not apply to this action.

Section 7(f)(1) and 7A(c)(1) of the U.S. Grain Standards Act, as amended (7 U.S.C. 71 *et seq.*, at 79(f)(1) and 79(a)(1)) (Act), specifies that the Administrator of the Federal Grain Inspection Service is authorized, upon application by any qualified agency or person, to designate such agency or person to perform official inspection, official weighing, and supervision of weighing services after a determination is made that the applicant is better able than any other applicant to provide official inspection, official weighing, and supervision of weighing services in an assigned geographic area.

Lima Grain Inspection Service (Lima), 2242 Arcadia Avenue, Lima, Ohio 45805, was designated as an official agency under the Act for the performance of official inspection functions on August 25, 1978. The Virginia Department of Agriculture and Consumer Services (Virginia), 203 North Governor Street, Richmond, Virginia 23219, was designated as an official agency under the Act for the performance of official inspection functions on July 1, 1978; for weighing functions on November 20, 1978. Lima's designation for performance of inspection functions only and Virginia's for both inspection and weighing functions will terminate on January 31, 1982. This date reflects administrative extensions of official agency designations as discussed in the July 16, 1979, issue of the **Federal Register** (44 FR 41275). Section 7(g)(1) of the Act states generally that designations of official agencies shall terminate no later than triennially and may be renewed according to the criteria and procedures prescribed in the Act.

The geographic area presently assigned to Lima in Ohio pursuant to section 7(f)(2) of the Act and which is the geographic area that may be assigned to the applicant selected for designation is the following:

Bounded: on the North by the northern Defiance County line; the eastern Defiance County line south to U.S. Route 24; U.S. Route 24 northeast to State Route 108;

Bounded: on the East by State Route 108 south to Putnam County; the northern and eastern Putnam County lines; the eastern Allen County line; the northern Hardin County line east to U.S. Route 68; U.S. Route 68 south to U.S. Route 47;

Bounded: on the South by U.S. Route 47 west-southwest to Interstate 75; Interstate 75 south to the Shelby County line; the southern and western Shelby County lines; the southern Mercer County line; and

Bounded: on the West by the Ohio-Indiana State line from the southern Mercer County line to the northern Defiance County line.

The geographic area presently assigned to Virginia pursuant to section 7(f)(2) of the Act and which is the geographic area that may be assigned to the applicant selected for designation is the entire State of Virginia, except those export port locations within the State.

Interested parties, including Lima and Virginia, are hereby given opportunity to apply for designation as the official agency to perform the respective official services in each geographic area, as specified above, under the provisions of section 7(f) and 7A(c)(1) of the Act and § 800.196(b) of the regulations issued thereunder. The designations in each specified geographic area are for the period beginning February 1, 1983, and terminating January 31, 1986. Parties wishing to apply for these designations should contact the Chief, Regulatory Branch, Compliance Division, at the address listed above for appropriate forms and information. Applications must be postmarked not later than August 30, 1982 to be eligible for consideration.

In making a determination as to which applicant will be designated to provide official services in the geographic areas, consideration will be given to all applications submitted and all other information available.

(Sec. 8, Sec. 9, Pub. L. 94–582, 90 Stat. 2873, 2875 (7 U.S.C. 79, 79a))

Dated: July 23, 1982.

J. T. Abshier,

Director, Compliance Division.

[FR Doc. 82–20587 Filed 7–29–82, 8:45 am]

BILLING CODE 3410-EN-M

Rural Electrification Administration

Bluebonnet Electric Cooperative

AGENCY: Rural Electrification Administration, USDA.

ACTION: Notice of Finding of No Significant Impact.

SUMMARY: Notice is hereby given that the Rural Electrification Administration (REA), pursuant to the National Environmental Policy Act of 1969, the Council on Environmental Quality Regulations (40 CFR Part 1500), and REA Bulletin 20–21:320–21, Environmental Policies and Procedures, has made a Finding of No Significant Impact with respect to proposed financing assistance to Bluebonne Electric Cooperative, Inc., (Bluebonnet), Giddings, Texas, for the construction of 138 kV transmission facilities in Burleson and Washington Counties, Texas.

FOR FURTHER INFORMATION CONTACT: REA's Finding of No Significant Impact and Environmental Assessment (EA) and Bluebonnet's Borrower's Environmental Report (BER) may be reviewed in the Office of the Director, Distribution Systems Division, Room 3304, South Agriculture Building, Rural Electrification Administration, Washington, D.C. 20250, telephone: (202) 382–8848, or at the office of Bluebonnet Electric Cooperative, Inc., (Mr. Henry Umscheid, Manager), P.O. Box 240, Giddings, Texas 78942, telephone: (713) 542–3151, during regular business hours.

SUPPLEMENTARY INFORMATION: REA, in connection with a request for assistance with financing from Bluebonnet, has reviewed the BER submitted by Bluebonnet and has determined that it represents an accurate assessment of the environmental impact of the proposed project. The proposed project consists of a 138 kV transmission line to be built between the following end points: Deanville—Lyons, 21,7 km (13.5 mi); and Lyons—Gay Hill, 16.9 km (10.5 mi). A new 138/24.9 kV substation is proposed for Lyons. Based upon the BER, Bluebonnet's 1983 System Biennial Work Plan and maps, REA prepared an Environmental Assessment concerning the proposed project and its impacts. REA concluded that the proposed financing assistance would not be a

major Federal action significantly affecting the quality of the human environment.

The BER and EA adequately consider potential impacts of the proposed project on resources, including threatened and endangered species, important farmlands, cultural resources, wetlands and floodplains. Some pole structures will be located in the 3.5 km (2.2 mi) of floodplains associated with Dry Creek and Yegua Creek and will cross approximately 10.6 km (6.6 mi) of prime farmlands. The environmental effects will be minimal.

Alternatives examined include refusing service to new customers, continuing service with only existing facilities and alternative line routing. After reviewing these alternatives, REA determined that the proposed project is an acceptable alternative because it best meets Bluebonnet's needs with a minimum opf adverse impacts.

This program is listed in the Catalog of Federal Domestic Assistance as 10.850—Rural Electrification Loans and Loan Guarantees.

Dated: July 23, 1982.

Harold V. Hunter,

Administrator.

[FR Doc. 82-20593 Filed 7-29-82; 8:45 am]

BILLING CODE 3410-15-M

Tri-State Generation & Transmission Association, Inc., Denver, Colo.; Proposed Loan Guarantee

AGENCY: Rural Electrification Administration (REA), USDA.

ACTION: Proposed Loan Guaranteel

SUMMARY: Under the authority of Public Law 93-32 (87 Stat. 65) and in conformance with applicable agency policies and procedures as set forth in REA Bulletin 20-22 (Guarantee of Loans for Bulk Power Supply Facilities), notice is hereby given that the Administrator of REA will consider providing a guarantee supported by the full faith and credit of the United States of America for a loan in the approximate amount of $21,300,000 to the Tri-State Generation and Transmission Association, Inc., Denver, Colorado (Tri-State). These loan funds will be used to finance the construction of Tri-State's portion of 95 miles of 345 kV transmission line, two new substations and related facilities. The other participants are the Colorado-Ute Electric Association, Inc., the Platte River Power Authority, and the Western Area Power Administration.

FOR FURTHER INFORMATION CONTACT: Mr. William E. Mickey, General Manager, Tri-State Generation and Transmission Association, Inc., 12076 Grant Street, P.O. Box 33695, Denver, Colorado 80233.

SUPPLEMENTARY INFORMATION: Legally organized lending agencies capable of making, holding and servicing the loan proposed to be guaranteed may obtain information on the proposed project, including the engineering and economic feasibility studies and the proposed schedule for the advances to the borrower of the guaranteed loan funds from Mr. William E. Mickey at the address given above.

In order to be considered, proposals must be submitted (within 30 days from the date of the **Federal Register** publication of this notice) to Mr. Mickey. The right is reserved to give such consideration and make such evaluation or other disposition of all proposals received, as Tri-State and REA deem appropriate. Prospective lenders are advised that the guaranteed financing for this project is available from the Federal Financing Bank under a standing agreement with the Rural Electrification Administration.

Copies of REA Bulletin 20-22 are available from the Director, Public Information Office, Rural Electrification Administration, U.S. Department of Agriculture, Washington, D.C. 20250.

This program is listed in the Catalog of Federal Domestic Assistance as 10.850—Rural Electrification Loans and Loan Guarantees.

Dated: July 23, 1982.

Harold V. Hunter,

Administrator.

[FR Doc. 82-20592 Filed 7-29-82; 8:45 am]

BILLING CODE 3410-15-M

Soil Conservation Service

Village of Speculator Critical Area Treatment RC&D Measure, New York; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Village of Speculator Critical Area Treatment RC&D Measure, Hamilton County, New York.

FOR FURTHER INFORMATION CONTACT: Paul A. Dodd, State Conservationist, Soil Conservation Service, James M. Hanley Federal Building, 100 S. Clinton Street, Room 771, Syracuse, New York 13260, telephone 315-423-5521.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional or national impacts on the environmental. As a result of these findings, Paul A. Dodd, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure concerns a plan for critical area treatment for erosion control in the Village of Speculator, New York. The planned works of improvement include 600 lineal feet of stone lined diversion, clearing of approximately .14 acres, and liming, fertilizing, seeding, and mulching of approximately 1.97 acres. The area of work is a reclaimed landfill.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Paul A. Dodd, State Conservationist.

No administrative action on implementation of the proposal will be taken until August 30, 1982.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program. Office of Management and Budget Circular A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

Ron E. Hendricks,

Acting State Conservationist.

July 21, 1982.

[FR Doc. 82-20542 Filed 7-29-82; 8:45 am]

BILLING CODE 3410-16-M

Jacobs Creek Watershed Flood Prevention RC&D Measure, Kansas; Finding of no Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil

Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Jacobs Creek Watershed Flood Prevention RC&D Measure, Lyon County, Kansas.

FOR FURTHER INFORMATION CONTACT: Mr. John W. Tippie, State Conservationist, Soil Conservation Service, 760 South Broadway, P.O. Box 600, Salina, Kansas 67401, telephone 913–823–4565.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally-assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. John W. Tippie, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure consists of two floodwater retarding dams built to protect 1,182 acres of cropland, 9 small bridges, and 2.0 miles of road. The measure includes full compensation of woody habitat affected by the dams.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. John W. Tippie.

No administrative action on implementation of the proposal will be taken until August 30, 1982.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program. Office of Management and Budget Circular A–95 regarding State and local clearinghouse reveiw of Federal and federally assisted programs and projects is applicable)

Dated: July 20, 1982.

John W. Tippie,

State Conservationist.

[FR Doc. 82–20603 Filed 7–29–82; 8:45 am]

BILLING CODE 3410–16–M

Phenis Creek Watershed Flood Prevention RC&D Measure, Kansas; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Phenis Creek Watershed Flood Prevention RC&D Measure, Lyon County, Kansas.

FOR FURTHER INFORMATION CONTACT: Mr. John W. Tippie, State Conservationist, Soil Conservation Service, 760 South Broadway, P.O. Box 600, Salina, Kansas 67401, telephone 913–823–4565.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally-assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. John W. Tippie, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure consists of three floodwater retarding dams built to protect 1,300 acres of cropland, 14 small bridges, and 3.4 miles of road. The measure includes full compensation of woody habitat affected by the dams.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. John W. Tippie.

No administrative action on implementation of the proposal will be taken until August 30, 1982.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program. Office of Management and Budget Circular A–95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

Dated: July 20, 1982.

John W. Tippie,

State Conservationist.

[FR. Doc. 82–20604 Filed 7–29–82; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[No. 388 (P286)]

Issuance of Marine Mammal Permit; Sea World Pty

On June 2, 1982, Notice was published in the **Federal Register** (47 FR 23967), that an application had been filed with the National Marine Fisheries Service by Sea World Pty of Queensland 4217, Australia, for a permit to export six (6) California sea lions (*Zalophus californianus*) from Sea Life Park, Inc., Hawaii for public display.

Notice is hereby given that on July 26, 1982, and as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the National Marine Fisheries Service issued a public display Permit for the above taking to Sea World Pty, Ltd., subject to certain conditions set forth therein.

The Permit is available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street NW., Washington, D.C.; and

Regional Director, National Marine Fisheries Service, Southwest Region, 300 South Ferry Street, Terminal Island, California 90731.

Dated: July 26, 1982.

Richard B. Roe,

Acting Director, Office of Marine Mammals and Endangered Species National Marine Fisheries Service.

[FR Doc. 82–20697 Filed 7–29–82; 8:45 am]

BILLING CODE 3510–22–M

CONSUMER PRODUCT SAFETY COMMISSION

Part-Time Career Employment Program

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of procedures.

SUMMARY: The Consumer Product Safety Commission (CPSC) proposes to issue internal procedures to implement a part-time career employment program pursuant to the Federal Employees Part-Time Career Employment Act of 1978. The proposed internal procedures, which will be used on an interim basis until they are made final, define the purpose and coverage of the program as it will be implemented by the CPSC,

designate the Director of Personnel as the part-time employment coordinator with responsibility for implementing and overseeing the program, and set forth certain part-time employee rights with respect to training and merit promotion.

COMMENTS DUE: Written comments are due on September 28, 1982.

ADDRESS: Send written comments to Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207.

FOR FURTHER INFORMATION CONTACT: Irwin L. Greif, Division of Personnel Management (301) 492–6660.

SUPPLEMENTARY INFORMATION: The Federal Employees Part-Time Career Employment Act of 1978 (5 U.S.C. 3401 et seq.) requires the head of each agency to establish and maintain a program for part-time career employment. To implement that requirement, the Consumer Product Safety Commission is publishing, prior to issuance, the following proposed procedures which will be incorporated into the CPSC Directives System. Comments are invited, and any changes which are warranted will be made in the final procedures.

Accordingly, pursuant to provisions of the Part-Time Career Employment Act of 1978 (5 U.S.C. 3401 et seq.), the Commission proposes the following procedures:

Part-Time Career Employment Program

Section 1. Purpose. This Order implements the Federal Employees Part-Time Career Employment Act of 1978 (Pub. L. 95–437), by establishing a continuing program in the Consumer Product Safety Commission (CPSC) to provide career part-time employment opportunities

Section 2. Scope.

a. The provisions of this Order apply to all individuals employed on a part-time career basis within CPSC on or after April 8, 1979. Employees who began service on a part-time basis under a career appointment before April 8, 1979, may continue to serve under the earlier arrangements as long as they continue to work part-time without a break in service.

b. The provisions of this guide do not apply to:

(1) Intermittent or part-time temporary employment; and

(2) Any position(s) excepted by the Chairman or Executive Director from inclusion in this program as necessary to carry out the mission of the CPSC. In making such determinations, consideration will be given to the criteria set forth in Section 7b below.

Section 3. References.

a. The Federal Employees Part-Time Career Employment Act of 1978 (Pub. L. 95–437), 5 U.S.C. 3401.

b. 5 CFR Part 340—Part-Time Employment.

c. Federal Personnel Manual, Chapter 340—Part-Time Employment.

Section 4. Policy. It is CPSC policy to provide part-time career employment opportunities in positions GS–1 through GS–15 (or equivalent) to the maximum extent possible consistent with CPSC resources and mission requirements. Managers and supervisors are encouraged to use part-time employment as an alternative to full-time employment in planning the accomplishment of their work. It is recognized that part-time career employment can be used as an effective management tool and at the same time may improve employee morale by permitting adjustments of work schedules to meet individual needs.

Section 5. Definitions.

a. *Part-time career employment* means regularly scheduled work from 16 to 32 hours per week performed by an employee who has an appointment in tenure group I or II and who became employed on such part-time basis on or after April 8, 1979. Under special circumstances, employment of part-time career employees for less than 16 hours per week is allowable under 5 U.S.C. 3402. However, any exceptions under this provision will be made on a case-by-case basis by the Chairman or Executive Director.

b. *Tenure group I* applies to employees in the competitive service under career appointments who are not serving probation, or to permanent employees in the excepted service whose appointments carry no restrictions or conditions.

c. *Tenure group II* applies to employees in the competitive service serving probation, career-conditional employees, and career employees in obligated positions. It also includes employees in the excepted service serving trial periods, whose tenure is indefinite solely because they occupy obligated positions; or whose tenure is equivalent to career-conditional in the competitive service.

Section 6. Responsibilities.

a. Associate Executive Directors and Office Directors, in conjunction with representatives of the Division of Personnel Management and the Office of Budget, Program Planning, and Evaluation will be responsible for:

(1) Establishing goals for each fiscal year to increase part-time career employment opportunities and a timetable for periodic measurement of such goals. The ability to expand part-time employment opportunities will be influenced by such factors as:

(a) Directorate or Office mission and occupational mix;

(b) Workload fluctuations and overtime usage;

(c) Size of workforce, turnover rate, and employment trends;

(d) Geographic dispersion;

(e) Employee and applicant interest in and availability for part-time employment;

(f) Potential for improving service to the public; and

(g) Meeting affirmative action goals.

(2) Reviewing specific requests from individual employees to change from a full-time to a part-time position, or vice versa in accordance with paragraph 7b below.

b. Division of Personnel Management. The Division of Personnel Management will be responsible for:

(1) Overseeing the development and implementation of part-time employment goals and timetables approved by the Chairman or the Executive Director and reporting to the Chairman, on an annual basis, on the progress made toward meeting these goals (see Section 9);

(2) Responding to requests for advice and assistance on part-time employment within CPSC;

(3) Monitoring agency progress in expanding part-time employment opportunities;

(4) Adhering to reporting requirements established by the Office of Personnel Management and the Congress;

(5) Notifying the public of vacant career part-time positions. Generally, this will be done through vacancy announcements; and

(6) Assuring that schedules do not result in disproportionate holiday pay.

Section 7. Changing employment status.

a. Under normal circumstances:

(1) No full-time position occupied by an employee will be abolished in order to make the duties of such position available to be performed on a part-time basis;

(2) No full-time employee will be required to accept part-time employment as a condition of continued employment;

(3) No part-time position occupied by an employee will be abolished in order to make duties of such position available to be performed on a fulltime basis; and

(4) No part-time employee will be required to accept full-time employment as a condition of continued employment.

b. An employee interested in changing from a full-time to a part-time schedule should consult with the immediate

supervisor to determine the effects such a change will have on his/her rights and benefits (see Section 8). The immediate supervisor, in deciding whether to recommend approval of a request to the appropriate AED or Office Director, should weigh the employee's request and management's needs against the following criteria:

(1) Employment ceilings—will part-time work make better use of work hour allotments under the full-time equivalency program?

(2) Workloads—will regular and peak workloads lend themselves to part-time schedules?

(3) Nature of work—is the work to be performed adaptable to part-time work schedule?

(4) Benefits to employee—will part-time work alleviate child care concerns for parents; lessen pressure of full day's work on those with health problems; allow those near retirement to discontinue work gradually?

Section 8. Part-time employees' rights and benefits.

a. *Tenure.* The protection of part-time employees against removal during or after the probationary period is the same as full-time employees. The probationary period and conversion from career-conditional to career status are computed on the basis of calendar time, just as full-time employment. Service computation dates are undisturbed by part-time work. Since part-time employment constitutes a separate competitive level from full-time employment, part-time employees would compete only with other part-time employees during a Reduction-in-Force (RIF).

b. *Earnings/Promotion.* The rate for part-time employees is proportionate to the time scheduled to work. Waiting periods for within-grade increases or eligibility for promotion for part-time employees are based on calendar weeks of creditable service in the same manner as full-time employees.

c. *Crediting Experience for Promotion Weights and Factors.* Part-time experience shall be credited on a pro-rata basis according to the relation it bears to a full workweek.

d. *Overtime.* Under 5 U.S.C. 5542, hours of work must be in excess of 40 hours in an administrative workweek or 8 hours in a day to be considered overtime. Under the Fair Labor Standards Act of 1938 as amended, overtime begins after 40 "hours of work" in a week, excluding holidays and paid leave. (See CPSC Order No. 1071.1 dated January 10, 1974).

e. *Leave.* Annual leave for part-time employees is earned on a pro-rata basis at the rate determined by years in service in accordance with applicable regulations. Maximum carryover at the end of a leave year remains the same as for full-time employees (240 hours). Sick leave is earned at the rate of one hour for every 20 hours in pay status. No leave (annual or sick) is earned for hours worked in excess of 80 in a pay period. Part-time employees are not eligible for Military Leave. Other leave categories (e.g., Absence Without Leave, Leave Without Pay, Court Leave, Funeral Leave, Excused Absences) are not changed from that available to full-time employees. For all categories of leave for which part-time employees are eligible, leave is charged only for absences during those hours the employee is scheduled to work.

f. *Holidays.* Holiday pay is received only if the employee is regularly scheduled to work on that day, and only for those hours regularly scheduled to work.

g. *Life Insurance Coverage.* Employees electing life insurance coverage will be covered for a minimum of $10,000. Those employees whose annual earnings exceed $8,000 will be covered for an amount rounded off to the nearest $1,000 above their annual earnings plus a $2,000 bonus. Therefore, an employee whose annual earnings are $13,240 would be covered for $16,000 under the basic life insurance program.

h. *Health Benefits.* The amount of government contribution toward the cost of enrollment under the Federal Employees Health Benefit Program will be determined by comparing the number of hours per day period that the part-time employee works with the number of hours a full-time employee in the same position works. For example, if an employee is employed on a part-time career position of 20 hours per week (40 hours per biweekly pay period) and is enrolled in a health benefits plan for which the full government contribution is $52.00 biweekly, he/she will receive ½ of the government contribution toward the cost of his/her enrollment since he/she is working ½ of a full-time tour of duty. The difference in the cost of the enrollment shall be paid by the employee.

i. *Retirement Date Eligibility.* There is no difference between part-time and full-time employees in this regard as service is credited by calendar days.

j. *Retirement Annuity.* The retirement annuity computation is based on the highest average annual actual pay for any three consecutive years. Therefore, if years of part-time service are among the high three, the annuity will be affected to the extent earnings were limited in those years.

k. *Merit Promotion and Training.* Part-time employees are eligible to compete for any position, either part-time or full-time, for which they qualify. Additionally, part-time employees will be granted consideration for job related training courses in the same manner as full-time employees.

Section 9. Program review and evaluation. The Division of Personnel Management, at the end of each fiscal year, will report to the Chairman on CPSC's part-time employment program. This report should include the following:

a. To the extent practicable, information about the extent to which part-time career employment opportunities were extended during the period covered by the report, e.g. older individuals, handicapped individuals, persons with family responsibilities, or students, etc.

b. Goals and timetables that were established.

c. Progress toward meeting the goals.

d. An explanation of any impediments in meeting goals or in otherwise carrying out the provisions of this Order, together with a statement of the measures taken to overcome such impediments.

Dated: July 23, 1982.

Bert Simson,

Acting Executive Director.

Dated: July 26, 1982.

Sadye Dunn,

Director, Office of Secretary.

[FR Doc. 82-20655 Filed 7-29-82; 8:45 am]

BILLING CODE 6355-01-M

[CPSC Docket No. 82-2]

Ford Manufacturing Co., Inc., a Corporation; Prehearing Conference

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of Prehearing Conference.

DATE: This notice announces a prehearing conference to be held by telephone in the matter of Ford Manufacturing Company, Incorporated, a corporation on August 11, 1982 at 10:00 a.m.

ADDRESS: The prehearing conference will be held by telephone. A speaker telephone will be available in Room 332, 5401 Westbard Avenue, Bethesda, Maryland. For additional information contact: Sheldon D. Butts, Deputy Secretary, Consumer Product Safety Commission, Washington, D.C. 20207, telephone (301) 492-6800.

Notice of Prehearing Conference

Please take notice that a prehearing conference in this proceeding will be held by telephone by 10:00 a.m., on August 11, 1982 before Administrative Law Judge Daniel J. Davidson. The issues to be considered at the hearing in this proceeding are:

(1) Whether Ford violated section 19(a)(3) and (9) of the Consumer Product Safety Act ("CPSA"), 15 U.S.C. 2068(a)(3) and (9), by failing to provide to the Consumer Product Safety Commission ("Commission") samples of all labels, warning statements, and instructions for products put into commerce after September 26, 1978;

(2) Whether Ford obtained information which reasonably supported the conclusion that it had violated any consumer product safety rule and therefore violated section 15(b) of the CPSA, 15 U.S.C. 2065(b), by not reporting until August 5, 1980 its failure to comply with such consumer product safety rules.

(3) Whether Ford violated section 19(a)(4) of the CPSA, 15 U.S.C. 2068(a)(4), by failing to furnish information required by section 15(b) of the CPSA;

(4) Whether any of the remedies available, under section 20 of the CPSA, 15 U.S.C. 2069, should be ordered in the public interest.

The prehearing conference is being held for the purpose of narrowing the issues as set out above and for other purposes outlined in 16 CFR 1025.21(a).

Dated: July 27, 1982.

Sadye E. Dunn,

Secretary.

[FR Doc. 82-20669 Filed 7-29-82; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF ENERGY

Office of Assistant Secretary for International Affairs

Civil Uses of Atomic Energy; Proposed Subsequent Arrangement; Japan

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation Between the Government of the United States of America and the Government of Japan Concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above mentioned agreement involves approval for the following sale: Contract Number S-JA-321, to the Nuclear Material Control Center, Tokyo, Japan, 259.935 grams of natural uranium, for use as standard reference material.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that the furnishing of the nuclear material will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: July 26, 1982.

George Bradley,

Principal Deputy Assistant Secretary for International Affairs.

[FR Doc. 82-20673 Filed 7-29-82; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

Champlin Petroleum Co.; Proposed Consent Order

AGENCY: Economic Regulatory Administration, 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 Champlin Petroleum Company (Champlin). The Consent Order resolves all issues of compliance with the DOE Petroleum Price and Allocation Regulations, with exceptions noted in the Consent Order, for the period January 1, 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, Champlin has agreed to remedies totalling $14.1 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, if appropriate, 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: Champlin Consent Order Comments, Department of Energy, RG-30, 1200 Pennsylvania Avenue, NW., 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) 633-9358.

Copies of the Consent Order may be received free of charge by written request to: Champlin Consent Order Request, Department of Energy, RG-30, 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 Builidng, 1000 Independence Avenue, SW., Room, 1E-190, Washington, D.C. during the hours 8:00 a.m. to 4:00 p.m.

SUPPLEMENTARY INFORMATION: Champlin is one of the petroleum refiners subject to the audit jurisdiction of OSC to determine compliance with the DOE Petroleum Price and Allocation Regulations (Regulations). During the period covered by this Consent Order, Champlin engaged in, among other things, the production, importation, refining, and sale of crude oil and refined petroleum products. An audit conducted by OSC included a review of Champlin's records relating to its compliance with the Regulations during the period January 1, 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 explicitly 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 Champlin's compliance with the applicable Regulations; however, Champlin's rights or obligations with respect to any entitlements notices to be issued and entitlements adjustments to be made to complete the Entitlements Program, any pending or future Champlin claim for an entitlemenst refund, and a matter in litigation concerning the stripper well exemption are not covered by the Consent Order. OSC's audit reviewed Champlin's pricing and allocation policies and procedures and the manner in which Champlin applied the Regulations with respect to, among other things, its production, importation, 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 Champlin's compliance with the Regulations. Notwithstanding DOE's position to the contrary, Champlin maintains that it has correctly construed and applied the Regulations. The parties desire, however, to resolve the issues raised 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 Champlin 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 Champlin and to remedy any violations that may have occurred during the audit period, Champlin has agreed to remedies, described more fully below, totalling $14.1 million.

The $14.1 million in remedies consists of two elements. First, beginning on the effective date of the Consent Order, Champlin will hold $7 million in a constructive claims fund that will be available for distribution to Champlin's Cargo Lot (Class 52) motor gasoline customers that purchased regular motor gasoline from Champlin during the period December 1, 1973 through January 31, 1976. Within thirty days of the effective date of the Consent Order, Champlin will notify these customers of their eligibility to receive payment from the constructive fund. Any eligible customer having a claim for payment from the constructive fund must submit its claim to Champlin within sixty days of the effective date of the Consent Order. The amount of any payment will be determined in negotiations between Champlin and the claimant and will be subject to the approval of DOE. Any payment will be subject to the condition that the claimant execute a release waiving all of the claimant's claims and causes of action against Champlin arising out of or related to the Federal petroleum price and allocation regulations. Champlin will make any agreed-upon and approved payments within 120 days of the effective date of the Consent Order to eligible claimants that have executed releases.

Any portion of the constructive fund not distributed in the manner described above will be available to satisfy any judgment rendered against Champlin in (or to settle in whole or in part) a contested action pending or brought by an eligible claimant within twelve months of the effective date of the Consent Order. Twelve months from the effective date of the Consent Order if no litigation is pending or, if litigation is pending, at the conclusion of the litigation but not more than sixty months from the effective date of the Consent Order, Champlin will remit any balance remaining in the constructive fund to DOE for deposit in the U.S. Treasury. Second, Champlin will deliver to the Strategic Petroleum Reserve (SPR) a quantity of crude oil having a delivered value of $7.1 million. Champlin will arrange for the crude oil to be delivered to the SPR in two approximately equal installments, with the first installment to be delivered within ninety days of the effective date of the Consent Order and the second by September 30, 1983. If Champlin is unable to complete the necessary arrangements for either delivery thirty days prior to the delivery deadline, Champlin will remit a check for the amount to have been delivered as crude oil to DOE for deposit in the U.S. Treasury.

The remedies reflect OSC's judgments concerning the appropriate remedies in light of OSC's audit of Champlin. The constructive claims fund represents OSC's conclusion concerning an appropriate remedy for Champlin's alleged violations of the refiner price regulations because the effects of any overcharge that may have occurred were probably directed to Champlin's Cargo Lot (Class 52) motor gasoline customers during the period December 1973 through January 1976. This issue was the subject of administrative proceedings before DOE's Office of Hearings and Appeals in *Champlin Petroleum Co.*, Case No. BRA–0510.

The delivery of crude oil to the SPR represents OSC's conclusion concerning the appropriate remedy for the other issues raised in OSC's audit of Champlin. Among those issues were alleged violations of the crude oil producer price regulations. Because of the operation of the Entitlements Program, the effects of crude oil pricing violations on the prices of refined products were dispersed by the purchase and sale of entitlements and the opportunity to pass through the cost of the entitlements or the cost of the crude oil. Because of the ability of a refiner to bank, allocate and pass through those costs under the refiner price regulations, it is virtually impossible to identify in what time period, to what product and to which purchasers the effects of crude oil violations were channelled. Moreover, other issues were raised in the Champlin audit regarding the calculation of costs under the refiner price formula. They resulted in disputed amounts of recoveries. However, these amounts were not calculated on a transactional basis and, thus, were not traceable to identifiable customers or classes of customer. As a result, OSC cannot determine which purchasers or what geographic areas may have borne the effects of the challenged cost issues. Under these circumstances, delivery of crude oil to the SPR, which is the equivalent of depositing the funds in the U.S. Treasury as miscellaneous receipts, is an appropriate remedy.

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 Champlin has waived its right to an administrative or judicial appeal. The Consent Order does not constitute an admission by Champlin or 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 5:00 p.m. on the thirtieth day following publication of this notice 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, significantly 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 Champlin. 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., July 26, 1982.

Milton C. Lorenz,

Special Counsel, Economic Regulatory Administration.

[FR Doc. 82–20674 Filed 7–29–82; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. CP78-221-002]

Southwest Gas Corp.; Petition To Amend Order

July 23, 1982.

Take notice that on July 20, 1982, Southwest Gas Corporation (Petitioner), P.O. Box 15015, Las Vegas, Nevada 89114, filed in Docket No. CP78-221-002 a petition to amend the order of January 30, 1980, in Docket No. CP78-221 issuing a certificate of public convenience and necessity pursuant to Section 7(c) of the Natural Gas Act authorizing the construction and operation of a liquefied natural gas (LNG) facility on its northern Nevada transmission system, by authorizing the construction of said facility under a plan of financing other than that initially proposed, all as more fully set forth in the petition to amend on file with the Commission and open to public inspection.

Petitioner requests amendment of the order of January 30, 1980, to authorize construction under its definitive financing plan for the LNG facility, as hereinafter set forth. Construction of the facility will be financed through a construction trust. A grantor trust formed by General Electric Credit Corporation will then purchase the facility from the construction trust. This grantor trust will own and lease the LNG facility to Petitioner for an initial term of 20 years at a fixed rental, with a renewal option for 5 years at a reduced rental and subsequent renewal options at fair market rental value. It is stated that the lease financing is projected to result in a cost of service to Petitioner's customers lower than would result should Petitioner finance the LNG facility through the sale of long-term debt and equity securities in the conventional manner, as originally proposed. Petitioner requests approval of the altered financing arrangements.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before August 2, 1982, file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-20630 Filed 7-29-82; 8:45 am]

BILLING CODE 6717-01-M

Determinations by Jurisdictional Agencies Under the Natural Gas Policy Act of 1978

Issued: July 23, 1982.

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROL	PURCHASER
TEXAS RAILROAD COMMISSION									
-A M ROGERS			RECEIVED:	07/01/82	JA: TX				
8241316	F-08-049926	4210532753		103		J B TUBB #2	SANDHILL TUBBS	0.0	WARREN PETROLEUM
-ADA OIL EXPLORATION CORP			RECEIVED:	07/01/82	JA: TX				
8241179	F-03-043932	4205100000		102-2		JOHN NEWMAN #5	GIDDINGS	18.5	PHILLIPS PETROLEU
8241184	F-03-044488	4205100000		102-2		JOHN NEWMAN #8	GIDDINGS	18.5	PHILLIPS PETROLEU
-AKERS AND FULTZ INC			RECEIVED:	07/01/82	JA: TX				
8241300	F-09-049710	4223700000		108		W J DURHAM #3 L T	BOONESVILLE BEND CONG	0.1	LONE STAR GAS CO
-ALLIED PRODUCTION CORP			RECEIVED:	07/01/82	JA: TX				
8241128	F-03-033240	4220131032		103		GLORIA & HIRSCH #2	TOMBALL (1200) FIELD	0.0	TENNESSEE GAS PIP
-AMAX PETROLEUM CORPORATION			RECEIVED:	07/01/82	JA: TX				
8241335	F-33-050348	4207131253		102-4	103	STATE TRACT 129 #1	TRIUNE (FRIO F-1)	73.0	UNITED TEXAS TRAN
-AMOCO PRODUCTION CO			RECEIVED:	07/01/82	JA: TX				
8241373	F-06-050914	4220330527		103		STROUD B NESBITT GAS UNIT WELL #1	HALLSVILLE NE/PETTIT/	96.0	EAST TEXAS INDUST
-ANADARKO PRODUCTION COMPANY			RECEIVED:	07/01/82	JA: TX				
8241375	F-09-050922	4223700000		108		HUDSON UNIT	BOONSVILLE	1.0	LONE STAR GAS CO
8241374	F-04-050918	4240931563		102-4		R T DAVIS NO 1	WILLOW TANK WEST (KRI	795.0	UNITED GAS PIPE L
-ANDERSON PETROLEUM INC			RECEIVED:	07/01/82	JA: TX				
8241214	F-7C-046373	4210533222		103	107-TF	ALMEDA HOOVER ET AL 1-22	OZONA (CANYON SAND)	0.0	ANDERSON PIPELINE
-AQUILA ENERGY CORP			RECEIVED:	07/01/82	JA: TX				
8241206	F-04-046062	4213135274		103		GLASSCOCK #1	LEAL (MIOCENE 2200)	60.0	VALLEY GAS TRANSM
-ARCADIA REFINING CO			RECEIVED:	07/01/82	JA: TX				
8241119	F-06-029719	4240130898		103	107-TF	C E LLOYD NO 5	CYRIL (COTTON VALLEY)	0.0	UNITED GAS PIPE L
-ARCO OIL AND GAS COMPANY			RECEIVED:	07/01/82	JA: TX				
8241229	F-03-046725	4235130343		102-4		ARCO HANKAMER WELL #1	SABINE TRAM S W (WILC	365.0	TEXAS EASTERN TRA
8241208	F-04-046105	4221531019		102-4		SWALLOW GAS UNIT #8-UT	DONNA (7,500)	500.0	TENNESSEE GAS PIP
-ASHFORD OIL & GAS CO			RECEIVED:	07/01/82	JA: TX				
8241268	F-02-048488	4228531598		102-4		CUTBIRTH #1	ASHFORD (YEGUA)	500.0	
-ATLAS ENERGY CORP			RECEIVED:	07/01/82	JA: TX				
8241129	F-01-033835	4217700000		102-2		RIMSCHELL #2	GONZALES (AUSTIN CHAL	0.0	MESA PIPELINE
-BASIN OPERATING CO LTD			RECEIVED:	07/01/82	JA: TX				
8241120	F-06-030229	4234730510		102-4	103	HAYTER ESTATE WELL #2	DOUGLASS E (TRANSITIO	274.0	TEXAS UTILITIES F
-BASS ENTERPRISES PRODUCTION CO			RECEIVED:	07/01/82	JA: TX				
8241348	F-08-050528	4249531248		102-4	103	PAN AM "B" HILL MITCHELL TR 2 #7	HALLEY (PENN 8000)	1000.0	TRANSWESTERN PIPE
-BETTIS BOYLE & STOVALL			RECEIVED:	07/01/82	JA: TX				
8241239	F-7B-046971	4242900000		108		ELLA HARALSON #1 ID NO 10160	JILL (CONGL N)	7.7	LONE STAR GAS CO
8241238	F-7B-046970	4242900000		108		ELLA HARALSON "A" - 3 ID NO 10438	JILL N W (CONGL 4050)	13.2	LONE STAR GAS CO
-BILL FORNEY INC			RECEIVED:	07/01/82	JA: TX				
8241201	F-32-045753	4229732849		102-4	103	A H STEINMEYER #5 RRC ID # N/A	HOUDMAN (PETTUS C)	35.0	TRANSCONTINENTAL
-BLACK ROCK OIL & GAS CO INC			RECEIVED:	07/01/82	JA: TX				
*8241131	F-01-034476	4232330800		108		BAKER RANCH #L-1-51 #71969	GENESIS (OLMOS 2030)	21.1	WEBB INDUSTRIES
-BLAIR ENERGY JOINT VENTURE			RECEIVED:	07/01/82	JA: TX				

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8241247	F-08-047313	4231732437		103		BLAIR ENERGY-JONES #1	SPRAYBERRY	0.0	
-BORDER EXPLORATION CO				RECEIVED:	07/01/82	JA: TX			
8241220	F-04-046583	4242731578		103		NIMMO G U #1-4P	YZAGUIRRE (9400')	174.0	VALERO TRANSMISSI
-C-K RESOURCES INC				RECEIVED:	07/01/82	JA: TX			
8241240	F-02-046974	4217531578		102-4		RUTH BELL #1	CHARCO N (WILCOX 7830	256.0	UNITED GAS PIPELI
-CAMBRIDGE & NAIL				RECEIVED:	07/01/82	JA: TX			
8241241	F-10-047085	4235731151		102-4		ELSIE NO 1 WELL (ID NO 96781)	PERRYTON (ST LOUIS)	0.0	
8241343	F-11-050455	4248530959		102-4		HELTON NO 1 WELL	BRISCOE (MORROW)	0.0	NORTHERN NATURAL
-CAPITAL & COMANCHE OIL & GAS				RECEIVED:	07/01/82	JA: TX			
8241194	F-7C-045167	4213700000		103	107-TF	W L MIERS #3 94213	SAWYER CANYON	6.0	LONE STAR GAS CO
-CARTER EXPLORATION CO				RECEIVED:	07/01/82	JA: TX			
8241389	F-04-051180	4213100000		103		A C GARCIA #1	SABRINA-MAG (COLE 333	0.0	UNITED GAS PIPE L
-CASSELL OIL CO				RECEIVED:	07/01/82	JA: TX			
8241130	F-7B-034392	4204931220		102-4	103	QUAIL HOLLOW NO 1	JETT (DUFFER) EVR 5/1	36.7	ODESSA NATURAL CO
-CHAMPLIN PETROLEUM COMPANY				RECEIVED:	07/01/82	JA: TX			
*8241156	F-04-041874	4235531838		103		IRENE WALTON #3	AGUA DULCE (7550)	0.0	TENNESSEE GAS PIP
*8241169	F-04-043649	4235531831		102-4	103	J W DRYDEN NO 7-L	STRATTON (G-9 RES 8)	0.0	TENNESSEE GAS PIP
-CHEVRON U S A INC				RECEIVED:	07/01/82	JA: TX			
8241293	F-08-049604	4200332976		103		COLUMBUS GRAY ET AL #19-23	FUHRMAN-MASCHO	44.0	PHILLIPS PETROLEU
8241258	F-7C-048155	4241331140		103		NEVA WEST NO 207	NEVA WEST (STRAWN)	98.0	ARCO OIL & GAS CO
-CICO OIL & GAS CO				RECEIVED:	07/01/82	JA: TX			
8241145	F-03-040478	4205100000		102-2		T D GHOLSON #1 (14726)	GIDDINGS (AUSTIN CHAL	120.0	CLAJON GAS CO
-CITIES SERVICE COMPANY				RECEIVED:	07/01/82	JA: TX			
8241355	F-03-050746	4204130638		102-2		EIDSON "A" #1 (15225)	GIDDINGS (AUSTIN CHAL	16.0	PRODUCER'S GAS CO
8241310	F-03-049843	4204130621		102-2		WINDHAM "A" #1 (15213)	GIDDINGS (AUSTIN CHAL	400.0	PRODUCER'S GAS CO
-CLAYTON W WILLIAMS JR				RECEIVED:	07/01/82	JA: TX			
8241292	F-03-049550	4205100000		102-2		GOLD-RYAN UNIT #1	GIDDINGS (AUSTIN CHAL	0.0	VALERO TRANSMISSI
8241302	F-06-049736	4236500000		103		LANGFORD ESTATE #1	CARTHAGE (TRAVIS PEAK	35.0	VALERO TRANSMISSI
-CLEAR FORK GAS CO				RECEIVED:	07/01/82	JA: TX			
8241279	F-7B-048935	4244732861		102-2		J T ODELL A #7-04961	HUGHES-ODELL-MISSISSI	8.0	LONE STAR GAS CO
8241338	F-7B-050372	4244732422		102-2		OTTO TUGGLE #1	THROCKMORTON COUNTY R	0.0	LONE STAR GAS CO
8241337	F-7B-050372	4244732423		102-2		OTTO TUGGLE #2	THROCKMORTON COUNTY R	0.0	LONE STAR GAS CO
8241278	F-7B-048934	4244700000		102-2		SPAIN #1-13895	BERL CADDO	0.0	LONE STAR GAS CO
8241304	F-7B-049783	4244732234		102-2		SULLIVAN #1	THROCKMORTON COUNTY R	0.0	LONE STAR GAS CO
8241306	F-7B-049785	4244732236		102-2		SULLIVAN #2	THROCKMORTON COUNTY R	0.0	LONE STAR GAS CO
8241313	F-7B-049889	4244732337		102-2		SULLIVAN #5	THROCKMORTON COUNTY R	0.0	LONE STAR GAS CO
8241307	F-7B-049786	4244732389		102-2		SULLIVAN #6	THROCKMORTON COUNTY R	0.0	LONE STAR GAS CO
8241305	F-7B-049784	4244732398		102-2		SULLIVAN #8	THROCKMORTON COUNTY R	0.0	LONE STAR GAS CO
-CLOVER ENERGY CORP				RECEIVED:	07/01/82	JA: TX			
8241287	F-03-049339	4248100000		102-4		FOSTER JACKSON #1	KENDLETON SE (FRIO500	900.0	
8241244	F-02-047212	4246931794		102-4		JASCHKE NO 1-C	VICTORIA (4030) FIELD	800.0	
8241243	F-02-047211	4246931794		102-4		JASCHKE NO 1-T	SEE REMARKS FRIO 4360	1000.0	
-COATES ENERGY TRUST				RECEIVED:	07/01/82	JA: TX			
8241330	F-04-050273	4242731274		102-4		#8 DR JOSE GARCIA "B"	JAY SIMMONS (HECTOR)	60.0	VALERO INTERSTATE
8241296	F-04-049651	4242731380		102-4		DANIEL ALVARADO WELL #1	ALVARADO (HOMCO SAND)	292.0	VALERO INTERSTATE
8241288	F-01-049342	4212732286		102-4		TUMLINSON UNIT #5	BLAKEWAY (4600' GAS S	138.0	VALERO TRANSMISSI
-COLA PETROLEUM INC				RECEIVED:	07/01/82	JA: TX			
8241390	F-06-051181	4218330531		103	107-TF	RUFORD #1	OAK HILL S (COTTON VA	285.0	TEXAS EASTERN TRA
8241372	F-7C-050906	4238331468		108		HOLT "110" #1	CALVIN (DEAN)	5.7	UNION TEXAS PETRO
8241368	F-7C-050902	4238331509		108		HOLT "114" #1	CALVIN (DEAN)	9.5	UNION TEXAS PETRO
8241371	F-7C-050905	4238331512		108		HOLT "130" #1	CALVIN (DEAN)	11.4	UNION TEXAS PETRO
8241369	F-7C-050903	4238331488		108		HOLT "132" #1	CALVIN (DEAN)	6.0	UNION TEXAS PETRO
8241370	F-7C-050904	4238331489		108		HOLT "132" #2	CALVIN (DEAN)	6.0	UNION TEXAS PETRO

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
-CONOCO INC				RECEIVED:	07/01/82	JA: TX			
8241158	F-38-042067	4238900000		108		FORD GERALDINE UNIT #296 ID #21021	GERALDINE FORD	2.1	EL PASO NATURAL G
-CONSOLIDATED OIL & GAS INC				RECEIVED:	07/01/82	JA: TX			
8241149	F-04-041092	4247930828		108		CLARK #3	LAREDO (LOBO)	21.0	VALERO TRANSMISSI
8241150	F-04-041094	4247931871		108		HACHAR AKIN #2S	LAREDO SO (QUEEN CITY	21.0	VALERO TRANSMISSI
-CORDOVA RESOURCES INC				RECEIVED:	07/01/82	JA: TX			
8241166	F-7B-042955	4213300000		103	108	SOOTER NO 1	EASTLAND COUNTY REGUL	9.1	ODESSA NATURAL CO
-COSTA RESOURCES INC				RECEIVED:	07/01/82	JA: TX			
8241202	F-08-045834	4210332645		103		TUNSTILL & RENAUD NO 1	COSTA (CLEARFORK UPPE	10.9	PERRY GAS PROCESS
-CREST RESOURCES & EXPL CORP				RECEIVED:	07/01/82	JA: TX			
8241333	F-03-050321	4232130864		102-4		PERRY & TRULL GAS UNIT #1 #1 ST	CAMP HULEN W (FRIO 85	400.0	TENNESSEE GAS PIP
-CRYSTAL OIL COMPANY				RECEIVED:	07/01/82	JA: TX			
8241242	F-02-047163	4229732660		103		EL PASO NATURAL GAS #2-C	WILDCAT	18.3	VALERO TRANSMISSI
-D H HUNT				RECEIVED:	07/01/82	JA: TX			
8241298	F-02-049661	4212331113		102-4		GOHMERT GAS UNIT WELL NO 1	ARNECKEVILLE (FRIO 28	215.0	TEXAS GAS TRANSMI
-DAMSON OIL CORPORATION				RECEIVED:	07/01/82	JA: TX			
8241354	F-03-050654	4219931588		102-4		KIRBY-SANTA FE 2-C	WILCOX (9450) (PENDIN	730.0	HOUSTON PIPELINE
-DELTA DRILLING CO				RECEIVED:	07/01/82	JA: TX			
8241254	F-06-047729	4236500000		103	107-TF	GUILL #3	CARTHAGE (CV) FLD	0.0	UNITED GAS PIPE L
8241196	F-06-045552	4236500000		102-3	107-TF	HUNT #2	CARTHAGE (CV)	0.0	UNITED GAS PIPE L
8241196	F-06-045552	4236500000		103		HUNT #2	CARTHAGE (CV)	0.0	UNITED GAS PIPE L
8241198	F-06-045693	4240100000		102-3	103	STATE OF TEXAS #1	OVERTON NE FLD (PETTI	0.0	TEJAS GAS CORP
8241248	F-06-047317	4236500000		102-3	107-TF	WERNER-NEEDHAM #2	CARTHAGE SE (CV)	0.0	WESTERN GAS CORP
8241248	F-06-047317	4236500000		103		WERNER-NEEDHAM #2	CARTHAGE SE (CV)	0.0	WESTERN GAS CORP
-DIAMOND SHAMROCK CORPORATION				RECEIVED:	07/01/82	JA: TX			
8241294	F-10-049614	4221100000		103		DAVID QUENTIN ISAACS SR #4	CANADIAN SE	0.0	NORTHERN NATURAL
8241311	F-10-049853	4229500000		103		ELODA FREEMAN "A" #2-334	LIPSCOMB SW	160.0	
8241356	F-10-050752	4221131455		103		J T BROWN "B" NO 9	CANADIAN SE	0.0	NORTHERN NATURAL
8241264	F-10-048402	4223300000		108		J T TREW NO 1	BULER N	20.0	SOUTHWESTERN PUBL
8241185	F-10-044568	4221131342		103		LUCILE WRIGHT "D" #2-124	CANADIAN SE	47.5	50% - NORTHERN NA
8241260	F-10-048347	4223300000		108		MCCLOY "A" NO 1	PANHANDLE	0.0	NORTHERN NATURAL
8241262	F-10-048349	4223300000		108		MCCLOY "A" NO 3	PANHANDLE	0.0	NORTHERN NATURAL
8241261	F-10-048348	4223300000		108		MCCLOY "A" NO 5	PANHANDLE	0.0	NORTHERN NATURAL
8241263	F-10-048350	4223300000		108		MCCLOY "A" NO 6	PANHANDLE	0.0	NORTHERN NATURAL
-DORAY CORP				RECEIVED:	07/01/82	JA: TX			
8241317	F-04-049935	4213100000		102-2		KIBBE #2	KIBBE 330' SAND	0.0	GALAXY ENERGIES I
-DYAD ASSOCIATES				RECEIVED:	07/01/82	JA: TX			
8241325	F-08-050170	4237133607		103		AUBREY FARISS #1 WELL	GIRVIN SOUTH (TUBB)	54.7	INTRATEX GAS CO
8241326	F-08-050171	4237133607		103		AUBREY FARISS NO 1 WELL	WENTZ (WICHITA-ALBANY	182.5	INTRATEX GAS CO
-EGAN-WILSON PETROLEUM INC				RECEIVED:	07/01/82	JA: TX			
8241270	F-04-048514	4235500000		102-4		BIRDIE BALZER UNIT #1	BALZER (1600)	150.0	
-ENERGY CAPITAL DEVELOPMENT CORP				RECEIVED:	07/01/82	JA: TX			
8241193	F-03-045026	4248100000		102-4		L G RUST #1	HUNGERFORD S (5070)	150.0	HOUSTON PIPE LINE
-ENSERCH EXPLORATION INC				RECEIVED:	07/01/82	JA: TX			
8241347	F-05-050524	4221300000		107-PE		C H ALLYN NO 3	OPELIKA	504.0	LONE STAR GAS CO
8241271	F-05-048591	4221300000		107-PE		J H LEWIS "A" # 2-U	OPELIKA	94.0	LONE STAR GAS CO
8241346	F-05-050523	4221300000		107-PE		THEO MAGERS NO 1	OPELIKA	480.0	LONE STAR GAS CO
-ENSOURCE INC				RECEIVED:	07/01/82	JA: TX			
8241217	F-7C-046505	4246131524		103		AMACKER-HALFF "48" #2	SPRABERRY (TREND AREA	16.3	PHILLIPS PETROLEU
8241122	F-7C-030780	4238300000		103		PALO-TOMMYE BOOTHE S #3	N E BARNHART (GRAYBUR	14.6	
8241218	F-7C-046506	4246100000		103		UNIVERSITY "A" NO 2	SPRABERRY (TREND AREA	0.0	PHILLIPS PETROLEU
-ESENJAY PETROLEUM CORP				RECEIVED:	07/01/82	JA: TX			
8241283	F-04-049159	4235531950		102-4	103	B LISKA #1	AGUA DULCE N (FRIO 53	360.0	ESPERANZA TRANSMI

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8241251	F-02-047533	4212331184		102-4	103	W O ZENGERLE NO 1	ARNECKEVILLE	250.0	ESPERANZA TRANSMI
-ESTATE OIL & GAS CORP				RECEIVED:	07/01/82	JA: TX			
8241123	F-06-030826	4220330582		103		EDWIN L FEIST #1-C 89313	LANSING NORTH (TRAVIS	36.5	TEJAS GAS CORP
8241110	F-06-020658	4220330670		102-4	103	ELLIS TAYLOR HEIRS GAS UN 1-C 85696	LONGVIEW NORTH (TRAVI	547.5	TEJAS GAS CORP
8241124	F-06-030827	4220330604		103		HENRY PITTS #1-C 89518	LANSING NORTH (TRAVIS	54.8	TEJAS GAS CORP
8241121	F-06-030746	4220330490		102-4	103	JOHN K KEASLER #1-C 89882	LONGVIEW NORTH (TRAVI	255.5	TEJAS GAS CORP
-EXXON CORPORATION				RECEIVED:	07/01/82	JA: TX			
*8241359	F-03-050783	4247330342		103		KATY GAS FIELD UNIT 1 WELL 51	KATY (FIRST WILCOX)	3.2	HOUSTON PIPELINE
8241363	F-04-050877	4224731352		102-4		MRS A M K BASS 47 (ID PENDING)	KELSEY DEEP (ZONE 22-	300.0	TRUNKLINE GAS CO
8241286	F-8A-049289	4216532262		103		ROBERTSON CLEARFORK UNIT #1013	ROBERTSON N (CLEARFOR	15.0	PHILLIPS PETROLEU
8241297	F-04-049658	4226130638		103		SARITA GU 7 WELL 3-D (098731)	SARITA (2-M)	475.0	NATURAL GAS PIPEL
8241358	F-8A-050772	4258132161		103		W C KNORPP #1	JANICE (SAN ANDRES)	5.0	
*8241342	F-03-050448	4220130921		102-4		WEST PRODUCTION CO A/C 3 #29	WEBSTER (FRIO 6500)	109.5	HOUSTON PIPELINE
-F WILLIAM CARR				RECEIVED:	07/01/82	JA: TX			
8241322	F-02-050041	4229732610		103		GEORGE WEST ESTATE NO 4-L	GEORGE WEST WEST (860	90.0	TEXAS EASTERN TRA
-FIRST DALLAS OIL & GAS CORP				RECEIVED:	07/01/82	JA: TX			
8241380	F-09-050997	4250335540		103		W E HARTY-MCCRACKEN 21985	BERGEN (CONGL)	182.5	LONE STAR GAS CO
8241379	F-09-050996	4250335826		103		W E HARTY-MCCRACKEN 21986	BERGEN (MISS)	182.5	LONE STAR GAS CO
-FLORIDA GAS EXPLORATION COMPANY				RECEIVED:	07/01/82	JA: TX			
8241199	F-7C-045712	4241331132		103	107-TF	FLORENCE 23 #1	PHYLLIS SONORA	700.0	INTRATEX GAS CO
8241255	F-7C-047878	4241331172		103	107-TF	FLORENCE 23 #2	PHYLLIS SONORA	700.0	
8241200	F-7C-045713	4241331133		103	107-TF	FLORENCE 24 #1	PHYLLIS SONORA	700.0	INTRATEX GAS CO
8241219	F-7C-046558	4241300000		103	107-TF	FLORENCE 88 #1	PHYLLIS SONORA	700.0	
8241361	F-7C-050803	4243532516		103	107-TF	HUNT 34 #1	PHYLLIS SONORA	0.0	INTRATEX GAS COMP
-GENERAL PRODUCTION CORP				RECEIVED:	07/01/82	JA: TX			
8241183	F-03-044414	4205100000		103		ALBERT VALIAN ET UX NO 1	WILLARD (NAVARRO) FIE	0.0	FERGUSON CROSSING
8241136	F-03-036845	4205100000		103		SIDNEY PILLOW JR #1	WILLARD (NAVARRO)	0.0	FERGUSON CROSSING
-GETTY OIL COMPANY				RECEIVED:	07/01/82	JA: TX			
8241189	F-03-044702	4205100000		102-2		A NOVOSAD UNIT #1	GIDDINGS (AUSTIN CHAL	0.0	FERGUSON CROSSING
8241177	F-04-043841	4247900000		102-4	107-TF	EL GATO NO 3	EL GATO (LOBO)	0.0	TRANSCONTINENTAL
8241195	F-05-045252	4200100000		102-4		G W WARE "B" #1	INGRAM TRINITY (RODES	0.0	LONE STAR GAS CO
8241192	F-06-044940	4236500000		103	107-TF	HOUGH-SHIVERS "A" NO 3	CARTHAGE (COTTON VALL	0.0	UNITED GAS PIPELI
8241180	F-05-044195	4234900000		102-4		JOE E ANDERSON #2	AKER (SMACKOVER) FIEL	0.0	
8241209	F-03-046176	4205100000		102-2		M PORTER #1	GIDDINGS (AUSTIN CHAL	0.0	FERGUSON CROSSING
8241318	F-03-049949	4240700000		108		PAULA FEAGIN GU #1	COLD SPRINGS WEST (WI	18.0	TENNESSEE GAS PIP
-GHR ENERGY CORP				RECEIVED:	07/01/82	JA: TX			
*8241168	F-04-043576	4250531167		102-4	107-TF	LA PERLA #29	LA PERLA RANCH (7850)	730.0	VALERO TRANSMISSI
-GOLDEN PETOLEUM				RECEIVED:	07/01/82	JA: TX			
8241204	F-09-045921	4223733900		103		WOODHOUSE #2	STRAHAN (MISSISSIPPIA	30.0	SOUTHWEST GAS PIP
-GOLDKING PRODUCTION COMPANY				RECEIVED:	07/01/82	JA: TX			
8241211	F-04-046238	4235500000		102-4		MANLEY #1-L	DOUGHTY (FRIO 9950')	0.0	HOUSTON PIPELINE
-GRACE PETROLEUM CORPORATION				RECEIVED:	07/01/82	JA: TX			
8241148	F-05-040900	4228900000		102-4	107-TF	BLAZEK GAS UNIT NO 1	BEARGRASS	0.0	
8241126	F-06-032688	4241930315		102-3		J R GRAVES #1	GARRISON (PETTIT LO)	0.0	UNITED GAS PIPELI
8241164	F-05-042824	4216130676		103	107-TF	WHITAKER GAS UNIT #1	TEAGUE WEST (COTTON V	650.0	TEXAS UTILITIES F
-GREER PETROLEUM CO				RECEIVED:	07/01/82	JA: TX			
8241376	F-04-050931	4250531385		103	107-TF	FALCON GAS UNIT #7	FALCON (WILCOX LOBO 8	0.0	TEXCOL GAS SERVIC
-GROVER J GEISELMAN				RECEIVED:	07/01/82	JA: TX			
8241353	F-03-050646	4215731273		103		STEFFEK GAS UNIT WELL NO 3	NEEDVILLE (BLK 5 MIO	70.0	PHILLIPS PETROLEU
-GRUY MANAGEMENT SERVICE CO				RECEIVED:	07/01/82	JA: TX			
8241295	F-04-049624	4242700000		102-1		ANASTACIA SALINAS #1 (UNASSIGNED)	SALINAS (2000')	91.3	ESPERANZA TRANSMI
-GULF ENERGY PRODUCING COMPANY				RECEIVED:	07/01/82	JA: TX			
8241291	F-76-049505	4236332645		103		VIVIAN SIKES MURPHY #1 (95568)	MINERAL WELLS N (BIG	0.0	TEXAS UTILITIES F

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROL	PURCHASER
-GULF OIL CORPORATION				RECEIVED:	07/01/82	JA: TX			
8241236	F-09-046932	4218130816		102-4		F M HEFTON #1	N E SOUTHMAYD	5.0	LONE STAR GAS CO
8241176	F-10-043739	4217900000		108		I B HUGHEY /A/ #1	PANHANDLE GRAY COUNTY	2.0	CITIES SERVICE CO
8241175	F-10-043738	4217900000		108		I B HUGHEY /A/ #2	PANHANDLE GRAY COUNTY	2.0	CITIES SERVICE CO
8241174	F-10-043737	4217900000		108		I B HUGHEY /A/ #3	PANHANDLE GRAY COUNTY	2.0	CITIES SERVICE CO
8241173	F-10-043736	4217900000		108		I B HUGHEY /A/ #4	PANHANDLE GRAY COUNTY	2.0	CITIES SERVICE CO
8241172	F-10-043735	4217900000		108		I B HUGHEY /A/ #5	PANHANDLE GRAY COUNTY	2.0	CITIES SERVICE CO
8241171	F-10-043734	4217900000		108		I B HUGHEY /A/ #6	PANHANDLE GRAY COUNTY	2.0	CITIES SERVICE CO
8241170	F-10-043733	4217900000		108		I B HUGHEY /A/ #7	PANHANDLE GRAY COUNTY	2.0	CITIES SERVICE CO
8241323	F-09-050056	4218130813		102-4		J H G CORP #1	N E SOUTHMAYD	3.0	LONE STAR GAS CO
8241143	F-10-039558	4223331047		103		J T HODGES #3-5	PANHANDLE HUTCHINSON	54.0	PHILLIPS PETROLEU
8241235	F-09-046930	4218130845		102-4		L H JEANES #1	N E SOUTHMAYD	286.0	LONE STAR GAS CO
8241162	F-09-042584	4218130806		102-4		R H PICKENS #15	N E SOUTHMAYD	240.0	LONE STAR GAS CO
8241165	F-09-042947	4218130792		102-4		ROBERT TATE #1	N E SOUTHMAYD	0.0	LONE STAR GAS CO
-H A STUART ZMAR/CON ENERGY INC				RECEIVED:	07/01/82	JA: TX			
8241308	F-02-049790	4202500000		108		IMOGENE HALL #4	MOSCA/WILCOX MIDDLE 9	0.0	UNITED GAS PIPELI
-H-M OIL CO				RECEIVED:	07/01/82	JA: TX			
8241142	F-03-039113	4248100000		102-4	103	ELMER P REDWINE #1	TWIN BASIN (6550)	0.0	TENNESSEE GAS PIP
-HAMILTON BROTHERS OIL CO				RECEIVED:	07/01/82	JA: TX			
8241224	F-02-046620	4212331126		102-4		GOHMERT #1	WITTGO (WILCOX)	317.9	TEXAS EASTERN TRA
8241383	F-05-051064	4212331191		102-4		JOE G SYMA ET AL #1	FIFTEEN MILE CREEK	59.1	VALERO TRANSMISSI
-HARRISON INTERESTS LTD				RECEIVED:	07/01/82	JA: TX			
8241387	F-7C-051124	4210533722		103	107-TF	NO 23 JOHN W HENDERSON III "K"	OZONA (CANYON SAND)	180.0	INTRATEX GAS CO
-HARWOOD EXPLORATION INC				RECEIVED:	07/01/82	JA: TX			
8241125	F-04-030964	4227300000		102-4		WELCH REICHARDT UNIT #1 WELL #1	KINGSVILLE (5900')	36.0	VALERO INTERSTATE
-HENDERSON CLAY PRODUCTS INC				RECEIVED:	07/01/82	JA: TX			
8241186	F-06-044630	4240130909		102-3	107-TF	BATH UNIT WELL #1	DIRGIN (COTTON VALLEY	250.0	HYDROCARBON TRANS
8241340	F-06-050406	4240131395		103		CHARLES HENDERSON WELL #1	RUFUS (TRAVIS PEAK) F	16.0	HENDERSON CLAY PR
8241233	F-06-046884	4240131311		102-3	107-TF	GARRETT GAS UNIT WELL #1	HENDERSON NORTH (COTT	325.0	UNITED GAS PIPELI
8241249	F-06-047318	4240131326		102-3	107-TF	KANGERGA -A- GAS UNIT WELL #1	OAKHILL N W (COTTON V	325.0	UNITED GAS PIPELI
8241153	F-06-041715	4240131229		102-3	107-TF	VERNON GIBSON ESTATE WELL #1	HENDERSON N (COTTON V	1095.0	UNITED GAS PIPELI
-HINTON PRODUCTION COMPANY				RECEIVED:	07/01/82	JA: TX			
8241190	F-06-044801	4240131199		102-4	107-TF	CHILDRESS #2	HENDERSON NORTH (COTT	500.0	UNITED GAS PIPELI
-HNG OIL COMPANY				RECEIVED:	07/01/82	JA: TX			
8241349	F-04-050549	4247932906		102-4	107-TF	BRUNI MINERAL "A" #5	JUANITA (LOBO)	469.7	HOUSTON PIPELINE
8241349	F-04-050549	4247932906		103		BRUNI MINERAL "A" #5	JUANITA (LOBO)	469.7	HOUSTON PIPELINE
8241315	F-04-049910	4235530811		102-4	103	CHAPMAN HEIRS A 442	ARNOLD DAVID NORTH (8	356.2	HOUSTON PIPELINE
8241289	F-04-049432	4247933171		103	107-TF	HIRSCH ESTATE "1772" #1	BIG COWBOY (LOBO)	196.0	HOUSTON PIPELINE
8241252	F-7C-047679	4243500000		103	107-TF	REED "100" #5	SAWYER (CANYON)	0.0	INTRATEX GAS CO
-HOOVER & BRACKEN ENERGIES				RECEIVED:	07/01/82	JA: TX			
8241132	F-10-034528	4221131213		102-4	103	THORNE #1-76	SHRIEKEY EA (MORROW U	182.5	EL PASO NATURAL G
-HOUSTON OIL & MINERALS CORPORATION				RECEIVED:	07/01/82	JA: TX			
8241212	F-08-046336	4232730394		103		WILBANKS #1 (DEAN)	SPRABERRY	0.0	
-HUNTER PETROLEUM INC				RECEIVED:	07/01/82	JA: TX			
8241223	F-03-046615	4232100000		102-4		STATE TRACT 71 #1 96221	RUSTY MIOCENE 4400	337.6	DOW CHEMICAL USA
-INVESTEK INC				RECEIVED:	07/01/82	JA: TX			
8241312	F-09-049865	4223700000		102-4		J E HENDERSON A-1	STRAHAN CONGLOMERATE	128.0	SOUTHWESTERN GAS
-J A LEONARD				RECEIVED:	07/01/82	JA: TX			
8241327	F-03-050208	4205100000		102-4		COFFIELD-WINSTON "C" NO 2	INEZ JAMESON (NAVARRO	15.0	FERGUSON CROSSING
-J M HUBER CORPORATION				RECEIVED:	07/01/82	JA: TX			
8241141	F-10-038818	4223300000		108		MAGNOLIA HERRING NO 5-T	PANHANDLE WEST	18.0	COLORADO INTERSTA
-J PAUL GOLDSMITH				RECEIVED:	07/01/82	JA: TX			
8241234	F-06-046892	4240100000		103		C R LAWLER ETAL #1	MINDEN E (TRAVIS PEAK	60.0	DELHI GAS PIPELIN

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
-JACKSON EXPLORATION INC				RECEIVED:	07/01/82	JA: TX			
8241365	F-03-050887	4220131289		102-4	103	UNIT DEVELOPMENT #1	TOMBALL S (WILCOX)	180.0	LINK SYSTEMS INC
-JOYCE & HILTY INC				RECEIVED:	07/01/82	JA: TX			
8241205	F-03-046030	4219931521		103		B KIRKENDALL ET AL #1	SLESSINGER (WILCOX 10	500.0	HOUSTON PIPE LINE
-KAISER-FRANCIS OIL COMPANY				RECEIVED:	07/01/82	JA: TX			
8241137	F-10-036917	4221131270		102-4	103	J W CAMPBELL #1	MENDOTA NW (GRANITE W	300.0	EL PASO NATURAL G
-KILLAM & HURD LTD				RECEIVED:	07/01/82	JA: TX			
8241290	F-04-049462	4247933221		102-4	107-TF	K&H FEE WELL NO 1-1570	JUANITA (LOBO)	0.0	UNITED TEXAS TRAN
-L M YOUNG				RECEIVED:	07/01/82	JA: TX			
8241238	F-78-046733	4274932539		102-4		W R CHAMBERS #1	WILDCAT	22.0	ODESSA NATURAL CO
8241160	F-78-042529	4204900000		102-4		W R CHAMBERS NO D-2	DALE (CADDO)	36.0	ODESSA NATURAL CO
-LEAR PETROLEUM CORPORATION				RECEIVED:	07/01/82	JA: TX			
8241144	F-03-040474	4224531460		102-2		LEAR J M CARPENTER #1	NOME N E	400.0	PRODUCER'S GAS CO
-LENOIR M JOSEY INC				RECEIVED:	07/01/82	JA: TX			
*8241388	F-06-051162	4240130668		102-3		C S PRICE ET AL #1	OAK HILL (COTTON VALL	0.0	DELHI GAS PIPELIN
*8241360	F-06-050785	4240130798		102-3		T PRITCHARD ET AL #1	OAK HILL (COTTON VALL	0.0	DELHI GAS PIPELIN
-LIVELY ENERGY & DEVELOPMENT CORP				RECEIVED:	07/01/82	JA: TX			
8241161	F-7C-042534	4241330984		103	107-TF	LOE A-1	JOHN RAE	365.0	EL PASO NATURAL G
-MARDAM EXPLORATION INC				RECEIVED:	07/01/82	JA: TX			
8241226	F-02-046634	4239131438		102-4		GILLIAM #1-T	BONNIE VIEW (FRIO 570	300.0	UNITED TEXAS TRAN
-MARIANAS OPERATING CO INC				RECEIVED:	07/01/82	JA: TX			
8241344	F-78-050461	4278300000		102-4		FREEMAN -E- #3	TRIPLE -H- (HOPE)	535.0	ODESSA NATURAL CO
-MAY PETROLEUM INC				RECEIVED:	07/01/82	JA: TX			
8241364	F-10-050878	4229531108		103		MARTIN #1 (05008)	MAMMOTH CREEK NORTH (	109.5	
-MCCORMICK OPERATING CO				RECEIVED:	07/01/82	JA: TX			
8241232	F-06-046859	4200131282		102-4		LOU ALLEN NO 2	JECAN	360.0	LONE STAR GAS CO
-MCMAHON-BULLINGTON DRLG CO				RECEIVED:	07/01/82	JA: TX			
8241331	F-09-050315	4223700000		102-4		BALL ELVERA "A" #2	ANTELOPE S (BRYSON)	20.0	LONE STAR GAS CO
8241332	F-09-050316	4223700000		102-4		BALL NO 2	ANTELOPE S (BRYSON)	20.0	LONE STAR GAS CO
-MCMORAN PRODUCTION CO				RECEIVED:	07/01/82	JA: TX			
8241277	F-04-048924	4221530968		102-4		COOK #1	MCALLEN SOUTH (CARD S	0.0	TRANSCONTINENTAL
-MEWBOURNE OIL COMPANY				RECEIVED:	07/01/82	JA: TX			
8241203	F-10-045848	4235731174		103		MORRISON #1 RRC ID #	PARCELL (MORROW UPPER	40.0	NORTHERN NATURAL
-MITCHELL ENERGY CORPORATION				RECEIVED:	07/01/82	JA: TX			
8241112	F-09-025345	4249731762		103		ALVORD SOUTH (CADDO CONGL) #36	ALVORD SOUTH (CADDO C	35.0	NATURAL GAS PIPEL
8241113	F-09-025612	4249700000		108-ER		FLOIS CROWNOVER #2 52843	BOONESVILLE (BEND CON	11.3	NATURAL GAS PIPEL
8241382	F-05-051060	4239530252		103	107-TF	MILLER-MARTIN #1	BALD PRAIRIE (CV-LIME	273.0	UNITED TEXAS TRAN
8241127	F-09-032792	4249700000		103		R W LINEHAM #3-T	BOONSVILLE (BEND CONG	50.0	NATURAL GAS PIPEL
-MOORE MCCORMACK OIL & GAS CORP				RECEIVED:	07/01/82	JA: TX			
8241250	F-06-047510	4222530395		102-4		A E MURRAY #1	PENDING	255.5	ESPERANZA ENERGY
-MUELLER ENGINEERING CORP				RECEIVED:	07/01/82	JA: TX			
8241257	F-04-048098	4213100000		103		J S BORDOVSKY - STATE OF TEXAS #3	NEELY (BRUNI 1900')	144.0	NATURAL GAS PIPEL
-MV STEWART/EAGLE PETROLEUM				RECEIVED:	07/01/82	JA: TX			
8241147	F-02-040813	4212331144		103		WENDELL #1-L	MEYERSVILLE N (EY UP)	0.0	VALERO TRANSMISSI
-NELSON & TUCKER OPERATING CO				RECEIVED:	07/01/82	JA: TX			
8241320	F-04-049974	4213135132		102-4		SEMMES (WEIL) ESTATES #1	WILDCAT ABOVE 6100'	73.0	MAN-GAS TRANSMISS
-NICHOLS & BRADY PRODUCTION CO				RECEIVED:	07/01/82	JA: TX			
8241167	F-8A-043384	4216500000		102-3		BINGHAM #2 WELL #62039	HOMANN (SAN ANDRES)	0.2	PHILLIPS PETROLEU
-NORTH TEXAS EXPLORATION INC				RECEIVED:	07/01/82	JA: TX			
8241314	F-09-049891	4218130836		103		ADRIAN L O'HANLON UNIT	SHERMAN	36.5	WARREN PETROLEUM
-OXY PETROLEUM INC				RECEIVED:	07/01/82	JA: TX			
8241116	F-04-028852	4260330147		102-4		ST LSE M-77220 TR 845-S 2-L	MATAGORDA ISLAND BLOC	3.0	CHANNEL INDUSTRIE
8241154	F-04-041810	4200700000		102-4		STATE LEASE M-77985 NO 3	MATAGORDA ISLAND BLOC	3.0	CHANNEL INDUSTRIE

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
-PAR OIL CORPORATION				RECEIVED:	07/01/82	JA: TX			
8241227	F-05-046664	4221300000		102-4		YARRBEE #3	TRINIDAD SOUTH (RODES	548.0	UNITED GAS PIPE L
-PAUL D WEATHERBEE				RECEIVED:	07/01/82	JA: TX			
8241159	F-7B-042464	4213332076		103		MATTIE BAGGETT #1 (15878)	LEE RAY (DUFFER LIME)	35.0	LONE STAR GAS CO
-PED OIL CORP				RECEIVED:	07/01/82	JA: TX			
8241197	F-08-045570	4222732546		102-2		FLANAGAN A-2	RED DRAW (FUSSELMAN)	0.0	PHILLIPS PETROLEU
-PEERLESS OIL CO INC				RECEIVED:	07/01/82	JA: TX			
8241309	F-7B-04982	4236732147		102-2		HARRIS #2	H & R (BEND CONGL)	375.0	SOUTHWESTERN GAS
-PEL-TEX OIL COMPANY INC				RECEIVED:	07/01/82	JA: TX			
8241115	F-03-028515	4215731122		102-4		M MILLER WELL #1-C	ROSENBURG (FRIO-5340)	409.5	UNITED GAS PIPE L
-PENNZOIL PRODUCING COMPANY				RECEIVED:	07/01/82	JA: TX			
8241107	F-04000190	4250530578		108-ER		JENNINGS #31	JENNINGS	12.0	NATURAL GAS PIPE
-PHILLIPS PETROLEUM COMPANY				RECEIVED:	07/01/82	JA: TX			
8241215	F-08-046410	4213502674		108		GS ANDECTOR UNIT WELL #P 12 L	GOLDSMITH (CLEARFORK)	0.0	EL PASO NATURAL G
8241384	F-10-051066	4217900000		108		PHIL-PAMPA UNIT 11-15	PANHANDLE GRAY	0.0	GETTY OIL CO
8241386	F-10-051068	4217900000		108		PHIL-PAMPA UNIT 4-2	PANHANDLE GRAY	0.0	GETTY OIL CO
8241385	F-10-051067	4217900000		108		PHIL-PAMPA UNIT 5A-8	PANHANDLE GRAY	0.0	GETTY OIL CO
8241118	F-10-029319	4235700000		108		ROBERTS D #8	HORIZON CLEVELAND	5.3	
8241216	F-10-046431	4223300000		108		RUBIN-MCDOWELL #7	PANHANDLE HUTCHINSON	0.0	
-RAY H EUBANK				RECEIVED:	07/01/82	JA: TX			
8241111	F-06-021433	4220330685		103		J W ING HEIRS G U #1-C	LONGVIEW NORTH (TRAVI	547.5	TEJAS GAS CORP
-RHODES DRILLING CO				RECEIVED:	07/01/82	JA: TX			
8241157	F-7B-042040	4205900000		102-4		MYRTLE M POINDEXTER #1	CARM (GRAY)	483.0	UNION TEXAS PETRO
-RICHARDS PRODUCING CO				RECEIVED:	07/01/82	JA: TX			
8241259	F-03-048287	4240730450		103		LICK BRANCH UNIT #1	LICK BRANCH (9150' HE	390.0	
-SABINE PRODUCTION COMPANY				RECEIVED:	07/01/82	JA: TX			
8241350	F-7C-050550	4210500000		102-4	103	UNIVERSITY 32-14 #1	HOWARDS CREEK (PENN)	0.0	PRODUCER'S GAS CO
-SAGE DRILLING CO INC				RECEIVED:	07/01/82	JA: TX			
8241152	F-10-041590	4235731149		102-4		R E BRUNSTETER-BULTMAN #1	BULTMAN (MORROW UP)	365.0	NORTHERN NATURAL
-SAGE ENERGY CO				RECEIVED:	07/01/82	JA: TX			
8241352	F-03-050598	4205100000		102-2		BIG "J" #1	GIDDINGS (AUSTIN CHAL	134.0	PHILLIPS PETROLEU
8241299	F-03-04968	4214900000		102-2		CHIEF "A" #1	GIDDINGS (AUSTIN CHAL	25.0	PHILLIPS PETROLEU
8241272	F-03-048618	4205100000		102-2		MASON UNIT #1	GIDDINGS (AUSTIN CHAL	345.0	PHILLIPS PETROLEU
8241362	F-03-050828	4214900000		102-2		ROSS IVY #1	GIDDINS (AUSTIN CHALK	8.0	PHILLIPS PETROLEU
-SAMSON RESOURCES COMPANY				RECEIVED:	07/01/82	JA: TX			
8241114	F-02-026004	4205730991		102-4		MELBOURN #2	STOFER (BRAUN) FIELD	120.0	UNITED TEXAS TRAN
-SANCHEZ-OBRIEN OIL & GAS CORP				RECEIVED:	07/01/82	JA: TX			
8241319	F-02-049959	4229732657		102-4		PAWLIK GAS UNIT 1 WELL NO 2	FANT SOUTH (WILCOX 95	500.0	UNITED TEXAS TRAN
-SANDEFER OIL & GAS INC				RECEIVED:	07/01/82	JA: TX			
8241138	F-03-037277	4232131041		102-4		F J MILBERGER #1	MELLON	350.0	DOW CHEMICAL U S
-SANTA FE ENERGY PRODUCTS CO				RECEIVED:	07/01/82	JA: TX			
8241282	F-03-049136	4214921218		102-2	103	CANNADY #1	GIDDINGS (AUSTIN CHAL	380.0	CLAJON GAS CO
-SANTA FE-WINDSOR PRODUCING CO				RECEIVED:	07/01/82	JA: TX			
8241357	F-03-050761	4228731164		102-2	103	HEINKEL #1	GIDDINGS (AUSTIN CHAL	365.0	PERRY PIPELINE CO
-SAXON OIL COMPANY				RECEIVED:	07/01/82	JA: TX			
8241253	F-7C-047683	4238300000		103		BRANCH "A" NO 2	SPRABERRY (TREND AREA	0.0	NORTHERN NATURAL
-SEAGULL OPERATING CO INC				RECEIVED:	07/01/82	JA: TX			
8241280	F-03-048964	4205131070		103		COFFIELD B-3 #2	NOACK COWHERD N E (34	10.0	FERGUSON CROSSING
-SEATEX ENERGY CORP				RECEIVED:	07/01/82	JA: TX			
8241228	F-7B-046677	4236332658		103		D L HART #8	GRAFORD S CONGL	36.5	SOUTHWESTERN GAS
-SHAR-ALAN OIL CO				RECEIVED:	07/01/82	JA: TX			
8241377	F-03-050944	4231330349		103		HERBERT ROSS #2	MADISONVILLE NE (DEXT	0.0	LONE STAR GAS COM
-SHELL OIL CO				RECEIVED:	07/01/82	JA: TX			

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8241216	F-04-046221	4204730984		102-4		HECTOR LOPEZ NO 6	LOPEZ RANCH (VICKSBUR	500.0	CHANNEL INDUSTRIE
-SHEPHERD PETROLEUM INC				RECEIVED:		07/01/82 JA: TX			
8241351	F-7B-050594	4242932016		102-4		HAILEY #1	AGAPE (CADDO MIDDLE)	14.0	BRECKENRIDGE GASO
-SOUTHFORK OIL CO				RECEIVED:		07/01/82 JA: TX			
8241134	F-03-035529	4204100000		102-2		SUE ELLEN #1	GIDDINGS (AUSTIN CHAL	510.4	CLAJON GAS COMPAN
-SOUTHLAND ROYALTY CO				RECEIVED:		07/01/82 JA: TX			
8241231	F-7C-046745	4243500000		103	107-TF	B M HALBERT #3-122	SONORA	73.0	EL PASO NATURAL G
8241336	F-08-050359	4222732570		103		MCKINNON #1	FLORAC	88.0	ODESSA NATURAL CO
8241256	F-8A-047902	4216531250		103		TOBE FOSTER #11	D E B	19.0	PHILLIPS PETROLEU
8241339	F-8A-050379	4216532152		103		TOBE FOSTER #12	D E B	57.0	PHILLIPS PETROLEU
-SPARKMAN PRODUCING CO				RECEIVED:		07/01/82 JA: TX			
8241275	F-04-048833	4221500000		102-4		MINOJOSA #2	LA REFORMA (E-6500) J	250.0	VALERO INTERSTATE
8241191	F-04-044922	4242700000		102-4		UVALDO SALINAS ET AL #1	SALINAS FIELD	37.0	ESPERANZA TRANSMI
-SUN EXPLORATION & PRODUCTION CO				RECEIVED:		07/01/82 JA: TX			
8241381	F-04-051000	4242731621		102-4		A OLIVARES #21	SUN	245.0	
8241321	F-03-050007	4224531281		103		BROUSSARD & HEBERT NO 39	LABELLE (7060) EVR 5/	120.0	UNITED TEXAS TRAN
8241285	F-8A-049263	4221933294		103		C E RATLIFF #6	LEVELLAND	9.0	AMOCO PRODUCTION
8241284	F-05-049254	4216130668		102-2	107-TF	G A MILTON #1	WILDCAT	0.0	
8241163	F-04-042823	4242731450		102-4		I V MONTALVO -C- #42L	SUN NORTH	237.0	
8241328	F-7B-050223	4242900000		108		R L BUCHANAN #1	STEPHENS COUNTY REGUL	12.0	WARREN PETROLEUM
-SUN OIL COMPANY (DELAWARE)				RECEIVED:		07/01/82 JA: TX			
8241109	F-04-014861	4224930954		103		SEELIGSON UNIT #0144B (1-244)	SEELIGSON (ZONE 14-B)	256.0	TENNESSEE GAS PIP
-SUNDANCE ENERGY CORP				RECEIVED:		07/01/82 JA: TX			
8241221	F-7B-046584	4209330857		103		BIBBY #2	BEATTIE N (MARBLE FAL	18.0	SOUTHWESTERN GAS
-SUPERIOR OIL CO				RECEIVED:		07/01/82 JA: TX			
8241178	F-02-043852	4228531588		102-2		RANDOW GAS UNIT #1 WELL #2	NORTH WORD (EDWARDS)	429.8	VALERO TRANSMISSI
8241237	F-7C-046964	4210533715		103		UNIVERSITY 23-31 WELL #1	UNIVERSITY 31	0.0	
-TAYLOR OPERATING COMPANY				RECEIVED:		07/01/82 JA: TX			
8241345	F-09-050479	4223700000		103		MCALISTER NO 1 (96700)	PLEMMONS (CONGL)	219.0	LONE STAR GAS CO
-TDC ENGINEERING INC				RECEIVED:		07/01/82 JA: TX			
8241269	F-04-048493	4250500000		102-4		TRUJILLO #4	NEW ZAPATA (2300)	124.0	VALERO TRANSMISSI
-TEE OPERATING CO				RECEIVED:		07/01/82 JA: TX			
8241334	F-02-050331	4223931666		102-4		QUIREY	STEWART (6500)	0.0	
-TEXACO INC				RECEIVED:		07/01/82 JA: TX			
8241213	F-8A-046372	4221933293		103		IRA P DELOACHE #22	LEVELLAND	56.6	AMOCO PRODUCTION
8241265	F-8A-048435	4221933351		103		IRA P DELOACHE #36	LEVELLAND	61.7	AMOCO PRODUCTION
8241324	F-8A-050134	4221933319		103		IRA P DELOACHE #51	LEVELLAND	25.5	AMOCO PRODUCTION
8241329	F-8A-050251	4250132059		103		ROBERTS UNIT #2702	WASSON	10.2	SHELL OIL CO
8241245	F-8A-047271	4250132065		103		ROBERTS UNIT NO 2703	WASSON	16.6	SHELL OIL CO
8241378	F-09-050947	4223700000		108		S F BORDEN ESTATE 2-U	CRAFTON W (CADDO LIME	5.6	CITIES SERVICE CO
8241367	F-08-050901	4249500000		108		STATE OF TEXAS "DH" #1	WARWINK (DELAWARE)	6.9	NORTHERN NATURAL
8241391	F-04-051186	4248900000		108		YTURRIA L&L CO "A" NCT-1 #12	RAYMONDVILLE /F-4/	12.0	TENNESSEE GAS PIP
-TEXAS INTERNATIONAL PET CORP				RECEIVED:		07/01/82 JA: TX			
8241225	F-03-046633	4204130650		102-2		DANSBY #1	KURTEN (AUSTIN CHALK)	164.0	PRODUCERS GAS CO
8241274	F-03-048785	4214900000		102-2		FARMER #1	GIDDINGS (AUSTIN CHAL	730.0	CLAJON GAS CO
8241303	F-03-049742	4205100000		102-2		GIESSEL #B-2	GIDDINGS (AUSTIN CHAL	300.0	CLAJON GAS CO
8241181	F-06-044300	4240100000		103	107-TF	J HUTCHINGS UNIT #1	DIRGIN (COTTON VALLEY	292.0	DELHI GAS PIPELIN
8241273	F-03-048784	4205100000		102-2		LAMB-HAMBLIN #1	GIDDINGS (AUSTIN CHAL	730.0	CLAJON GAS CO
-TEXAS OIL & GAS CORP				RECEIVED:		07/01/82 JA: TX			
8241207	F-06-046066	4240131304		103	107-TF	CUNNINGHAM "A" #-3	OAK HILL (COTTON VALL	0.0	DELHI GAS PIPELIN
8241151	F-03-041218	4214931013		102-2		FUCHS #1	GIDDINGS (AUSTIN CHAL	0.0	CLAJON INC
8241182	F-02-044352	4228531470		103		HANCOCK L-1	PROVIDENT CITY (FRIO	8.8	DELHI GAS PIPELIN
8241266	F-10-048474	4221031434		103		LOCKHART "B" #2	FELDMAN (TONKAWA)	250.0	PHILLIPS PETROLEU

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JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8241135	F-04-036442	4224931322		102-4		STECH #1	WADE CITY (3025)	0.0	VALLEY GAS TRANSM
8241155	F-02-041835	4229732352		102-4		ZAMZOW #2	RAY POINT N (7540') P	0.0	UNITED GAS PIPELI
-TEXCAN RESOURCES CORP				RECEIVED:	07/01/82	JA: TX			
8241301	F-7C-049732	4239900000		102-4		BREVARD-HALE #1	BERNARD (FRY LOWER)	803.0	LONE STAR GAS CO
-TKA				RECEIVED:	07/01/82	JA: TX			
8241267	F-02-048481	4205700000		103		J A HYNES TRUST #1-A	LONG MOTT S (FRIO UPP	368.0	TEXAS EASTERN TRA
-TRINITY RESOURCES INC				RECEIVED:	07/01/82	JA: TX			
8241281	F-02-049134	4229732852		102-4		DOROTHY PROBST I D #098771	RAY POINT (WILCOX PRO	110.0	VALERO TRANSMISSI
8241187	F-02-044642	4246931803		102-4	103	KEERAN NO 1-C	WILDCAT FIELD	0.0	
8241188	F-02-044643	4246931803		102-4	103	KEERAN NO 1-T	GARCITAS CREEK (8236)	0.0	TENNGASCO GAS GAT
-TRIPLE L OIL CO INC				RECEIVED:	07/01/82	JA: TX			
8241341	F-03-050435	4248132166		102-4		HENRY WELL NO 1 (N/A)	KUBELA (PROPOSED)	130.0	DOW CHEMICAL USA
-U S OPERATING INC				RECEIVED:	07/01/82	JA: TX			
8241276	F-03-048872	4205131884		102-2		BILLIE MARIE UNIT #1 RRC ID N/A	GIDDINGS (AUSTIN CHAL	0.0	PHILLIPS PETROLEU
8241246	F-03-047307	4228731047		102-2		GINGER UNIT NO 1 RRC ID N/A	GIDDINGS (AUSTIN CHAL	0.0	PGP GAS PRODUCTS
-UNION OIL & MINERALS CORP				RECEIVED:	07/01/82	JA: TX			
8241146	F-03-040753	4205133152		102-2		G C STILLWAGON	GIDDINGS (AUSTIN CHAL	0.0	CLAJON GAS CO
-UNION TEXAS PETROLEUM				RECEIVED:	07/01/82	JA: TX			
8241139	F-10-038316	4248330783		107-DP		T G PURYEAR 1-28	WHEELER NE (MORROW)	0.0	TEXAS GAS TRANSMI
-W T WAGGONER ESTATE				RECEIVED:	07/01/82	JA: TX			
8241133	F-09-034617	4223700000		108-ER		PRUNTY 1-B (29288)	BOONSVILLE BEND CONGL	5.0	LONE STAR GAS CO
-WAINOCO OIL & GAS CO				RECEIVED:	07/01/82	JA: TX			
8241366	F-05-050888	4216130694		103	107-TF	HL&P GAS UNIT #1	BEAR GRASS (COTTON VA	180.0	DELHI GAS PIPELIN
-WILLIAM PERLMAN				RECEIVED:	07/01/82	JA: TX			
8241108	F-7C-008155	4243500000		107-TF		ADA CAUTHORN ET AL "4" #1	SHURLEY RANCH (CANYON	0.0	EL PASO NATURAL G
8241117	F-7C-028898	4243532412		102-2	107-TF	IDA CAUTHORN 135-3	SHURLEY RANCH (CANYON	0.0	EL PASO NATURAL G
-WINDSOR PRODUCING CO				RECEIVED:	07/01/82	JA: TX			
8241222	F-03-046611	4228731080		102-2	103	LUTHER UNIT #1	GIDDINGS (AUSTIN CHAL	36.5	PERRY PIPELINE CO
-ZENITH EXPLORATION COMPANY				RECEIVED:	07/01/82	JA: TX			
8241140	F-01-038520	4216331852		103		ESTHER BERRY 1-B	BERRY (FRIO)	30.0	TRANSCONTINENTAL

OTHER PURCHASERS VOLUME NO :694

8241131	VALERO TRANSMISSION CO
8241156	COLUMBIA GAS TRANSMISSION CORP
8241168	UNITED TEXAS TRANSMISSION CO
8241169	COLUMBIA GAS TRANSMISSION CORP
8241342	E I DUPONT DE NEMOURS & CO INC
8241359	UNITED TEXAS TRANSMISSION CO
8241360	HYDROCARBON LTD
8241388	HYDROCARBON LTD

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-20634 Filed 7-29-82; 8:45 am]

BILLING CODE 6717-01-C

Determinations by Jurisdictional Agencies Under the Natural Gas Policy Act of 1978

Issued: July 23, 1982.

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
TEXAS RAILROAD COMMISSION									
-A E C OIL & GAS INC			RECEIVED:	07/01/82		JA: TX			
8241425	F-7B-051583	4242932995		102-4		GARLITZ 75 #1 RRC ID #098785	MC LENNAN-REID	350.0	WARREN PETROLEUM
-ADOBE OIL & GAS CORPORATION			RECEIVED:	07/01/82		JA: TX			
8241447	F-7B-051803	4213333748		102-4		SNEED "D" #1	MANGUM NORTH (3200)	44.0	ODESSA NATURAL CO
-AMERICAN QUASAR PETROLEUM CO			RECEIVED:	07/01/82		JA: TX			
8241621	F-8A-052592	4244531027		102-4		RAMSEUR #1-92V	SEC 92 BLK T D&W RR C	0.0	
-AMOCO PRODUCTION CO			RECEIVED:	07/01/82		JA: TX			
8241762	F-8A-053020	4227930237		103		ANTON-IRISH CLEARFORK UNIT #779	ANTON-IRISH	4.7	PIONEER CORP
8241607	F-8A-052544	4221933373		103		CENTRAL MALLET UNIT #326	SLAUGHTER	18.0	AMOCO PRODUCTION
8241552	F-03-052426	4205132051		102-4		CORA MASON UNIT #1	CALDWELL (AUSTIN CHAL	25.0	FERGUSON CROSSING
8241553	F-03-052427	4205132017		102-4		HAZEL J CHACHERE "B" #1	STONE CITY (AUSTIN CH	36.0	FERGUSON CROSSING
8241764	F-06-053024	4240131309		102-4	107-TF	KATHLEEN LEE BROWN GAS UNIT #1	HENDERSON N (COTTON V	116.0	VALERO TRANSMISSI
8241763	F-06-053023	4220330936		102-4	107-TF	THELMA MOSLEY GAS UNIT #1	BLOCKER (COTTON VALLE	365.0	UNITED GAS PIPELI
8241557	F-03-052438	4205131960		102-4		WILLIE LEE TARVER #1	CALDWELL (AUSTIN CHAL	91.0	FERGUSON CROSSING
8241556	F-03-05243	4205132000		102-4		WILLIE LEE TARVER "A" UNIT #1	CALDWELL (AUSTIN CHAL	73.0	FERGUSON CROSSING
8241554	F-03-052435	4205131975		102-4		WILLIE LEE TARVER "C" #1	CALDWELL (AUSTIN CHAL	48.9	FERGUSON CROSSING
8241555	F-03-052436	4205132083		102-4		WILLIW LEE TARVER UNIT "B" #1	CALDWELL (AUSTIN CHAL	55.0	FERGUSON CROSSING
-ANDRESS PETROLEUM INC			RECEIVED:	07/01/82		JA: TX			
8241715	F-02-052863	4239131463		102-4		J F WELDER HEIRS #1	DEVIL'S RUN (5250)	0.0	TENNESSEE GAS PIP
8241716	F-02-052866	4239131531		102-4		J F WELDER HEIRS #3	DEVILS RUN (5250)	0.0	TENNESSEE GAS PIP
-ARIES PETROLEUM INC			RECEIVED:	07/01/82		JA: TX			
8241505	F-7B-052145	4213333355		102-4		OTTO SCHAEFER "K" #1 (17758)	GREEN SHOW (UPPER CAD	22.0	EL PASO HYDROCARB
8241504	F-7B-052144	4213333603		102-4		OTTO SCHAEFER "K" #2 (17758)	GREEN SHOW (UPPER CAD	1.1	EL PASO HYDROCARB
-ASPEN PETROLEUM INC			RECEIVED:	07/01/82		JA: TX			
8241697	F-10-052811	4217930840		103		CHADWICK WELL #1 04887	PANHANDLE GRAY COUNTY	72.0	NORTHERN NATURAL
8241695	F-10-052809	4217930912		103		CHADWICK WELL #8 04887	PANHANDLE GRAY COUNTY	72.0	NORTHERN NATURAL
8241694	F-10-052808	4217930911		103		CHADWICK WELL #9 04887	PANHANDLE GRAY COUNTY	72.0	NORTHERN NATURAL
8241696	F-10-052810	4217930901		103		CHADWICK WELL NO 7 04887	PANHANDLE GRAY COUNTY	72.0	NORTHERN NATURAL
8241701	F-10-052815	4217930954		103		WARNICK WELL #1 04888	PANHANDLE GRAY COUNTY	72.0	NORTHERN NATURAL
8241700	F-10-052814	4217930955		103		WARNICK WELL #2 04888	PANHANDLE GRAY COUNTY	72.0	NORTHERN NATURAL
8241699	F-10-052813	4217930956		103		WARNICK WELL #3 04888	PANHANDLE GRAY COUNTY	72.0	NORTHERN NATURAL
8241698	F-10-052812	4217930957		103		WARNICK WELL #4 04888	PANHANDLE GRAY COUNTY	72.0	NORTHERN NATURAL
-BAJA ENERGY INC			RECEIVED:	07/01/82		JA: TX			
8241599	F-7C-052528	4208100000		102-4		CHAPMAN #1 (08178)	RAY (STRAWN)	35.0	KOCH HYDROCARBONS
8241598	F-7C-052527	4208130909		102-4		CHAPMAN #2 (08178)	RAY (STRAWN)	10.0	KOCH HYDROCARBONS
-BAR M PETROLEUM CO INC			RECEIVED:	07/01/82		JA: TX			
8241542	F-03-052376	4247730457		103		LOEWE UNIT #1	GIDDINS NAUSTIN CHALK	350.0	PERRY PIPELINE GA
-BASS ENTERPRISES PRODUCTION CO			RECEIVED:	07/01/82		JA: TX			
8241723	F-08-052892	4230130349		102-4	103	BASS TXL 45 WELL #2	DIMMITT (CHERRY CANYO	21.9	PHILLIPS PETROLEU
-BEACH OIL & GAS INC			RECEIVED:	07/01/82		JA: TX			
8241475	F-10-051974	4248330924		103		MACINA (126) #1 RRC ID#098548	PANHANDLE EAST FIELD	10.6	HI PLAINS NATURAL

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
-BILL FENN INC				RECEIVED:	07/01/82	JA: TX			
8241665	F-83-052726	4228700000		103		JOHNNY D #15414	GIDDINGS NAUSTIN CHAL	44.8	PGP
-BILL J GRAHAM				RECEIVED:	07/01/82	JA: TX			
8241742	F-08-052953	4237100000		103		BOREN B #3	PECOS VALLEY (LOW GRA	8.8	EL PASO NATURAL G
8241741	F-08-052952	4237100000		103		BOREN B #4	PECOS VALLEY (LOW GRA	9.1	EL PASO NATURAL G
-BROCK PETROLEUM CORP				RECEIVED:	07/01/82	JA: TX			
8241392	F-01-051190	4217731205		102-3		PLOEGER UNIT #1	PEACH CREEK (AUSTIN C	19.0	VALERO TRANSMISSI
8241479	F-01-052005	4217731270		102-2		PLOEGER-GONZALES UNIT WELL #2	PEACH CREEK (BUDA)	54.0	VALERO TRANSMISSI
-BUCK WHEAT RESOURCES INC				RECEIVED:	07/01/82	JA: TX			
8241600	F-7B-052529	4209330812		102-4		O T MORRIS #1 (095814)	SKAGGS (2700)	252.0	SOUTHWESTERN GAS
-BURNS - MOORE OIL CO				RECEIVED:	07/01/82	JA: TX			
8241517	F-09-052236	4207732457		102-4		CASTLE MORRIS #2	SHANNON W (CONGL)	75.0	LONE STAR GAS CO
-CARTER ENERGY CORP				RECEIVED:	07/01/82	JA: TX			
8241416	F-09-051479	4249732284		103		T H OBENCHAIN ET AL #1	BOONSVILLE (BEND CONG	180.0	SOUTHWESTERN GAS
-CHEVRON U S A INC				RECEIVED:	07/01/82	JA: TX			
8241713	F-8A-052860	4241532072		103		SACROC UNIT NO 124-8	KELLY SNYDER	18.0	EL PASO NATURAL G
8241710	F-8A-052857	4241532081		103		SACROC UNIT NO 140-4	KELLY-SNYDER	21.0	EL PASO NATURAL G
8241711	F-8A-052858	4241532033		103		SACROC UNIT NO 26-11	KELLY-SNYDER	19.0	EL PASO NATURAL G
8241712	F-8A-052859	4241532102		103		SACROC UNIT NO 57-5	KELLY-SNYDER	9.0	EL PASO NATURAL G
8241714	F-8A-052861	4241532118		103		SACROC UNIT NO 75-13	KELLY-SNYDER	54.0	EL PASO NATURAL G
-CINCO OIL & GAS INC & NRM				RECEIVED:	07/01/82	JA: TX			
8241445	F-01-051797	4217700000		102-2		GLASS #1	PEACH CREEK (AUSTIN C	28.0	TIPPERARY CORP
-CITIES SERVICE COMPANY				RECEIVED:	07/01/82	JA: TX			
8241707	F-08-052845	4247500639		108		BLAIR A #1	PAYTON-MISSISSIPPIAN	2.5	EL PASO NATURAL G
8241608	F-8A-052548	4216531624		103		WEST SEMINOLE SAN ANDRES UT #309	SEMINOLE WEST	0.0	CITIES SERVICE CO
-COATES ENERGY TRUST				RECEIVED:	07/01/82	JA: TX			
8241495	F-01-05209	4210732297		102-4		#6 BERTA TUMLINSON	BLAKEWAY (DIXON SAND)	11.0	VALERO TRANSMISSI
-COLA PETROLEUM INC				RECEIVED:	07/01/82	JA: TX			
8241675	F-10-052740	4217930734		108		ALMA #2	EAST PANHANDLE	0.0	PHILLIPS PETROLEU
8241673	F-10-052738	4217630726		108		BIDWELL #1	EAST PANHANDLE	0.0	PHILLIPS PETROLEU
8241674	F-10-052739	4248330672		108		ROGERS #1	EAST PANHANDLE	0.0	PHILLIPS PETROLEU
8241672	F-10-052737	4217630744		108		SAYE #1	EAST PANHANDLE	0.0	PHILLIPS PETROLEU
8241671	F-10-052736	4217630733		108		SKARKE-SMITH #1	EAST PANHANDLE	0.0	PHILLIPS PETROLEU
8241670	F-10-052735	4217930747		108		SKARKE-SMITH #2	EAST PANHANDLE	0.0	PHILLIPS PETROLEU
-COLUMBIA GAS DEVELOPMENT CORP				RECEIVED:	07/01/82	JA: TX			
8241419	F-03-051533	4228731209		102-2		ED ZGABAY #6	GIDDINGS (AUSTIN CHAL	0.0	FERGUSON CROSSING
8241589	F-03-052496	4205132202		102-2		RAYMOND ZGABAY #3	GIDDINGS (AUSTIN CHAL	155.0	FERGUSON CROSSING
-CONOCO INC				RECEIVED:	07/01/82	JA: TX			
8241551	F-8A-052412	4211531679		103		EAST ACKERLY DEAN UNIT #69	ACKERLY (DEAN SAND)	23.0	TEXACO INC
-CORAL PETROLEUM DEVELOPMENT INC				RECEIVED:	07/01/82	JA: TX			
8241770	F-04-053036	4240931433		103		SCHMIDT-CRITES UNIT WELL #1	MIDWAY EAST (10,700')	375.0	ESPERANZA TRANSMI
-CRAIN OIL CO				RECEIVED:	07/01/82	JA: TX			
8241614	F-7C-052573	4210533896		103		UNIVERSITY 2 #1	FARMER (SAN ANDRES)	0.0	NORTHERN NATURAL
8241622	F-7C-052595	4210533897		103		UNIVERSITY 3 #1	FARMER (SAN ANDRES)	0.0	NORTHERN NATURAL
-CURRAN-KIEL				RECEIVED:	07/01/82	JA: TX			
8241611	F-7B-052558	4208300000		102-4		HAYNES #1-B #094438	TRICKHAM (CROSSCUT)	0.0	LONE STAR GAS CO
8241612	F-7B-052559	4208300000		102-4		HAYNES #9 #094662	TRICKHAM (CROSSCUT)	0.0	LONE STAR GAS CO
-DALLAS PRODUCTION INC				RECEIVED:	07/01/82	JA: TX			
8241722	F-7B-052887	4236731736		108		LAKE WEATHERFORD #1	LAKE WEATHERFORD (CON	2.3	SOUTHWESTERN GAS
-DAMSON OIL CORPORATION				RECEIVED:	07/01/82	JA: TX			
8241676	F-04-052753	4247930386		107-PE		A E GATES #1	DOS HERMANOS E (OLMOS	110.0	DELHI GAS PIPELIN
8241412	F-04-051376	4247933107		103		O S PETTY #4-11	DOS HERMANOS W (OLMOS	100.0	DELHI GAS PIPELIN
-DANIELS ENERGY CO				RECEIVED:	07/01/82	JA: TX			

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8241436	F-10-051667	4217900000		103		MCKNIGHT #4	PANHANDLE GRAY COUNTY	1.0	CABOT PIPELINE
-DAVIS OIL COMPANY				RECEIVED:		07/01/82 JA: TX			
8241434	F-7C-051643	4209530587		102-4		SMITH LAND & CATTLE CO "3" #1	PAINT ROCK SW (GARDNE	650.0	LONE STAR GAS CO
-DELTA OIL & GAS CO				RECEIVED:		07/01/82 JA: TX			
8241454	F-7B-051850	4242900000		103		COPELAND-MITCHELL RRC #15856	C-M DUFFER	0.0	LONE STAR GAS CO
8241769	F-7B-053031	4242900000		108		JUDITH WINSTON KIGHT RRC 72430	TULLOS (CADDO)	6.0	LONE STAR GAS CO
8241467	F-7B-051916	4242900000		103		R M ROGERS ESTATE "A" RRC #15233	STEPHENS COUNTY REGUL	0.0	LONE STAR GAS CO
8241610	F-7B-052557	4242900000		108		R N RICHARDSON RRC #82679	ROGERS RANCH CONGL 39	19.8	LONE STAR GAS CO
-DEMINEX US OIL COMPANY				RECEIVED:		07/01/82 JA: TX			
8241721	F-7B-052883	4225331425		103		DUGAN A #6	CRESLENN (UPPER STRAW	18.3	DENACO INC
-DORCHESTER EXPLORATION INC				RECEIVED:		07/01/82 JA: TX			
8241498	F-08-052119	4232931034		102-3		BRADFORD 22A-#1	BRADFORD RANCH	146.0	EL PASO NATURAL G
-EL PASO NATURAL GAS COMPANY				RECEIVED:		07/01/82 JA: TX			
8241703	F-10-052823	4217923709		108		GRIFFIN #1	PANHANDLE WEST	23.7	EL PASO NATURAL G
8241641	F-10-052641	4248330776		108		LISTER #2	PANHANDLE EAST	11.8	EL PASO NATURAL G
8241643	F-10-052642	4248330777		108		NELSON #2	PANHANDLE EAST	10.5	EL PASO NATURAL G
8241702	F-10-052822	4217923745		108		RICE #1	PANHANDLE-WEST	21.4	EL PASO NATURAL G
-EMERALD PETROLEUM CORP				RECEIVED:		07/01/82 JA: TX			
8241446	F-09-051799	4207700000		103		DAVID A #1	BLUE GROVE (CADDO)	7.3	FAGADAU ENERGY CO
-ENERGETICS INC				RECEIVED:		07/01/82 JA: TX			
8241522	F-03-052285	4214930855		102-2		C FLECK #1	GIDDINGS (AUSTIN CHAL	50.0	PHILLIPS PETROLEU
8241523	F-01-052287	4217731034		102-2		CHRISTIAN #3	CHRISTIAN (6800)	10.0	VALERO TRANSMISSI
8241525	F-31-052289	4217731056		102-2		CHRISTIAN #4	CHRISTIAN (6800)	10.0	VALERO TRANSMISSI
8241526	F-03-052290	4214930458		102-2		KIESCHNIK #2	GIDDINGS AUSTIN CHALK	0.0	PHILLIPS PETROLEU
8241520	F-03-052283	4214931072		102-2		KOENNING "A" #1	GIDDINGS AUSTIN CHALK	3.0	PHILLIPS PETROLEU
8241521	F-03-052284	4214931059		102-2		M KOENNING #1	GIDDINGS AUSTIN CHALK	3.0	PHILLIPS PETROLEU
8241524	F-03-052288	4214931267		102-2		W C MOORE #1	GIDDINGS (AUSTIN CHAL	60.0	PHILLIPS PETROLEU
8241519	F-03-052282	4214930966		102-2		WAC #1	GIDDINGS AUSTIN CHALK	9.5	PHILLIPS PETROLEU
-ENERGY RESERVES GROUP INC				RECEIVED:		07/01/82 JA: TX			
8241750	F-7C-052987	4208131043		103		J E CHAPPELL "A" #13	JAMESON (STRAWN)	33.8	UNION TEXAS PETRO
8241776	F-7C-053048	4208131080		103		J E CHAPPELL "A" #14	JAMESON (STRAWN)	4.7	UNION TEXAS PETRO
-ENSOURCE INC				RECEIVED:		07/01/82 JA: TX			
8241765	F-7B-053025	4213331348		102-4	103	G STEEL "B" #1	BLIND HOG (RANGER)	0.0	SOUTHWESTERN GAS
-EXXON CORPORATION				RECEIVED:		07/01/82 JA: TX			
8241396	F-08-051244	4249531448		103		BROWN-ALTMAN B #28	EMPEROR EAST (CLEARFO	2.0	
8241458	F-08-051866	4249531474		103		BROWN-ALTMAN B #30	EMPEROR EAST (CLEARFO	219.0	PIONEER NATURAL G
8241798	F-04-053087	4204730951		102-4		D J SULLIVAN "B" 52-T (097103)	PITA (E-2-E SEG 2)	171.0	TENNESSEE GAS PIP
*8241418	F-03-051529	4245730331		103		EAST TEXAS OIL CO FEE H #8	PAVEY KIRBY (WILCOX 1	200.0	ARMCO STEEL CORP
8241488	F-38-052808	4200332916		103		FULLERTON CLEARFORK UNIT 843	FULLERTON	15.0	PHILLIPS PETROLEU
8241457	F-08-051865	4200332260		103		GEORGIA B KING #8	DEEP ROCK (ELLENBERGE	15.0	PHILLIPS PETROLEU
*8241651	F-03-052671	4207131299		103		H A GRIPON A/C NO 1 #32	ANAHUAC	220.0	HOUSTON PIPELINE
8241603	F-08-052536	4210300000		108		J B TUBB A/C 1 #52	SAND HILLS (MCKNIGHT)	7.0	EL PASO NATURAL G
8241604	F-08-052537	4210331342		108		J C TUBB A/C 1 #124	SAND HILLS (TUBB)	3.0	EL PASO NATURAL G
8241605	F-08-052538	4210331366		108		J C TUBB A/C 1 #125	SAND HILLS	8.0	EL PASO NATURAL G
8241459	F-08-051868	4210332673		103		J C TUBB A/C 1 #250U	SAND HILLS (MCKNIGHT)	5.0	EL PASO NATURAL G
8241518	F-10-052254	4239330901		103		J C VOLLMERT #4	MENDOTA	50.0	TRANSWESTERN PIPE
*8241624	F-04-052604	4227331353		103		K R ALAZAN 328-D (10029)	HINOJOSAS (G-04)	102.0	ARMCO STEEL CORP
*8241528	F-04-052292	4227331600		103		K R ALAZAN 345 (097722)	HINOJOSA NORTH (E-62)	365.0	ARMCO STEEL CORP
*8241560	F-04-052454	4227331502		103		K R ALAZAN 361 (098489)	ALAZAN NORTH (F-51)	550.0	ARMCO STEEL CORP
*8241531	F-04-052295	4227331640		103		K R BORREGOS 571 (098487)	BORREGOS (ZONE N-10)	234.0	ARMCO STEEL CORP
*8241690	F-04-052793	4227331441		102-4		K R CHILTIPIN 83 (88868)	ARNOLD-DAVID (K-80)	58.0	ARMCO STEEL CORP
*8241530	F-04-052294	4227331637		103		K R CHILTIPIN 92 (098210)	LUBY (3900')	438.0	ARMCO STEEL CORP
*8241739	F-04-052949	4227331168		102-4		K R SEELIGSON C-192-F (098757)	SEELIGSON (2G-G-02,N)	104.0	ARMCO STEEL CORP

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
*8241529	F-04-052293	4227330596		102-4		K R STRATTON T-37-D (10020)	STRATTON (N-26,SW)	10.0	ARMCO STEEL CORP
8241470	F-02-051934	4202500000		108		LAURA D THOMSON B-10 (082908)	BURKES RIDGE (1600)	3.0	TRUNKLINE GAS CO
8241469	F-02-051931	4202500000		108		LAURA D THOMSON B-2-C (043488)	HEARD RANCH (3900)	1.0	TRUNKLINE GAS CO
8241481	F-7C-052010	4243131016		103		LOU E JOHNSON ESTATE A/C 1 #28	JAMESON (STRAWN)	0.0	
8241793	F-04-053082	4242700000		108		MCGIL BROS 406-D (051929)	KELSEY SOUTH (19-B)	17.0	TRUNKLINE GAS CO
8241796	F-04-053085	4204700000		108		MCGILL BORS 194-T (068442)	KELSEY DEEP (21-CC)	4.0	TRUNKLINE GAS CO
8241508	F-08-052177	4200332853		103		MEANS/SAN ANDRES/UNIT #2266	MEANS	15.0	PHILLIPS PETROLEU
8241507	F-08-052175	4200333036		103		MEANS/SAN ANDRES/UNIT 6524	MEANS	15.0	PHILLIPS PETROLEU
8241797	F-04-053086	4224700000		108		MRS A M K BASS 32-F (071029)	KELSEY DEEP (18-B E)	1.0	TRUNKLINE GAS CO
*8241534	F-03-052360	4215700000		103		MRS MARY GUBBELS #18	THOMPSON	20.0	ARMCO STEEL CORP
*8241740	F-10-052950	4226130631		103		MRS S K EAST "B" 36 (098733)	SARITA EAST (FRIO)	1171.0	ARMCO STEEL CORP
8241794	F-04-053083	4242700000		108		N R MONTALVO 16 (053660)	SUN (D-1)	7.0	TENNESSEE GAS PIP
8241792	F-04-053081	4224700000		108		NICEFORO PENA 7 (066945)	KELSEY (K-4 SOUTH)	7.0	TRUNKLINE GAS CO
*8241766	F-03-053026	4215731166		102-4		PECAN GROVE GU 5 #1-L	PECAN GROVE (8000)	800.0	ARMCO STEEL CORP
*8241433	F-04-051631	4204730683		103		RJK JR TR BARROSA PASTURE 16-F	PITA NW (G-63)	500.0	ARMCO STEEL CORP
*8241689	F-04-052792	4204730960		103		RJK JR TR VIBORAS PASTURE 96-F	VIBORAS (G-13-C)	7.3	ARMCO STEEL CORP
8241602	F-8A-052533	4216532263		103		ROBERTSON CLEARFORK UNIT #8803	ROBERTSON N (CLEARFOR	15.0	PHILLIPS PETROLEU
8241506	F-8A-052172	4216532320		103		ROBERTSON CLEARFORK UNIT 3201	ROBERTSON N (CLEARFOR	15.0	PHILLIPS PETROLEU
*8241527	F-04-052291	4221530850		102-4		SANTA FE RANCH MULA PASTURE 17	TODOS SANTOS (N-68)	190.0	ARMCO STEEL CORP
8241654	F-03-052676	4220131340		103		TOMBALL OIL UNIT NO 1 #1	TOMBALL (HIRSCH NW)	32.8	NATURAL GAS PIPEL
*8241650	F-03-052670	4207131314		103		W C TYRRELL TRUST #38	ANAHUAC	220.0	HOUSTON PIPELINE
8241545	F-08-052388	4249531467		103		YARBROUGH AND ALLEN #95	ARENOSO (STRAWN DETRI	20.0	PHILLIPS PETROLEU
-F C D OIL CORP				RECEIVED:	07/01/82	JA: TX			
8241497	F-01-052108	4217731380		102-4		MOHRMANN UNIT #1	PEACH CREEK (AUSTIN C	730.0	VALERO TRANSMISSI
-FAGADAU ENERGY CORP				RECEIVED:	07/01/82	JA: TX			
8241477	F-09-051989	4237700000		103		SCALING RANCH "C" #3 RRC #22058	CASS (CADDO)	120.0	BLUEGROVE GASOLIN
-FORBASE - TRAVERSE				RECEIVED:	07/01/82	JA: TX			
8241744	F-09-052975	4223700000		103		J D WHEELER NO 1 (21907)	JACK COUNTY REGULAR	7.3	LONE STAR GAS CO
-FRANKS PETROLEUM INC ETAL				RECEIVED:	07/01/82	JA: TX			
8241558	F-06-052447	4236530772		102-3	107-TF	DAVID DUNHAM NO 1	CARTHAGE (COTTON VALL	30.0	UNITED GAS PIPELI
-GENERAL AMERICAN OIL COMPANY OF TEX				RECEIVED:	07/01/82	JA: TX			
8241583	F-04-052487	4213133363		108		J F WELDER HEIRS "B" #3	N E LOMA NOVIA (WILCO	8.0	TENNESSEE GAS PIP
-GETTY OIL COMPANY				RECEIVED:	07/01/82	JA: TX			
8241476	F-03-051985	4224500000		108		FROST NATIONAL BANK #1-A #07315	MARS MCLEAN	16.0	TEXAS GAS PIPELIN
-GRO-TEX				RECEIVED:	07/01/82	JA: TX			
8241443	F-7B-051794	4204932878		103		COX #1	BROWN COUNTY REGULAR	29.0	SIOUX PIPELINE CO
-GULF OIL CORPORATION				RECEIVED:	07/01/82	JA: TX			
8241735	F-08-052937	4247532483		103		HUTCHINGS STOCK ASSN #1155	WARD-ESTES NORTH	2.0	CABOT CORP
8241781	F-08-053060	4247532558		103		HUTCHINGS STOCK ASSN #1161	WAGON WHEEL (PENN)	146.0	CABOT CORP
8241669	F-08-052734	4210300912		108		W N WADDELL #104	WADDELL (GRAYBURG)	12.8	H & T GATHERING
-H & G OIL & GAS CO				RECEIVED:	07/01/82	JA: TX			
8241619	F-01-052589	4212732042		102-4		VOTAW NO 1	THIRTEEN SOUTH (OLMOS	0.0	VALERO TRANSMISSI
8241620	F-01-052590	4212732042		102-4		VOTAW NO 2	THIRTEEN SOUTH (OLMS	0.0	VALERO TRANSMISSI
-H & S PRODUCTION INC				RECEIVED:	07/01/82	JA: TX			
8241450	F-09-051839	4223700000		102-4		H F LEWIS #1	H F L (CONGLOMERATE 5	300.0	LONE STAR GAS CO
-H A W INVESTMENTS				RECEIVED:	07/01/82	JA: TX			
8241601	F-7B-052530	4200300000		102-4		SKAGGS #1 (091732)	SKAGGS (DUFFER)	264.0	SOUTHWESTERN GAS
-HEA EXPLORATION INC				RECEIVED:	07/01/82	JA: TX			
8241437	F-03-051688	4228731187		102-2		BLUEBONNET UNIT WELL #2	GIDDINGS (AUSTIN CHAL	0.0	PERRY PIPELINE CO
-HEXAGON OIL & GAS INC				RECEIVED:	07/01/82	JA: TX			
8241627	F-7B-052623	4236332698		103		KIMBERLIN-LOCKHART #1	BRAZOS E (CADDO)	59.0	INTRASTATE GATHER
8241438	F-7B-051732	4236332675		103		WILLIAMS #1	BRAZOS EAST (CADDO)	33.0	INTRASTATE GATHER
-HILLIN PRODUCTION CO				RECEIVED:	07/01/82	JA: TX			

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8241429	F-08-051608	4237133678		103		I R T 29 #3	PECOS VALLEY (YATES)	93.6	INTRATEX GAS CO
-HINTON PRODUCTION COMPANY				RECEIVED:		07/01/82 JA: TX			
8241424	F-05-051580	4246730521		102-4		FANCHER #1	MARTINS MILL W (RODES	150.0	LONE STAR GAS CO
-HOOPER & SONS INVESTMENTS INC				RECEIVED:		07/01/82 JA: TX			
8241773	F-06-053041	4236531225		103		PARKER-CARROLL NO 1	PAXTON (PALUXY)	0.0	WESTERN GAS CORP
-HORIZON OIL & GAS CO OF TEXAS				RECEIVED:		07/01/82 JA: TX			
8241468	F-17-051928	4235731178		103		CONVERSE "A"	HORIZON (CLEVELAND)	4.8	TRANSWESTERN PIPE
-HUGHES & HUGHES				RECEIVED:		07/01/82 JA: TX			
8241618	F-04-052586	4235500000		102-4		R PHILIP SCHULZE ET AL #4	AGUA DULCE (7850)	175.0	HOUSTON PIPE LINE
-HYQUEST ENERGY INC				RECEIVED:		07/01/82 JA: TX			
8241484	F-03-052032	4248132222		102-4		HENDERSON #1	HENDERSON (MIOCENE 25	110.0	TRUNKLINE GAS CO
-IKE LOVELADY INC				RECEIVED:		07/01/82 JA: TX			
8241780	F-7C-053059	4241330589		103		CHEANEY #1 WELL	CHEANEY (HARKEY)	26.6	ARCO OIL & GAS CO
8241779	F-7C-053058	4241330741		103		ENOS NO 1 WELL	CHEANEY (HARKEY)	51.0	ARCO OIL & GAS CO
8241778	F-7C-053056	4241330918		103		ENOS NO 2 WELL	CHEANEY (HARKEY)	25.5	ARCO OIL & GAS CO
-INDEPENDENT EXPLORATION CO				RECEIVED:		07/01/82 JA: TX			
8241512	F-7B-052223	4236332541		102-4		JENKINS #1	SCATTER (BEND)	51.0	SOUTHWESTERN GAS
-INTERNORTH INC				RECEIVED:		07/01/82 JA: TX			
8241417	F-10-051526	4221131409		103		KENYON 36 #1	FELDMAN (TONKAWA)	313.0	NORTHERN NATURAL
8241423	F-10-051551	4221131407		103		LOCKHART A 36 #1	FELDMAN (TONKAWA)	250.0	NORTHERN NATURAL
-INTREPID DEVELOPMENT CO				RECEIVED:		07/01/82 JA: TX			
8241550	F-02-052411	4217531582		102-4	103	COLETO CREEK (SWOBODA) #1	SWOBODA (FRIO 3680)	183.0	DELHI GAS PIPELIN
-INVESTEK INC				RECEIVED:		07/01/82 JA: TX			
8241533	F-09-052341	4223700000		102-4		J E HENDERSON A-1	STRAHAN CONGLOMERATE	128.0	SOUTHWESTERN GAS
-J A LEONARD				RECEIVED:		07/01/82 JA: TX			
8241449	F-03-051836	4205100000		102-4		COFFIELD-WINSTON "D" NO 1	INEZ JAMESON (NAVARRO	10.0	FERGUSON CROSSING
-J A WILBURN				RECEIVED:		07/01/82 JA: TX			
8241474	F-7B-051970	4215131379		103		FOMBY ET AL #2	CLAYTONVILLE (CANYON	18.0	TIPPERARY CORP
-J B HERRMANN				RECEIVED:		07/01/82 JA: TX			
8241460	F-10-051873	4223331316		103		LUCAS #8 ID #04565	PANHANDLE-HUTCHINSON	32.0	PHILLIPS PETROLEU
8241644	F-10-052646	4223331385		103		LUCAS #9 ID #04565	PANHANDLE-HUTCHINSON	21.0	PHILLIPS PETROLEU
-J CLEO THOMPSON & JAMES CLEO THOMPS				RECEIVED:		07/01/82 JA: TX			
8241420	F-03-051536	4210533967		102-4		UNIVERSITY 30-22E #2	UNIVERSITY 31 (QUEEN)	210.0	
8241413	F-7C-051378	4210500000		102-4		UNIVERSITY 30-23 #1	UNIVERSITY 31 (QUEEN)	90.0	
8241431	F-7C-051613	4210500000		102-4		UNIVERSITY 30-23W #3	UNIVERSITY 31 (QUEEN)	180.0	
8241430	F-7C-051612	4210533936		102-4		UNIVERSITY 34 #4	UNIVERSITY 31 (QUEEN)	60.0	PHILLIPS PETROLEU
-J H PURVIS				RECEIVED:		07/01/82 JA: TX			
8241693	F-7C-032798	4209500000		103		JOHN LLOYD #5	SPECK NORTH (STRAWN)	13.9	SUN OIL CO
8241692	F-7C-052797	4209500000		103		JOHN LLOYD NO 6	SPECK NORTH (STRAWN)	24.6	SUN OIL CO
-J R HAMILTON				RECEIVED:		07/01/82 JA: TX			
8241452	F-04-051842	4213100000		102-4		V B CUELLAR D-4 098560	J R (5505)	100.0	VALERO TRANSMISSI
-JACK JOHNSON JR				RECEIVED:		07/01/82 JA: TX			
8241775	F-10-053044	4234100000		103		#7 LOEBER RRC #01798	PANHANDLE HUTCHINSON	127.8	PHILLIPS PETROLEU
-JOHN G VOIGHT				RECEIVED:		07/01/82 JA: TX			
8241407	F-03-051315	4248100000		102-4		H C COCKBURN EST ET AL	HOLLYWOOD SOUTH (FRIO	29.9	TENNESSEE GAS PIP
-JONES CO				RECEIVED:		07/01/82 JA: TX			
8241540	F-7B-052373	4241733988		102-4		BLACKBURN #1 (17429)	MARSHA (ELLEN)	1.0	DELHI GAS PIPELIN
8241539	F-7B-052372	4241734343		102-4		BLACKBURN #2 (17429)	MARSHA (ELLEN)	8.0	DELHI GAS PIPELIN
8241538	F-7B-052370	4241734386		102-4		BLACKBURN #3 (17429)	MARSHA (ELLEN)	17.0	DELHI GAS PIPELIN
8241681	F-7B-052766	4241734485		102-4		BLACKBURN #5 (17429)	MARSHA (ELLEN)	21.0	DELHI GAS PIPELIN
8241488	F-7B-052041	4242933155		103		BROWN HEIRS "16" #1	ONEAL (ELLENBERGER)	1.0	WARREN PETROLEUM
8241682	F-7B-052767	4241732891		102-4		MILES BENDA "71" #2 (089408)	BENDA (CADDO)	596.0	DELHI GAS PIPELIN
8241463	F-7B-051882	4241733844		103		NEWELL "86" #1 (16712)	SHACKELFORD COUNTY RE	1.0	DELHI GAS PIPELIN

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8241473	F-7B-051965	4205933082		103		RAY GREEN "2295A" #1 (17227)	CALLAHAN COUNTY REGUL	1.0	DELHI GAS PIPELIN
-JUSTISS OIL CO INC				RECEIVED:		07/01/82 JA: TX			
8241652	F-06-052673	4220330904		103	107-TF	EAST TEXAS BAPTIST COLLEGE #1	WOODLAWN (COTTON VALL	105.0	EAST TEXAS INDUST
-KEITH D GRAHAM				RECEIVED:		07/01/82 JA: TX			
8241439	F-03-051761	4205132035		102-2		HUGHES UNIT #1	GIDDINGS (AUSTIN CHAL	547.5	FERGUSON CROSSING
8241440	F-03-051762	4204130709		102-2		TEXAS SPEEDWAY "A" #1	GIDDINGS (AUSTIN CHAL	80.3	CLAJON GAS CO
-KERR-MCGEE CORPORATION				RECEIVED:		07/01/82 JA: TX			
8241653	F-10-052675	4234130661		103		B A DONALDSON OIL #1	PANHANDLE (MOORE)	0.0	PHILLIPS PETROLEU
-L M YOUNG				RECEIVED:		07/01/82 JA: TX			
8241680	F-7B-052765	4204932832		102-4		R J GOODALL "C" #8 (18282)	DALE (CADDO)	19.0	ODESSA NATURAL CO
-LARIAT OIL & GAS				RECEIVED:		07/01/82 JA: TX			
8241411	F-7B-051364	4236700000		102-4		J D ST CLAIR #1-C (099040)	LARIAT (STRAWN)	136.0	SOUTHWESTERN GAS
8241410	F-7B-051363	4236700000		102-4		J D ST CLAIR #1-T (099041)	LARIAT (BEND CONGLOME	189.0	SOUTHWESTERN GAS
-LAYTON ENTERPRISES INC				RECEIVED:		07/01/82 JA: TX			
8241617	F-8A-052587	4207931528		103		REED WRIGHT #36	LEVELLAND	8.9	CITIES SERVICE CO
-LOGAN & SHEETS EXPLORATION CO				RECEIVED:		07/01/82 JA: TX			
8241422	F-7B-051549	4242933071		103		WARD HEIRS #1 18169	STEPHENS COUNTY REGUL	45.0	WARREN PETROLEUM
-LOUISIANA CRUDE OIL & GAS CO INC				RECEIVED:		07/01/82 JA: TX			
8241570	F-MB-052472	4213300000		108		E J SNEED #1 14402	PAT KAHAN (MISS)	7.6	LONE STAR GAS CO
8241568	F-7B-052470	4213300000		108		G TUCKER #1 13182	FOSTER (MARBLE FALLS)	13.5	ODESSA NATURAL CO
8241567	F-7B-052469	4213300000		108		G TUCKER #2 13182	FOSTER (MARBLE FALLS)	13.5	ODESSA NATURAL CO
8241569	F-7B-052471	4213300000		108		G TUCKER #3 13182	FOSTER (MARBLE FALLS)	13.5	ODESSA NATURAL CO
-M-C OIL CO				RECEIVED:		07/01/82 JA: TX			
8241537	F-02-052368	4228500000		102-4		BREZIK NO 1	EZZELL (HOBBS 9200)	36.0	
-MABEE PETROLEUM CORP				RECEIVED:		07/01/82 JA: TX			
8241664	F-08-052708	4231732360		103		BREEDLOVE "C" #2	BREEDLOVE SOUTH (SPRA	57.6	NORTHERN NATURAL
-MARALO INC				RECEIVED:		07/01/82 JA: TX			
8241587	F-7C-052494	4238331920		103		UNIVERSITY "15" #4	BLOCK 49 (2450)	2.0	NORTHERN NATURAL
8241586	F-7C-052493	4238331921		103		UNIVERSITY "15" #5	BLOCK 49 (2450)	2.0	NORTHERN NATURAL
8241588	F-7C-052495	4238332012		103		UNIVERSITY "15" #6	BLOCK 49 (2450)	1.5	NORTHERN NATURAL
-MAY PETROLEUM INC				RECEIVED:		07/01/82 JA: TX			
8241724	F-10-052896	4219530836		103		GRUBBS #1	GRUNVER NW (MORROW UP	55.0	
8241767	F-10-053028	4229531143		102-4		SCHULTZ #2	SKUNK CREEK (HELPER)	109.5	
-MCCOMMONS OIL COMPANY				RECEIVED:		07/01/82 JA: TX			
8241448	F-09-051832	4249700000		108		OLLIE CULWELL #1	BOONSVILLE BEND (CONG	18.0	NATURAL GAS PIPEL
-MCCORD EXPLORATION				RECEIVED:		07/01/82 JA: TX			
*8241509	F-04-052179	4235500000		102-4		MCCORD-C N COOKE #2	WILDCAT	1000.0	HOUSTON PIPELINE
-MCFARLANE OIL CO INC				RECEIVED:		07/01/82 JA: TX			
8241478	F-02-052003	4246931664		103		PICKERING & ROOS #41	PLACEDO FIELD	0.0	TENNECO CHEMICALS
-MEG PETROLEUM CORP				RECEIVED:		07/01/82 JA: TX			
8241609	F-7C-052555	4223531865		102-2	103	LOPEZ CREEK #2	ROCK PEN (CANYON)	108.7	NORTHERN NATURAL
8241709	F-7C-082853	4223531910		102-2	103	LOPEZ CREEK #4	ROCK PEN (CANYON)	108.7	NORTHERN NATURAL
*8241708	F-7C-052852	4223531901		102-2	103	ROCK PEN NORTH #4	ROCK PEN (CANYON)	153.7	CRA INC
-MERCURY EXPLORATION CO				RECEIVED:		07/01/82 JA: TX			
8241496	F-7B-052106	4208332686		102-4		COLEMAN-BARR #1-A-R	THUNDECLOUD - GRAY SA	11.0	LONE STAR GAS CO
-MICHAEL J THOMAS INTERESTS INC				RECEIVED:		07/01/82 JA: TX			
8241659	F-08-052700	4247532326		103		BENTLEY P-1	WARD SOUTH	6.0	WARREN PETROLEUM
8241662	F-08-052703	4247532324		103		BENTLEY S-1	WARD SOUTH	6.0	WARREN PETROLEUM
8241661	F-08-052702	4247532489		103		BENTLEY S-4	WARD SOUTH	10.0	WARREN PETROLEUM
8241660	F-08-052701	4247532466		103		BENTLEY Z-1	WARD SOUTH	6.0	WARREN PETROLEUM
8241658	F-08-052699	4247532487		103		BENTLEY Z-3	WARD SOUTH	6.0	WARREN PETROLEUM
-MILLS BENNETT ESTATE				RECEIVED:		07/01/82 JA: TX			
8241563	F-04-052460	4204700000		108		BENNETT MILLS ESTATE FEE #22	MILLS BENNETT (D SAND	0.0	TEXAS EASTERN TRA

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8241561	F-04-052457	4204700000		108		BENNETT MILLS ESTATE FEE #3	MILLS BENNETT A SAND	0.0	TEXAS EASTERN TRA
8241564	F-04-052461	4204700000		108		BENNETT MILLS ESTATE FEE #37	MILLS BENNETT (P SAND	0.0	TEXAS EASTERN TRA
8241562	F-04-052459	4204700000		108		BENNETT MILLS ESTATE FEE #8	MILLS BNNETT (J SAND)	0.0	TEXAS EASTERN TRA
-MITCHELL ENERGY CORPORATION				RECEIVED:		07/01/82 JA: TX			
8241616	F-78-052584	4236731910		102-2		HOWARD SPRAGUE #1 #89377	RENO (CONGL)	150.0	SOUTHWESTERN GAS
8241492	F-78-052077	4214330143		102-2		MARGARET BROOKS #2 #77441	TEXOLINE (MARBLE FALL	100.0	
8241493	F-78-05207	4214330142		102-2		ROSS SEGAL #2 #91994	TEXOLINE (MARBLE FALL	70.0	
8241511	F-09-052202	4249700000		108		W H PORTWOOD #1 #35363	BOONSVILLE (BEND CONG	10.3	NATURAL GAS PIPEL
-MOBIL PRDG TEXAS & NEW MEXICO INC				RECEIVED:		07/01/82 JA: TX			
8241515	F-08-052229	4230130346		102-4		J LOGAN ABERNATHY "B" #1	DIMMIT (CHERRY CANYON	23.7	INTRATEX GAS CO
8241514	F-08-052227	4230130345		102-4		W D JOHNSON ET AL "D" #2	DIMMIT (CHERRY CANYON	32.1	INTRATEX GAS CO
8241513	F-08-052226	4230130351		102-4		W D JOHNSON ET AL "L" #1	DEMMIT (CHERRY CANYON	140.2	INTRATEX GAS CO
8241606	F-08-052541	4230130350		102-4		W D JOHNSON ET AL D #3	DIMMIT (CHERRY CANYON	26.8	INTRATEX GAS CO
-MONSANTO COMPANY				RECEIVED:		07/01/82 JA: TX			
8241592	F-7C-052512	4245130921		103		HARVEY WILDE "A" #3	SUSAN PEAK NORTH (CAN	0.0	ARCO OIL & GAS CO
8241591	F-08-052511	4231732480		103		UNIVERSITY MAK 6-41 #2	MAK (SPRAYBERRY)	11.0	PHILLIPS PETROLEU
-MOODY ENERGY CO				RECEIVED:		07/01/82 JA: TX			
8241783	F-10-053067	4221131410		103		WRIGHT NO 6 WELL (ID NO 098223)	CANADIAN SE (DOUGLAS)	0.0	NORTHERN NATURAL
-MOORE MCCORMACK OIL & GAS CORP				RECEIVED:		07/01/82 JA: TX			
8241725	F-05-052897	4228930421		102-4		LEON PLANTATION #1	HOLT (PETTIT)	213.2	TEXAS UTILITIES F
-MORAN EXPLORATION INC				RECEIVED:		07/01/82 JA: TX			
8241405	F-7C-051291	4238331906		103		UNIVERSITY 6A #1	TEXON WEST (SPRABERRY	0.0	PHILLIPS PETROLEU
8241406	F-7C-051293	4238331994		103		UNIVESITY 3258 #1	SPRABERRY (TREND AREA	0.0	PHILLIPS PETROLEU
-MORROW RESOURCES INC				RECEIVED:		07/01/82 JA: TX			
8241704	F-7C-052839	4245130911		102-2	103	BROWN "A" #4	K W B (STRAWN)	77.4	LONE STAR GAS CO
8241705	F-7C-052840	4245130910		102-2	103	MATHEWS #4	K W B (STRAWN)	66.6	LONE STAR GAS CO
-MOSBACHER PRODUCTION CO				RECEIVED:		07/01/82 JA: TX			
8241486	F-03-052034	4205131627		102-2		ROBERT SPEARMAN "B" NO 2	N E CALDWELL (GEORGET	47.0	CLAJON GAS CO
-MURJO OIL & ROYALTY CO				RECEIVED:		07/01/82 JA: TX			
8241559	F-09-052458	4223734254		102-4		C C HENDERSON TRUST #1	REBA (4900)	32.0	SOUTHWESTERN GAS
-N T E OF NORMAN OKLAHOMA INC				RECEIVED:		07/01/82 JA: TX			
8241691	F-09-052794	4218130844		103		BYRD PICKENS #4	SOUTHMAYD N E (LOWER	22.0	WARREN PETROLEUM
-NEV-TEX OIL & GAS INC				RECEIVED:		07/01/82 JA: TX			
8241596	F-78-052525	4208331561		103		DOROTHY FAYE #1 (080605)	BERRYMAN (KICHI CREEK	48.0	ODESSA NATURAL CO
8241595	F-78-052524	4208331648		103		DOROTHY FAYE #2 (081594)	BERRYMAN (KICHI CREEK	37.0	ODESSA NATURAL CO
8241594	F-78-052523	4208331761		103		DOROTHY FAYE #3 (083568)	BERRYMAN (KICHI CREEK	29.0	ODESSA NATURAL CO
8241597	F-78-052526	4238300000		102-4		SUZANNE #1 (16913)	CONSER-MURPHY (CROSSC	20.0	ODESSA NATURAL CO
-NORTHRIDGE OIL CO				RECEIVED:		07/01/82 JA: TX			
8241733	F-09-052928	4200732329		103		CATHERINE SCHEFFE #2	ARROWHEAD CADDO	20.0	FAGADAU ENERGY CO
-ORIGINALA PETROLEUM CORP				RECEIVED:		07/01/82 JA: TX			
8241751	F-09-052988	4223733879		103		WILLIE RUTH RICHARDS ET AL NO 23	CARY-MAG (CONGLOMERAT	150.0	TEXAS UTILITES FU
-PAGE PETROLEUM INC				RECEIVED:		07/01/82 JA: TX			
8241482	F-03-052023	4206931279		102-2		META JOHNSON #3	N W GARWOOD (1960 MIO	100.0	HYDROCARBON GATHE
-PARALLEL PETROLEUM CORP				RECEIVED:		07/01/82 JA: TX			
8241532	F-8A-052315	4211500000		103		CLINE #1	CLINE FARMS (PENN)	0.0	TEXACO INC
-PAUL E CAMERON JR INC				RECEIVED:		07/01/82 JA: TX			
8241442	F-02-051793	4202500000		102-4		LEHRMAN #1	BERCLAIR SW (3200)	12.0	HOUSTON PIPELINE
-PETROLEUM CORPORATION OF TEXAS				RECEIVED:		07/01/82 JA: TX			
8241408	F-09-051347	4223734047		102-4		T H MARKS #1	HUNTER (CONGLOMERATE)	73.0	
-PHILLIPS PETROLEUM COMPANY				RECEIVED:		07/01/82 JA: TX			
8241625	F-08-052616	4213502680		108		G S ANDECTOR UNIT L-10	GOLDSMITH (CLEARFORK)	8.0	EL PASO NATURAL G
8241500	F-10-052131	4223300000		108		HAILE W B #1	PANHANDLE HUTCHINSON	0.0	GETTY OIL CO
8241584	F-08-052488	4213506428		108		M PENWELL #135	PENWELL	4.0	EL PASO NATURAL G

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8241585	F-08-052489	4213507289		108		N PENWELL #22	PENWELL	5.0	EL PASO NATURAL G
8241502	F-10-052134	4217900000		108		PHIL-PAMPA UNIT 14-6	PANHANDLE GRAY	0.0	GETTY OIL CO
8241581	F-10-052132	4235700000		108		ROPER #1	HORIZON CLEVELAND	0.0	
8241541	F-10-052374	4223300000		108		STARNES G #2	TEXAS HUGOTON	0.0	EL PASO NATURAL G
8241761	F-08-053014	4200304803		108		UNIVERSITY ANDREWS #101	EMBAR (PERMIAN)	8.0	EL PASO NATURAL G
8241760	F-08-053013	4200304802		108		UNIVERSITY ANDREWS 99	EMBAR (PERMIAN)	10.0	EL PASO NATURAL G
-PRO OIL				RECEIVED:	07/01/82	JA: TX			
8241483	F-7C-052024	4245130930		102-2	103	PRO OIL GLASS #4	S S R (CANYON UPPER)	50.0	EL PASO HYDROCARB
-QUINTEX PETROLEUM CORP				RECEIVED:	07/01/82	JA: TX			
8241734	F-02-052929	4228531634		102-4		RODEN-CLARK NO 1	LAVACA RIVER (2110)	154.0	
-R A W ENERGY CORP				RECEIVED:	07/01/82	JA: TX			
8241536	F-7B-052367	4236300000		102-4		RICHARDSON #1-L	BRAD (BASAL CONGLOMER	0.0	SOUTHWESTERN GAS
8241535	F-7B-052366	4236300000		102-4		RICHARDSON #1-U	RICHARDSON (4050)	0.0	SOUTHWESTERN GAS
-RALPH L WAY INC				RECEIVED:	07/01/82	JA: TX			
*8241768	F-7C-053030	4210532939		103		UNIVERSITY-DYCO "C" #1	FARMER (SAN ANDRES)	7.3	J L DAVIS
-RANKIN OIL CO				RECEIVED:	07/01/82	JA: TX			
8241795	F-08-053084	4200332463		103		ANITA #4	FUHRMAN MASCHO	9.0	PHILLIPS PETROLEU
8241489	F-08-052066	4200300000		102-4		BROWN F-1	WINTER K	108.0	PHILLIPS PETROLEU
8241791	F-08-053076	4200332689		103		LEONA D-1	FUHRMAN MASCHO	31.0	PHILLIPS PETROLEU
8241790	F-08-053074	4200332745		103		LEONA E-1	FUHRMAN MASCHO	10.0	PHILLIPS PETROLEU
8241786	F-08-053070	4200333007		103		PARKER "D" 2	FUHRMAN MASCHO	11.0	PHILLIPS PETROLEU
8241789	F-08-053073	4200332556		103		PARKER C-1	FUHRMAN MASCHO	10.0	PHILLIPS PETROLEU
8241788	F-08-053072	4200332557		103		PARKER C-2	FUHRMAN MASCHO	13.0	PHILLIPS PETROLEU
8241787	F-08-053071	4200333008		103		PARKER D-1	FUHRMAN MASCHO	27.0	PHILLIPS PETROLEU
8241785	F-08-053069	4200332168		103		PEBSWORTH B-1	NIX SOUTH	69.0	PHILLIPS PETROLEU
8241784	F-08-053068	4200332421		103		SAM-1	FUHRMAN MASCHO	14.0	PHILLIPS PETROLEU
-RAPADA ENERGY INC				RECEIVED:	07/01/82	JA: TX			
8241549	F-7C-052419	4244330295		103		PAKENHAM RANCH 31 WELL #1	ALLISON (DEVONIANE	0.0	VALERO TRANSMISSI
-REALITOS ENERGY CORP				RECEIVED:	07/01/82	JA: TX			
8241503	F-02-052141	4223900000		102-4		MAURITZ ESTATE NO 2-T	MAURITZ (6435)	150.0	DELHI GAS PIPELIN
-RELIANCE ENERGY & MINERALS CORP				RECEIVED:	07/01/82	JA: TX			
8241451	F-03-051841	4205131153		102-2		NORMAN #1	GIDDINGS (AUSTIN CHAL	0.0	FERGUSON CROSSING
-RENDOVA OIL CO				RECEIVED:	07/01/82	JA: TX			
8241706	F-08-052841	4238931236		102-4	103	WORSHAM NO 4	SCOTT (CHERRY CANYON)	190.5	INTRATEX GAS CO
-REO INDUSTRIES INC				RECEIVED:	07/01/82	JA: TX			
8241801	F-10-053090	4223300000		103		WHITTENBURG 1-13A	PANHANDLE HUTCHINSON	7.2	TRANS-PAN PIPELIN
8241800	F-10-053089	4223300000		103		WHITTENBURG 1-26	PANHANDLE HUTCHINSON	7.2	TRANS-PAN PIPELIN
8241485	F-10-052033	4223300000		103		WHITTENBURG 2-11	PANHANDLE HUTCHINSON	7.2	TRANS-PAN PIPELIN
8241499	F-10-052121	4223300000		103		WHITTENBURG 3-17	PANHANDLE HUTCHINSON	7.2	TRANS-PAN PIPELIN
8241546	F-10-052395	4223300000		103		WHITTENBURG 32-1	PANHANDLE HUTCHINSON	7.2	TRANS-PAN PIPELIN
8241547	F-10-052396	4223300000		103		WHITTENBURG 32-2	PANHANDLE HUTCHINSON	7.2	TRANS-PAN PIPELIN
8241799	F-10-053088	4223300000		103		WHITTENBURG 32-3	PANHANDLE HUTCHINSON	7.2	TRANS-PAN PIPELIN
-RHODES DRILLING CO				RECEIVED:	07/01/82	JA: TX			
8241498	F-7B-052071	4205933155		102-4		HOWARD JOHNSON #1	CARM (GRAY)	18.0	UNION TEXAS PETRO
8241491	F-7B-052072	4205933154		102-4		STELLA JOHNSON #2 (17543)	CARM (GRAY)	177.0	UNION TEXAS PETRO
-RICHARD R DARNER				RECEIVED:	07/01/82	JA: TX			
8241409	F-01-051353	4250700000		103		JONSSON GRIFFIN PERLITZ NO 3	PILOSA EAST (2ND SAN	25.0	SONCETT ENERGY IN
-RK PETROLEUM CORP				RECEIVED:	07/01/82	JA: TX			
8241667	F-8A-052732	4211531563		102-4		MERRILL A NO 2 WELL #63888	LAMESA NORTH (7850)	18.2	PHILLIPS PETROLEU
8241668	F-8A-052733	4211531491		102-4		MERRILL B #2 WELL #63394	LAMESA NORTH (7850)	14.6	PHILLIPS PETROLEU
8241666	F-8A-052731	4211531674		102-4		NORET A NO 1 WLL #63786	CMI (SPRABERRY)	61.6	PHILLIPS PETROLEU
-ROBERT L BRADFORD				RECEIVED:	07/01/82	JA: TX			
8241748	F-7B-052981	4213300000		108		C E TERRELL #2 (01636)	EASTLAND COUNTY REGUL	29.0	LONE STAR GAS CO

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
-ROMAC OIL CO INC				RECEIVED:	07/01/82	JA: TX			
8241487	F-7B-052040	4244733048		102-4		HAYRICK #1 (18119)	MCKNIGHT S (CONGL)	16.0	GREAT WESTERN GAS
8241444	F-7B-051796	4244700000		108		MCKNIGHT #5 (079835)	THROCKMORTON COUNTY R	0.0	GREAT WESTERN GAS
-S & J OPERATING CO				RECEIVED:	07/01/82	JA: TX			
8241738	F-09-052941	4223733572		103		CHOWNING NO 1	JACK COUNTY REGULAR G	182.5	CITIES SERVICE OI
8241736	F-09-052939	4223733039		103		GLEASON #2	JACK COUNTY REGULAR	8.4	CITIES SERVICE OI
8241737	F-09-052940	4223733223		103		SPILLER #1	CRAFTON WEST CADDO OI	14.2	CITIES SERVICE OI
-S A C OIL & GAS INC				RECEIVED:	07/01/82	JA: TX			
8241679	F-7B-052763	4208331631		103		KOENIG #1 (17664)	COLEMAN COUNTY REGULA	53.0	SOUTHWESTERN GAS
8241678	F-7B-052762	4208300000		103		KOENIG "A" #3 (17665)	COLEMAN COUNTY REGULA	0.0	SOUTHWESTERN GAS
8241677	F-7B-052761	4208331632		103		RUBY HUNTER #1 (16505)	COLEMAN COUNTY REGULA	8.8	SOUTHWESTERN GAS
-SABINE PRODUCTION COMPANY				RECEIVED:	07/01/82	JA: TX			
8241657	F-08-052683	4210300000		103		D K GLENN "W" #2	ABELL (PERMIAN-GENERA	0.0	
-SAMEDAN OIL CORPORATION				RECEIVED:	07/01/82	JA: TX			
8241472	F-8A-051940	4216532070		103		SOUTH CENTRAL ROBERTSON #16	ROBERTSON NORTH/CLEAR	0.0	PHILLIPS PETROLEU
8241471	F-8A-051939	4216532068		103		SOUTH CENTRAL ROBERTSON #56	ROBERTSON NORTH/CLEAR	0.0	PHILLIPS PETROLEU
-SANTA FE-WINDSOR PRODUCING CO				RECEIVED:	07/01/82	JA: TX			
8241465	F-03-051893	4228731142		103		JATZLAU #1 UNIT	GIDDINGS (AUSTIN CHAL	36.5	PERRY PIPELINE CO
8241441	F-03-051769	4228731090		102-2	103	MARY #1	GIDDINGS (AUSTIN CHAL	36.5	PERRY PIPELINE CO
8241464	F-03-051892	4228731162		103		META UNIT #1	GIDDINGS (AUSTIN CHAL	36.5	PERRY PIPELINE CO
-SAXON OIL COMPANY				RECEIVED:	07/01/82	JA: TX			
8241590	F-08-052505	4211531480		103		ECHOLS #1	BREEDLOVE (SPRABERRY)	14.6	PHILLIPS PETROLEU
-SECURE TRUSTS				RECEIVED:	07/01/82	JA: TX			
8241630	F-7B-052627	4208332595		103		A R NEFF #1	GAYLE	43.0	SOUTHWESTERN GAS
8241629	F-7B-052626	4208332829		103		A R NEFF #2	GAYLE	36.0	SOUTHWESTERN GAS
-SEELY OIL CO				RECEIVED:	07/01/82	JA: TX			
8241632	F-7B-052629	4242932695		102-4		BLACK "24" 16982	HORNSBY (DUFFER)	3.1	GREAT WESTERN GAS
-SENTINEL PETROLEUM CORP				RECEIVED:	07/01/82	JA: TX			
8241543	F-7B-052378	4213333153		102-4		TREYBIG WELL NO 1-1SE #15463	MANGUM WEST (3100)	0.0	
-SHELL OIL CO				RECEIVED:	07/01/82	JA: TX			
*8241719	F-8A-052872	4250131935		103		DENVER UNIT WELL #4236 GC (GAS CAP)	WASSON	91.3	SHELL OIL CO
*8241718	F-8A-052871	4250132050		103		DENVER UNIT WELL NO 5717	WASSON	38.3	SHELL OIL CO
*8241717	F-8A-05287	4250132046		103		DENVER UNIT WELL NO 5906	WASSON	13.9	SHELL OIL CO
8241720	F-8A-052875	4250131920		103		OWNBY SAN ANDRES UNIT WELL #66	OWNBY	51.1	AMOCO PRODUCTION
-SOHIO PETROLEUM CO				RECEIVED:	07/01/82	JA: TX			
8241566	F-7C-052467	4217331246		103		J C BRYANS "B" WELL NO 5	CALVIN (DEAN)	45.0	EL PASO NATURAL G
-SOUTHLAND ROYALTY CO				RECEIVED:	07/01/82	JA: TX			
8241777	F-08-053052	4213533782		103		EDWARDS GRAYBURG UNIT #6-9	EDWARDS	14.0	PHILLIPS PETROLEU
-STAR DUST MINES INC				RECEIVED:	07/01/82	JA: TX			
8241613	F-10-052572	4223300000		103		JAMESON 1C	PANHANDLE HUTCHINSON	440.0	PANHANDLE PRODUCI
-STOWERS OIL & GAS				RECEIVED:	07/01/82	JA: TX			
8241743	F-10-052970	4217903100		103		MATHERS #2 RRC #04963	PANHANDLE GRAY COUNTY	72.0	NORTHERN NATURAL
-SUN EXPLORATION & PRODUCTION CO				RECEIVED:	07/01/82	JA: TX			
8241573	F-8A-052475	4250132136		103		BENNETT RANCH UNIT #329	WASSON	4.0	SHELL OIL CO
8241663	F-01-052706	4212732189		103		BIG WELLS (SAN MIGUEL) UNIT #4802	BIG WELLS (SAN MIGUEL	7.0	HOUSTON PIPELINE
8241647	F-7B-052660	4243331312		103		BOYD CONGLOMERATE UNIT #71	BOYD (CONGLOMERATE)	0.4	CITIES SERVICE CO
8241414	F-03-051440	4207131264		102-4		C L WAKEFIELD #7	WILLOW SLOUGH	18.0	UNITED TEXAS TRAN
8241574	F-8A-052476	4221933303		103		CENTRAL LEVELLAND UNIT #265	LEVELLAND	5.0	AMOCO PRODUCTION
8241771	F-7C-053037	4208131070		103		CENTRAL NATIONAL BANK #22	LYGAY	63.0	LONE STAR GAS CO
8241572	F-04-052474	4242700000		108		FRANCISCO G DE PEREZ #2	SUN	12.0	TRANSCONTINENTAL
8241576	F-01-052478	4212732212		103		G G BOYD #34	PEARSALL (AUSTIN CHAL	44.0	HOUSTON PIPELINE
8241686	F-7B-052780	4235331233		102-4		GERTRUDE WITHERS #8	WITHERS ELLENBURGER	9.0	PALO DURO PIPELIN
8241685	F-7B-052779	4208131086		103		JAMESON REEF UNIT NO 11-68	JAMESON	187.0	LONE STAR GAS CO

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
*8241415	F-8A-051463	4207931370		103		LEAGUE 91 PROJECT NO 3-13	SLAUGHTER	6.0	AMOCO PRODUCTION
8241577	F-08-052479	4249531288		103		M J HILL -23A- #28	HALLEY (GLORIETA)	39.0	TRANSWESTERN PIPE
8241579	F-08-052482	4249531302		103		M J HILL -23A- #31	HALLEY	95.0	TRANSWESTERN PIPE
8241646	F-8A-052658	4221933306		103		MALLET LAND & CATTLE CO A/C-1 #8	SLAUGHTER	1.0	AMOCO PRODUCTION
8241575	F-8A-052477	4221933417		103		NORTHEAST LEVELLAND UNIT #23	LEVELLAND	6.0	AMOCO PRODUCTION
8241772	F-8A-053038	4221933332		103		O A HEATH #8	LEVELLAND	2.0	AMOCO PRODUCTION
8241582	F-8A-052485	4221933203		103		S E LEVELLAND UNIT #272	LEVELLAND	2.0	AMOCO PRODUCTION
8241571	F-04-052473	4224900000		108		SEELIGSON UNIT NO 17-51	SELIGSON UNIT/COMBINE	18.0	TENNESSEE GAS PIP
8241432	F-03-051629	4216730799		103		SIMPTON #6	CAPLEN (FB35S) GAS 10	38.0	TEXAS GAS PIPELIN
8241645	F-8A-052657	4221933330		103		SOUTHEAST LEVELLAND UNIT #275	LEVELLAND	2.3	AMOCO PRODUCTION
8241687	F-08-052781	4233531704		103		STUBBLEFIELD MCCABE UT #1	JAMESON N (STRAWN)	16.0	LONE STAR GAS CO
8241578	F-03-05248	4203900000		103		THOMAS JAMISON #95	DANBURY DOME (3680)	9.0	EXXON PIPE LINE C
8241581	F-08-052484	4210332698		103		UNIVERSITY "L" #12	DUNE	4.0	PHILLIPS PETROLEU
8241580	F-08-052483	4210332709		103		UNIVERSITY "L" #14	DUNE	4.0	PHILLIPS PETROLEU
8241648	F-08-052661	4210332710		103		UNIVERSITY "L" NO 16	DUNE	0.4	PHILLIPS PETROLEU
8241688	F-8A-052782	4250132154		103		WASSON NORTH CLEARFORK UT #90	WASSON N E (CLEAR FOR	17.0	SHELL OIL CO
-TAMARACK PETROLEUM CO INC				RECEIVED:	07/01/82	JA: TX			
8241633	F-08-052631	4231732366		103		CAIN UNIT #1 (RRC #27007)	SPRABERRY (TREND AREA	15.0	PHILLIPS PETROLEU
8241637	F-08-052635	4231700000		103		FORREST #1 (RRC #27102)	SPRABERRY (TREND AREA	16.0	PHILLIPS PETROLEU
8241639	F-08-052637	4217331839		103		H W HOELSCHER "B" #1 (RRC #25892)	SPRABERRY (TREND AREA	18.0	PHILLIPS PETROLEU
8241635	F-08-052633	4231732362		103		KOONCE #1 (RRC #26954)	SPRABERRY (TREND AREA	15.0	PHILLIPS PETROLEU
8241636	F-08-052634	4231732306		103		LINDSEY UNIT #1 (RRC #26705)	SPRABERRY (TREND AREA	14.0	PHILLIPS PETROLEU
8241648	F-08-052638	4231732348		103		STANTON TOWNSITE I #1 (RRC #26913)	SPRABERRY (TREND AREA	0.0	PHILLIPS PETROLEU
8241638	F-7C-052636	4238331603		103		WEATHERBY H #1 (RRC #08386)	SPRABERRY (TREND AREA	18.0	PHILLIPS PETROLEU
8241634	F-7C-052632	4238331954		103		WEATHERBY K #1 (RRC #09226)	SPRABERRY (TREND AREA	17.0	PHILLIPS PETROLEU
-TAUBERT & STEED				RECEIVED:	07/01/82	JA: TX			
8241684	F-8A-052775	4226930937		102-4		S B BURNETT ESTATE "GG" #13 /62434	BIG -S- (STRAWN REEF)	1.9	LONE STAR GAS CO
8241683	F-8A-052772	4229000000		102-4		S B BURNETT ESTATE "GG" #14	BIG -S- (STRAWN 5400)	1.9	LONE STAR GAS CO
-TAYLOR BROTHERS OIL CO				RECEIVED:	07/01/82	JA: TX			
8241753	F-10-053001	4234130761		103		DOTTIE #3 #04547	PANHANDLE MOORE COUNT	10.0	PHILLIPS PETROLEU
8241752	F-10-053000	4234130762		103		DOTTIE #4 #04547	PANHANDLE MOORE COUNT	5.0	PHILLIPS PETROLEU
8241754	F-10-053003	4234130778		103		MITCH AND MITZIE "H" #20	PANHANDLE MOORE COUNT	5.0	PHILLIPS PETROLEU
-TAYLOR OPERATING COMPANY				RECEIVED:	07/01/82	JA: TX			
8241759	F-09-053009	4223700000		103		CHERRYHOMES #1 (21978)	JACK COUNTY REGULAR	21.5	LONE STAR GAS CO
8241758	F-09-053008	4207700000		103		COLEMAN NO 1 (21694)	CLAY COUNTY REGULAR	12.4	LONE STAR GAS CO
8241757	F-09-053007	4207700000		103		COLEMAN NO 2 (21694)	CLAY COUNTY REGULAR	4.4	LONE STAR GAS CO
8241461	F-09-051876	4223700000		103		PADGETT NEWMAN OIL UNIT #1	JACK COUNTY REGULAR	3.7	SOUTHWESTERN GAS
8241756	F-09-053005	4207700000		103		SEGLER #3 (22040)	JOY NORTHEAST (ELLENB	1.1	LONE STAR GAS CO
8241755	F-7B-053004	4222100000		103		SQUAW CREEK NO 1 (098173)	MCINTOSH (STRAWN)	15.3	SOUTHWESTERN GAS
8241462	F-7B-051877	4213300000		103		STEVENS #1 (98662)	SIPE SPRINGS (MARBLE	61.3	LONE STAR GAS CO
-TEE OPERATING CO				RECEIVED:	07/01/82	JA: TX			
8241453	F-03-051844	4248132088		102-4		LOUISE HARLOW D	HILLJE W (FRIO 7100)	0.0	ODESSA NATURAL CO
-TEXACO INC				RECEIVED:	07/01/82	JA: TX			
8241782	F-09-053061	4223700000		108		C C STRICKLAND "B" GU NO 1-L	BOONSVILLE (BEND CONG	5.7	LONE STAR GAS CO
8241395	F-8A-051230	4221933354		103		IRA P DELOACHE #28	LEVELLAN	8.0	AMOCO
8241403	F-08-051269	4213500000		108		J E PARKER A #1	HARPER	1.2	PHILLIPS PETROLEU
8241402	F-08-051267	4213500000		108		J E PARKER A #3	HARPER	4.8	PHILLIPS PETROLEU
8241404	F-08-051271	4213500000		108		J E PARKER A #4	HARPER	6.2	PHILLIPS PETROLEU
8241400	F-08-051265	4213500000		108		J E PARKER A #6	HARPER	2.5	PHILLIPS PETROLEU
8241401	F-08-051266	4213500000		108		J E PARKER A #7	HARPER	2.3	PHILLIPS PETROLEU
8241399	F-08-051264	4213500000		108		J E PARKER A #8	HARPER	1.7	PHILLIPS PETROLEU
8241398	F-08-051263	4213500000		108		J E PARKER A #9	HARPER	1.4	PHILLIPS PETROLEU
8241397	F-08-051262	4213500000		108		J E PARKER A NO 10	HARPER	1.8	PHILLIPS PETROLEU

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
-TEXAS GENERAL PETROLEUM CORP				RECEIVED:	07/01/82	JA: TX			
8241393	F-01-051196	4217731440		102-2		FRANK J ZAVADIL #1	CHRISTIAN 6800' FIELD	41.0	
8241394	F-01-051225	4217731076		102-2		MALATEK #1	MALATEK (BUDA)	1806.0	
-TEXAS INTERNATIONAL PET CORP				RECEIVED:	07/01/82	JA: TX			
8241427	F-03-051601	4205100000		102-2		GUELKER #2	GIDDINGS (AUSTIN CHAL	192.0	CLAJON GAS CO
8241428	F-03-051602	4205100000		102-2		LAMB A-5	GIDDINGS (AUSTIN CHAL	115.0	CLAJON GAS CO
8241426	F-03-051600	4205100000		102-2		SCHINDLER BIRCH CREEK RANCH #3	GIDDINGS (AUSTIN CHAL	230.0	CLAON GAS CO
-TEXAS OIL & GAS CORP				RECEIVED:	07/01/82	JA: TX			
8241593	F-05-052515	4216130473		103	107-TF	DESHAZO #1	TEAGUE (BOSSIER SAND)	0.0	LONE STAR GAS CO
-THRIFTY GAS AND TRANSMISSION CO				RECEIVED:	07/01/82	JA: TX			
8241626	F-7B-052620	4204932805		103		D L BOWERS 1-A	BROWN COUNTY REGULAR	5.3	EL PASO HYDROCARB
-THROCKMORTON GAS SYSTEMS				RECEIVED:	07/01/82	JA: TX			
8241512	F-7B-052180	4244700000		102-2		BARNEY DAVIS ESTATE WELL #1 (13863)	CONDRON (N MISS)	6.0	WARREN PETROLEUM
-TOM F MARSH INC				RECEIVED:	07/01/82	JA: TX			
8241435	F-10-051648	4248330729		107-DP		C ZYBACH #1-14	ZYBACH (15,000)	335.0	COLORADO INTERSTA
-TOTAL ENERGY CO OF TEXAS				RECEIVED:	07/01/82	JA: TX			
8241747	F-10-052980	4217900000		108		JOHNSON #101	PANHANDLE GRAY	0.0	PHILLIPS PETROLEU
8241745	F-10-052978	4217900000		108		JOHNSON #102	PANHANDLE GRAY	0.0	PHILLIPS PETROLEU
8241746	F-10-052979	4217900000		108		JOHNSON #103	PANHANDLE GRAY	0.0	PHILLIPS PETROLEU
-TRANSWESTERN GAS SUPPLY CO				RECEIVED:	07/01/82	JA: TX			
*8241642	F-10-052639	4239330156		108		O R TIPPS #1	ST CLAIR (GRANITE WAS	16.0	TRANSWESTERN PIPE
8241631	F-08-052628	4237131403		108		THEO WINFIELD ET AL "D" #2	GOMEZ (WOLFCAMP)	6.0	TRANSWESTERN PIPE
-UNION OIL COMPANY OF CALIF				RECEIVED:	07/01/82	JA: TX			
8241649	F-08-052666	4208332971		103		BLK 10 FUHRMAN-MASCHO UNIT #508	FUHRMAN-MASCHO	1.0	PHILLIPS PETROLEU
-W A MONCRIEF & SONS				RECEIVED:	07/01/82	JA: TX			
8241544	F-09-052382	4223700000		108		H H MCCONNELL #3	BOONSVILLE (BEND CONG	15.6	LONE STAR GAS CO
-W B ANDERSON & JACK JOURGENSON				RECEIVED:	07/01/82	JA: TX			
8241749	F-7B-052983	4213331103		103		JOHNSON #1 (13860)	FOSTER (MARBLE FALLS)	82.0	EL PASO HYDROCARB
-W R EDWARDS JR				RECEIVED:	07/01/82	JA: TX			
8241494	F-10-052090	4223300002		103		BEARKILLER #28	PANHANDLE HUTCHINSON	350.0	PANHANDLE PRODUCI
-WAGNER & BROWN				RECEIVED:	07/01/82	JA: TX			
*8241623	F-08-052608	4243131092		103		HILDEBRAND #45-20	CONGER (PENN)	102.0	VALERO TRANSMISSI
-WARREN PETR CO A DIV OF GULF OIL CO				RECEIVED:	07/01/82	JA: TX			
8241628	F-08-052624	4247532498		103		UNIVERSITY 18-29 #3	WAR-WINK S (WOLFCAMP)	87.0	VALERO TRANSMISSI
-WESSELY ENERGY CORPORATION				RECEIVED:	07/01/82	JA: TX			
8241516	F-05-052230	4246730510		103		WELLS # 098170	CANTON (SMACKOVER 12,	220.0	TEXAS UTILITIES F
-WILLIAM HERBERT HUNT TRUST ESTATE				RECEIVED:	07/01/82	JA: TX			
8241565	F-04-052464	4200700000		107-PE		BANKERS MORTGAGE "A" NO 1	SW COPANO BAY (0-8)	182.5	VALLEY PIPE LINES
-WILLIAM PERLMAN				RECEIVED:	07/01/82	JA: TX			
8241655	F-7C-052679	4243530255		108		ADA CAUTHORN 4 #1	SHURLEY RANCH (CANYON	0.0	EL PASO NATURAL G
8241656	F-7C-052680	4243532142		108		GEORGE BROCKMAN 64 #3	SAWYER (CANYON)	0.0	EL PASO HYDROCARB
-WILLIAMS PETROLEUM CO				RECEIVED:	07/01/82	JA: TX			
8241466	F-7B-051900	4236300000		108		KENDRICKS #2	GRAFORD (BEND CONGLOM	7.2	SOUTHWESTERN GAS
-WOOD MCSHANE & THAMS				RECEIVED:	07/01/82	JA: TX			
8241548	F-08-052408	4200331559		108		ALEXANDER #1 RRC #075046	BLOCK A-34 (YATES)	2.1	EL PASO NATURAL G
-WOODS PETROLEUM CORPORATION				RECEIVED:	07/01/82	JA: TX			
8241455	F-8A-051860	4207931503		102-4	103	RJR RANCH #8-2	BONANZA (SAN ANDRES)	5.0	WARREN PETROLEUM
8241456	F-8A-051863	4207931480		102-4	103	SANTE FE #2	BONANZA (SAN ANDRES)	5.0	WARREN PETROLEUM
-WORLD PRODUCERS INC				RECEIVED:	07/01/82	JA: TX			
8241728	F-7B-052921	4236731957		108		EARL KING #2	MOBY DICK (CONGL)	20.5	SOUTHWESTERN GAS
8241727	F-7B-052920	4236731440		108		L C ROY BYRD #1	MOBY DICK (STRAWN)	12.0	NATURAL GAS PIPEL
8241726	F-7B-052919	4236731762		108		L S BYRD #4	MOBY DICK (CONGL)	9.5	NATURAL GAS PIPEL
8241729	F-7B-052922	4236732002		108		LAMB #2	CLAYTON (CONGL)	12.5	SOUTHWESTERN GAS

VOLUME 695 PAGE 012

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8241732	F-7C-052925	4243531188		108		MAYER RANCH #1	MAYER RANCH (CANYON)	13.0	NORTHERN NATURAL
8241731	F-7C-052924	4243532104		108		MAYER RANCH "A" #4	MAYER RANCH (CANYON)	13.0	NORTHERN NATURAL
8241730	F-7C-052923	4243532161		108		MAYER RANCH "B" #5	MAYER RANCH (CANYON)	6.0	NORTHERN NATURAL
-MY-VEL CORP				RECEIVED:	07/01/82	JA: TX			
8241774	F-10-053043	4206531086		103		AEBERSOLD (84904) #4	PANHANDLE-CARSON COUN	135.0	GETTY OIL CO
8241421	F-10-051548	4217931026		103		O'NEAL (05037) #1	PANHANDLE-GRAY COUNTY	140.0	GETTY OIL CO
-ZINN PETROLEUM CO				RECEIVED:	07/01/82	JA: TX			
8241615	F-03-052583	4232131058		102-4		PIERCE ESTATE #1	BAY PRAIRIE SOUTH	730.0	DOW CHEMICAL CO

OTHER PURCHASERS VOLUME NO :695

8241415	EL PASO NATURAL GAS CO
8241418	E I DUPONT DE NEMOURS & CO INC
8241433	E I DUPONT DE NEMOURS & CO INC
8241509	VALERO TRANSMISSION CO
8241527	E I DUPONT DE NEMOURS & CO INC
8241528	E I DUPONT DE NEMOURS & CO INC
8241529	E I DUPONT DE NEMOURS & CO INC
8241530	E I DUPONT DE NEMOURS & CO INC
8241531	E I DUPONT DE NEMOURS & CO INC
8241534	E I DUPONT DE NEMOURS & CO INC
8241560	E I DUPONT DE NEMOURS & CO INC
8241623	TEXAS UTILITIES FUEL CO
8241624	E I DUPONT DE NEMOURS & C INC
8241642	PACIFIC INTERSTATE TRANSMISSION CO
8241650	E I DUPONT DE NEMOURS & CO INC
8241651	E I DUPONT DE NEMOURS & CO INC
8241689	E I DUPONT DE NEMOURS & CO INC
8241690	E I DUPONT DE NEMOURS & CO INC
8241708	LONE STAR GAS CO
8241717	COLTEXO CORP
8241718	COLTEXO CORP
8241719	COLTEXO CORP
8241739	E I DE NEMOURS & CO INC
8241740	E I DUPONT DE NEMOURS & CO INC
8241766	E I DUPONT DENEMOURS & CO INC
8241768	EL PASO NATURAL GAS CO

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-20635 Filed 7-29-82; 8:45 am]

BILLING CODE 6717-01-C

Oil Pipeline; Tentative Valuation

The Federal Energy Regulatory Commission by order issued February 10, 1978, established an Oil Pipeline Board and delegated to the Board its functions with respect to the issuance of valuation reports pursuant to Section 19a of the Interstate Commerce Act.

Notice is hereby given that a tentative valuation is under consideration for the common carrier by pipeline listed below:

1980 Report

July 28, 1982.

[Valuation Docket No. PV—1455–000]

Ohio Oil Gathering Corp. II, P.O. Box 368, Emmaus, PA 18049

On or before September 3, 1982, persons other than those specifically designated in Section 19a(h) of the Interstate Commerce Act having an interest in this valuation may file, pursuant to rule 70 of the Interstate Commerce Commission's "General Rules of Practice" (49 CFR 1100.70), an original and three copies of a petition for leave to intervene in this proceeding.

If the petition for leave to intervene is granted the party may thus come within the category of "additional parties as the FERC may describe" under Section 19a(h) of the Act, thereby enabling it to file a protest. The petition to intervene must be served on the company at its address shown above and an appropriate certificate of service must be attached to the petition. Persons specifically designated in section 19a(h) of the Act need not file a petition; they are entitled to file a protest as a matter of right under the statute.

Francis J. Connor,

Administrative Officer, Oil Pipeline Board.

[FR Doc. 82–20701 Filed 7–29–82; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[TSH–FRL 2178–5; OPTS 46010]

Test Guidelines; Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces that the Office of Toxic Substances (OTS) Health Effects, Environmental Effects, and Chemical Fate Test Guidelines are now available through purchase from the National Technical Information Service (NTIS). The test guidelines will constitute one source of methodologies that can be cited in chemical-specific test rules promulgated under section 4(a) of the Toxic Substances Control Act (TSCA).

ADDRESS: Copies of the OTS Test Guidelines may be obtained by ordering them from: National Technical Information Service, 5282 Port Royal Drive, Springfield, Virginia 22161, (703) 487–4650.

FOR FURTHER INFORMATION CONTACT: Douglas G. Bannerman, Acting Director, Industry Assistance Office (TS–799), Office of Toxic Substances, Environmental Protection Agency, Rm. E–511, 401 M St. SW., Washington, D.C. 20460, Toll Free: (800–424–9065) In Washington, D.C.: (544–1404) Outside the USA: (Operator—202–554–1404).

SUPPLEMENTARY INFORMATION:

Background

The test guidelines will constitute one source of methodologies that can be cited in chemical-specific test rules promulgated under section 4(a) of TSCA. A discussion of this procedure was published in the **Federal Register** of March 26, 1982 (47 FR 13012). These guidelines cover state-of-the-art methods for providing information on health effects, environmental effects and chemical fate (physical, chemical and persistence characteristics). Support documentation is included for some of the guidelines. It is expected that modification of existing guidelines and the addition of new guidelines and support documentation will occur later as the state-of-the-art evolves or the need for them warrants. A mechanism for soliciting public comments on these guidelines, modification of existing guidelines, and introduction of new guidelines will be announced in the **Federal Register** at a later date.

Ordering Information

Since the set of test guidelines consists of three sections, please specify when ordering whether you wish to purchase the complete set or one or more sections are follows: Complete set of test guidelines, PB 82–232976—$125, Health effects test guidelines, PB 82–232984—$40, Environmental effects test guidelines, PB 82–232992—$60, Chemical fate test guidelines, PB 82–233008—$40.

Dated: July 16, 1982.

Don R. Clay,

Director, Office of Toxic Substances.

[FR Doc. 82–20675 Filed 7–29–82; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–2180–4]

Availability of Environmental Impact Statements Filed July 19 through July 23, 1982, Pursuant to 40 CFR Part 1506.9

RESPONSIBLE AGENCY: Office of Federal Activities, General Information 382–5075 or 382–5076.

Corps of Engineers:
- EIS #820495, Final, COE, SEV, TN, MS, Horn Lake Creek and Tributaries (Cow Pen Creek), Flood Control, Due: Aug. 30, 1982.
- EIS #820503, FSuppl, COE, MO, St. Johns Bayou and New Madrid Floodway Flood Control, Improvements, Due: Aug. 30, 1982.
- EIS #820500, FSuppl, COE, SEV, TN, MS, Monconnah Creek Basin Flood Control Plan, Due: Aug. 30, 1982.

Department of Justice:
- EIS #820501, Draft, BOP, OK, El Reno Alien Detention Center, Construction, Canadian County, Due: Sept. 13, 1982.

Department of Interior:
- EIS #820485, Draft, SFW, TX, Matagorda Island, Disposition of Federal Land (DOI/GSA), Calhoun Co., Due: Sept. 13, 1982.

Department of Transportation:
- EIS #820499, Draft, FHW, WA, I–405 HOV Improvement, I–90/Factoria to WA–520/Northup, King County, Due: Sept. 20, 1982.
- EIS #820496, Draft, FHW, GA, US 80/Island Expressway to GA–367/S–1132, Construction, Chatham, Co., Due: Sept. 16, 1982.
- EIS #820494, Final, FHW, VA, Potomac Yards Bridge (US 1/Monroe Ave) Replacement, Fairfax County, Due: Aug. 30, 1982.

Delaware River Basin Commission:
- EIS #820498, Draft, DRB, NJ, Merrill Creek Reservoir, Approval, Delaware River, Warren County, Due: Sept. 30, 1982.

Environmental Protection Agency:
- EIS #820489, Draft, EPA, TX, Galveston Bay Dredged Material, Ocean Disposal Site Designation, Due: Sept. 13, 1982.
- EIS #820497, Draft, EPA, OK, Norman WWT Facilities, Upgrading and Expansion, Grant, Cleveland Co., Due: Sept. 13, 1982.

General Services Administration:
- EIS #820491, Draft, GSA, TX, Matagorda Island, Disposition of Federal Land (GSA/DOI), Calhoun Co., Due: Sept. 13, 1982.

Department of Housing and Urban Development:
- EIS #820492, Draft, HUD, AZ, Sierra Vista Planned Community, Mortgage Insurance, Cochise County, Due: Sept. 13, 1982.

EIS #820490, Draft, HUD, UT, White Sage Housing Development, Mortgage Insurance, Millard County, Due: Sept. 13, 1982.

Nuclear Regulatory Commission:

EIS #820502, DSuppl, NRC, TN, Clinch River Breeder Reactor Plant, C/O Permit, Roane County, Due: Sept. 13, 1982.

Department of Agriculture:

EIS #820486, Draft, AFS, WA, Naches Pass Road Construction, Permit, Cascade Mountains, Due: Sept. 13, 1982.

EIS #820487, Final, AFS, CO, Adam's Rib Recreation Area, White River NF, Permit, Eagle County, Due: Aug. 30, 1982.

Amended Notice:

EIS #820465, Final, FHW, PA, I-70/LR-1071, Section 50 Relocation *Published FR 07-16-82—Officially Retracted due to noncompletion of distribution, Due.

Dated: July 26, 1982.

Paul C. Cahill,

Director, Office of Federal Activities.

[FR Doc. 82-20723 Filed 7-29-82; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

July 21, 1982.

On June 3, 1982, the Federal Communications Commission requested OMB authorization under the provisions of § 3507(g) of P.L. 96-511, Paperwork Reduction Act of 1980, to collect the information identified below. On June 30, 1982, OMB approved the requested authorization.

Title: Application Amendment Guide to FCC 346, Application for Construction Permit for Translator or Low Power Television Broadcast Station.

Action: New

OMB No.: 3060-0124

Approval Expires: 9/30/82

Non-recurring Requirement

Estimated Responses: 4,000

Estimated Burden Hours: 60,000

The Commission has specified a 90-day period from June 24, 1982 to September 21, 1982 for all applicants with pending applications for new low power television (LPTV) broadcast stations to submit amendments in order to bring their applications into conformance with the final low power television and TV translator rules in compliance with Report and Order FCC 82-107, released April 16, 1982. Applicants are requested to use this Application Amendment Guide in preparing and submitting the amendments during the specified period in order to speed the processing and to ensure that each amendment is associated with its proper application.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 82-20658 Filed 7-29-82; 8:45 am]

BILLING CODE 6712-01-M

[CC Docket No. 82-473, File No. 10490-CM-P-80 and CC Docket No. 82-474, File No. 10495-CM-P-80]

Microband Corp. of America and Hawkeye Outdoor Advertising, Inc.; Order Designating Applications for Consolidated Hearing on Stated Issues

Adopted: July 22, 1982.

Released July 28, 1982.

In re applications for construction permits in the multipoint distribution service for a new station at Fort Dodge, Iowa.

1. For consideration are the above-referenced applications.[1] These applications are for construction permits in the Multipoint Distribution Service and they propose operations on Channel 1 at Fort Dodge, Iowa. The applications are therefore mutually exclusive and, under present procedures, require comparative consideration. These applications have been amended as a result of informal requests by the Commission's staff for additional information. There are no petitions to deny or other objections under consideration.[2] [3]

2. Upon review of the captioned applications, we find that these applicants are legally, typically, financially, and otherwise qualified to provide the services which they proposed and that a hearing will be required to determine, on a comparative basis, which of these applications should be granted.

3. Accordingly, it is hereby ordered, That pursuant to Section 309(e) of the Communications Act of 1934, as amended, 47 U.S.C. 309(e) and Section 0.291 of the Commission's Rules, 47 CFR 0.291, the above-captioned applications are designated for hearing, in a consolidated proceeding, at a time and place to be specified in a subsequent Order, to determine, on a comparative basis, which of the above-captioned applications should be granted in order to best serve the public interest, convenience and necessity. In making such a determination, the following factors shall be considered:[4]

(a) The relative merits of each proposal with respect to efficient frequency use, particularly with regard to compatibility with co-channel use in nearby cities and adjacent channel use in the same city;

(b) The anticipated quality and reliability of the service proposed, including installation and maintenance programs; and

(c) The comparative cost of each proposed considered in context with the benefits of efficient spectrum utilization and the quality and reliability of service as set forth in issues (a) and (b).

4. It is further ordered, that Microband Corporation of America, Hawkeye Outdoor Advertising, Inc. and the Chief, Common Carrier Bureau, are made parties to this proceeding.

5. It is further ordered, that parties desiring to participate herein shall file their notices of appearance in accordance with the provisions of § 1.221 of the Commission's rules, 47 CFR 1.221.

6. The Secretary shall cause a copy of this Order to be published in the Federal Register.

James R. Keegan,

Chief, Domestic Facilities Division, Common Carrier Bureau.

[FR Doc. 82-20693 Filed 7-29-82; 8:45 am]

BILLING CODE 6712-01-M

[CC Docket No. 82-478, File No. 22992-CD-P-(1)-82 and CC Docket No. 82-479, File No. 22973-CD-P-(1)-82]

Mobilefone Service, Inc. and Fayetteville Communications, Inc.; Order Designating Applications for Consolidated Hearing on Stated Issues

Adopted July 22, 1982.

Released July 27, 1982.

In re applications for a construction permit for a new one-way station to operate on frequency 152.24 MHz in the Domestic Public Land Mobile Radio Service near Springdale, Arkansas, for a construction permit to add frquency 152.24 MHz to Station KDS376 to

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[1] On August 18, 1980, Tymshare, Inc. (Tymshare) and Arthur Lipper Corporation (ALC) executed a contract whereby ALC agreed to transfer control of Microband to Tymshare. *Transfer of Control/MDS*, 84 FCC 2d 1023 (1981).

[2] By Memorandum Opinion and Order adopted June 26, 1981 and released July 2, 1981, Mimeo No. 001863, Microband was granted an exemption from the Commission's "cut-off" rules pursuant to Section 21.31 of the Rules 47 CFR 21.31, to preserve the status of its pending mutually exclusive application.

[3] On June 26, 1981, Hawkeye Outdoor Advertising, Inc. (Hawkeye) filed a Petition to Dismiss or Deny Microband's application (10490-CM-P-80) alleging that Microband did not have an available site for construction. Upon consideration on February 5, 1982, the Common Carrier Bureau's staff found the petition to be without merit and denied the request by letter.

[4] Consideration of these factors shall be in light of the Commission's discussion in *Frank K. Spain*, 77 FCC 2d 20 (1980).

operate in the Domestic Public Land Mobile Radio Service at Fayette, Arkansas.

1. Presently before the Chief, Mobile Services Division, pursuant to delegated authority, are the captioned applications of Mobilfone Service, Inc. (Mobilfone) and Fayetteville Communications, Inc. (FCI).[1] These applications are mutually exclusive; therefore, a comparative hearing will be held to determine which applicant would better serve the public interest. We find the applicants to be otherwise qualified.

2. Accordingly, it is ordered, pursuant to Section 309 of the Communications Act of 1934, as amended, that the applications of Mobilfone Service, Inc., File No. 22992-CD-P-(1)-82 and Fayetteville Communications, Inc., File No. 22973-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,[2] based upon the standards set forth in Section 22.504(a) of the Commission's Rules,[3] and to determine the relative demand for the proposed service in said areas; and

(c) To determine, in light of the evidence adduced pursuant to the foregoing issues, what disposition of the referenced applications would best serve the public interest, convenience, and necessity.

3. 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.

4. It is further ordered, that the Chief, Common Carrier Bureau, is made a party to the proceeding.

5. It is further ordered, that the applicants shall file writtten notices of appearances under § 1.221(c) of the Commission's rules within 20 days of the release date of this Order.

6. 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. 82-70694 Filed 7-29-82; filed 8:45 am]

BILLING CODE 6712-01-M

[1] We note that while the Mobilfone application is for a new facility, FCI is seeking an additional frequency for Station KDS376. A grant of either application would preclude a grant of the other.

[2] 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. R-6406, equation 8.

[3] 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 communications service on frequencies in the 150 MHz band. Propagation data set forth in § 22.504(b) are the proper bases for establishing the location of service contours F(50,50) for the facilities involved in this proceeding. (The applicants should consult with the Bureau counsel with the goal of reaching joint technical exhibits.)

[BC Docket No. 82-465, File No. BPH-810518AG and BC Docket No. 82-466, File No. BPH-810925AX]

Northshire Communications, Inc. and North Country Communications Inc.; Order Designating Applications for Consolidated Hearing on Stated Issues

Adopted: July 15, 1982.

Released: July 28, 1982.

In re applications of Northshire Communications, Inc., Manchester, Vermont, Req: 102.7 MHz, Channel 274B, 19.5 kW (H&V), 722 feet and North Country Communications, Inc., Manchester, Vermont, Req: 102.7 MHz, Channel 274B, 19.5 kW (H&V), 722 feet; for Construction Permit for a New FM Station.

1. The Commission, by the Chief, Broadcast Bureau, acting pursuant to delegated authority, has under consideration the above-captioned mutually exclusive applications filed by Northshire Communications, Inc., (Northshire) and North Country Communications, Inc. (North Country).

2. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. However, since the proposals are mutually exclusive they must be designated for hearing in a consolidated proceeding.

3. 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 s subsequent Order, upon the following issues:

(1) To determine which of the proposals would, on a comparative basis, better serve the public interest.

(2) To determine, in the light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

4. 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.

5. 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(g) 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(g) of the rules.

Federal Communication Commission.

Larry D. Eads,

Chief, Broadcast Facilities Division, Broadcast Bureau.

[FR Doc. 82-20696 Filed 7-29-82; 8:45 am]

BILLING CODE 6712-01-M

[BC Docket 82-460, File No. BPH-810416AF and BC Docket 82-461, File No. BPH-810925AT]

Ralph Edward Wittick and Plumas Wireless, Inc.; Order Designating Applications for Consolidated Hearing on Stated Issues

Adopted: July 14, 1982.

Released: July 27, 1982.

In re applications of Ralph Edward Wittick, Quincy, California, Req: 101.9 MHz, Channel 270B, 0.820 kW (H&V), 2605 feet (H&V) and Plumas Wireless, Inc., Quincy, California, Req: 101.9 MHz, Channel 270B, 1.17 kW (H&V), 2550 feet (H&V), for Construction Permit for a New FM Station.

1. The Commission, by the Chief, Broadcast Bureau, acting pursuant to delegated authority, has under consideration the above-captioned mutually exclusive applications filed by Ralph Edward Wittick (Wittick) and Plumas Wireless, Inc. (Plumas).

2. *Wittick.* 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 Ralph Wittick published the required notice. To remedy this deficiency, Wittick must publish local notice of his application, if he has not already done

so, and so inform the presiding Administrative Law Judge.

3. In response to Section VI of FCC Form 301, Wittick states that a copy of his EEO program is attached as Exhibit 10. The program was not filed. To remedy this deficiency, Wittick will be required to file an EEO program with the presiding Administrative Law Judge.

4. Analysis of the financial data submitted by Wittick reveals that $84,200 will be required to construct the proposed station and operate for three months, itemized as follows:

Equipment	$52,700
Building	5,000
Miscellaneous	11,500
Operating costs (3 mo)	15,000
Total	84,200

Wittick plans to finance construction and operation with $15,000 existing capital and a $125,000 loan from banks or others. However, no documentation has been supplied concerning the loan. Wittick also anticipates that revenues of $6,000 per month will be generated by the station. However, such funds may not be relied on to establish Wittick's financial qualifications. *Financial Qualifications Standards*, 72 FCC 2d 784 (1979).

5. *Plumas.* Analysis of the financial data submitted by Plumas reveals that $205,842 will be required to construct the proposed station and operate for three months, itemized as follows:

Equipment	$102,143
Building	10,000
Miscellaneous	55,329
Operating costs (3 mo)	38,370
Total	205,842

Plumas plans to finance construction and operation from the assets of Kathryn S. and Davie E. Caldwell. However, no balance sheet for the Cladwells has been submitted.[1]

6. Although the financial standards are unchanged, the Commission has changed the application form to require only certification as to financial qualifications. Accordingly, Wittick and Plumas will be given 30 days from the date of mailing of this Order to review their financial proposals in light of Commisison requirements, to make any changes that may be necessary, and, if appropriate, to submit certifications to the Administrative Law Judge in the manner called for in revised Section III, Form 301, as to their financial qualifications. If Wittick and Plumas cannot make the required certifications, they shall so advise the Administrative Law Judge who shall then specify and appropriate issue. *Minority Broadcasters of East St. Louis, Inc.*, BC Docket No. —.

7. Data submitted by the applicants indicate that there would be significant difference in the size of the areas and populations which would receive service from the proposals. Consequently, the areas and populations which would receive FM service of 1 mV/m or greater intensity, together with the availability of othe primary aural services in such areas will be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accure to any of the applicants.

8. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. However, since the proposals are mutually exclusive they must be designated for hearing in a consolidated proceeding.

9. 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 which of the proposals would, on a comparative basis, better serve the public interest.

(2) To determine, in the light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

10. It is further ordered, That, Wittick file with the presiding Administrative Law Judge showing compliance with the public notice requirements of § 73.580(f) of the Commission's rules.

11. It is further ordered, That, Wittick file the equal employment opportunity program required by Section VI of FCC Form 301 with the presiding Administrative Law Judge, in accordance with § 73.2080(c) of the Commission's rules.

12. It is further ordered, That, Wittick and Plumas shall submit financial certifications in the form required by Section III, FCC Form 301, or advise the Administrative Law Judge that the certifications cannot be made, as may be appropriate, within 30 days of the mailing of this Order.

13. 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.

14. 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(g) 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(g) of the rules.

Federal Communications Commission.

Larry D. Eads,

Chief, Broadcast Facilities Division, Broadcast Bureau.

[FR Doc. 82-20695 Filed 7-29-82; 8:45 am]

BILLING CODE 6712-01-M

[1] We note that the Caldwells intend to rely on the proceeds of the sale of stations KBLF and KSNR-FM, Red Bluff, California (BAL-810811FE and BALH-810811FF, granted September 24, 1981). However, it is unclear what dollar amount the Cladwells received from the sale. Also submitted was a letter from the North Valley Bank purporting to offer the Cladwells a $200,000 line of credit. Since the bank letter fails to comply with the requirements of paragraph 4(e) of Section III of FCC Form 301, the availability of the funds has not been established.

FEDERAL RESERVE SYSTEM

Bank Holding Company Proposed de Novo Nonbank Activities

The bank holding company listed in this notice has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(1) of the Board's Regulation Y (12 CFR 225.4(b)(1)), for permission to engage *de novo* (or continue to engage in an activity earlier commenced *de novo*), directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to the application, interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any comment on the 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.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated for the 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 the date indicated.

A. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President), 400 Sansome Street, San Francisco, California 94120:

1. *Security Pacific Corporation*, Los Angeles, California (finance and credit life and credit accident and health insurance activities; New Jersey): To engage through its subsidiary, Security Pacific Finance Corp., in making or acquiring for its own account or for the account of others, loans and extensions of credit, including making consumer installment personal loans, purchasing consumer installment sales finance contracts, making loans to small businesses and other extensions of credit such as would be made by a factoring company or a consumer finance company, and acting as broker or agent for the sale of credit life and credit accident and health insurance. These activities would be conducted from an office of Security Pacific Finance Corp., located in Cherry Hill, New Jersey, serving the State of New Jersey. Comments on this application must be received not later than August 25, 1982.

Board of Governors of the Federal Reserve System, July 26, 1982.

Dolores S. Smith,

Assistant Secretary of the Board.

[FR Doc. 82-20647 Filed 7-29-82; 8:45 am]

BILLING CODE 6210-01-M

Bank of New England Corp.; Acquisition of Bank

Bank of New England Corporation, Boston, Massachusetts, has applied for the Board's approval under § 3(a)(5) of the Bank Holding Company Act (12 U.S.C. § 1842(a)(5)) to merge with The Hancock Group, Incorporated, Quincy, Massachusetts. The factors that are considered in acting on the application are set forth in section 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 the Federal Reserve Bank of Boston. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than August 25, 1982. 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.

Board of Governors of the Federal Reserve System, July 26, 1982.

Dolores S. Smith,

Assistant Secretary of the Board.

[FR Doc. 82-20648 Filed 7-29-82; 8:45 am]

BILLING CODE 6210-01-M

Peoples Bankshares, Ltd.; Acquisition of Bank

Peoples Bankshares, Ltd., Waterloo, Iowa, has applied for the Board's approval under section 3(a)(5) of the Bank Holding Company Act (12 U.S.C. 1842(a)(5)) to merge with Kellogg-Sully Bank & Trust Co., Kellogg, Iowa. The factors that are considered in acting on the application are set forth in section 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 the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than August 25, 1982. 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.

Board of Governors of the Federal Reserve System, July 26, 1982.

Dolores S. Smith,

Assistant Secretary of the Board.

[FR Doc 82-20649 Filed 7-29-82; 8:45 am]

BILLING CODE 6210-01-M

Acquisition of Bank Shares by Bank Holding Companies

The companies listed in this notice have 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 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 Cleveland (Harry W. Huning, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Union National Corporation*, Mt. Lebanon, Pennsylvania; to acquire 100 percent of the voting shares of the successor by merger to Keystone National Bank, Punxsutawney, Pennsylvania. Comments on this application must be received not later than August 25, 1982.

B. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Central Fidelity Banks, Inc.*, Richmond, Virginia; to acquire 100 percent of the voting shares or assets of Central Fidelity Bank, N.A., Southwest, the successor by merger to The Washington County National Bank of Abingdon, Abingdon, Virginia. Comments on this application must be received not later than August 25, 1982.

C. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Peoples Bankshares, Ltd.*, Waterloo, Iowa; to acquire 80 percent or more of the voting shares of Melbourne Savings Bank, Melbourne, Iowa. Comments on this application must be received not later than August 25, 1982.

Board of Governors of the Federal Reserve System, July 26, 1982.

Dolores S. Smith,

Assistant Secretary of the Board.

[FR Doc. 82-20651 Filed 7-29-82; 8:45 am]

BILLING CODE 6210-01-M

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 Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Drovers Bancshares Corporation,* York, Pennsylvania; to become a bank holding company by acquiring 100 percent of the voting shares of The Drovers & Mechanics Bank, York, Pennsylvania. Comments on this application must be received not later than August 25, 1982.

B. **Federal Reserve Bank of Altanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Tucker Holding Company, Inc.,* Jacksonville, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of First State Bank of Winter Garden, Winter Garden, Florida. Comments on this application must be received not later than August 25, 1982.

C. **Federal Reserve Bank of Minneapolis** (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Ashby Bancshares, Inc.,* Ashby, Minnesota; to become a bank holding company by acquiring 80 percent of the voting shares of First State Bank of Ashby, Ashby, Minnesota. Comments on this application must be received not later than August 25, 1982.

2. *Noble Bank Holding Company, Inc.,* Red Wing, Minnesota; to become a bank holding company by acquiring 91.2 percent of the voting shares of First State Bank of Red Wing, Red Wing, Minnesota. Comments on this application must be received not later than August 25, 1982.

D. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Citizens State Bancorp., Inc.,* Morrison, Oklahoma; to become a bank holding company by acquiring 100 percent of the voting shares of Citizens State Bank, Morrison, Oklahoma. Comments on this application must be received not later than August 23, 1982.

E. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Assistant Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Follett Bancshares, Inc.,* Follett, Texas; to become a bank holding company by acquiring 80 percent of the voting shares of Follett National Bank, Follett, Texas. Comments on this application must be received not later than August 25, 1982.

2. *Plainview First National Bancshares, Inc.,* Plainview, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bancshares, Inc., Plainview, Texas, and its subsidiary, First National Bank of Plainview, Plainview, Texas. Comments on this application must be received not later than August 25, 1982.

F. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 400 Sansome Street, San Francisco, California 94120:

1. *South Valley Bancorporation,* Morgan Hill, California; to become a bank holding company by acquiring 100 percent of the voting shares of South Valley National Bank, Morgan Hill, California. Comments on this application must be received not later than August 24, 1982.

G. **Secretary, Board of Governors of the Federal Reserve System,** Washington, D.C. 20551:

1. *Dickinson Ban Corporation,* Herington, Kansas; to become a bank holding company by acquiring 100 percent of the voting shares of Herington Bancshares, Inc., Herington, Kansas and thereby indirectly acquire The Bank of Herington, Kansas. This application may be inspected at the Federal Reserve Bank of Kansas City. Comments on the application must be received not later than August 25, 1982.

Board of Governors of the Federal Reserve System, July 26, 1982.

Dolores S. Smith,

Assistant Secretary of the Board.

[FR Doc. 82-20650 Filed 7-29-82; 8:45 am]

BILLING CODE 62-10-M

FEDERAL TRADE COMMISSION

Early Termination of the Waiting Period of the Premerger Notification Rules; Damson Oil Corp.

AGENCY: Federal Trade Commission.

ACTION: Granting of request for early termination of the waiting period of the premerger notification rules.

SUMMARY: Damson Oil Corporation is granted early termination of the waiting period provided by law and the premerger notification rules with respect to the proposed acquisition of certain assets of Georgia Pacific Corp. The grant was made by the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice in response to a request for early termination submitted by both parties. Neither agency intends to take any action with respect to this acquisition during the waiting period.

EFFECTIVE DATE: June 8, 1982.

FOR FURTHER INFORMATION CONTACT: Roberta Baruch, Senior Attorney, Premerger Notification Office, Bureau of Competition, Room 303, Federal Trade Commission, Washington, D.C. 20580 (202) 523-3894.

SUPPLEMENTARY INFORMATION: Section 7A of the Clayton Act, 15 U.S.C. 18a as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Commission and Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

By direction of the Commission.

Carol M. Thomas,

Secretary.

[FR Doc. 82-20713 Filed 7-29-82; 8:45 am]

BILLING CODE 6750-01-M

Early Termination of the Waiting Period of the Premerger Notification Rules; Thomas Tilling PLC

AGENCY: Federal Trade Commission.

ACTION: Granting of request for early termination of the waiting period of the premerger notification rules.

SUMMARY: Thomas Tilling PLC is granted early termination of the waiting period provided by law and the premerger notification rules with respect to the proposed acquisition of all voting securities of Metal-X Corporation. The grant was made by the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice in response to a request for early termination submitted by Metal-X Corporation. Neither agency intends to take any action with respect to this acquisition during the waiting period.

EFFECTIVE DATE: July 16, 1982.

FOR FURTHER INFORMATION CONTACT: Roberta Baruch, Senior Attorney, Premerger Notification Office, Bureau of

Competition, Room 303, Federal Trade Commission, Washington, D.C. 20580 (202) 523–3894.

SUPPLEMENTARY INFORMATION: Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Commission and Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

By direction of the Commission.

Carol M. Thomas,

Secretary.

[FR Doc. 82–20714 Filed 7–29–82; 8:45 am]

BILLING CODE 6750–01–M

Early Termination of the Waiting Period of the Premerger Notification Rules; Regal Ware, Inc.

AGENCY: Federal Trade Commission.

ACTION: Granting of request for early termination of the waiting period of the premerger notification rules.

SUMMARY: Regal Ware, Inc., is granted early termination of the waiting period provided by law and the premerger notification rules with respect to the proposed acquisition of all voting securities of Moulinex Manufacturing, Inc. The grant was made by the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice in response to a request for early termination submitted by both parties. Neither agency intends to take any action with respect to this acquisition during the waiting period.

EFFECTIVE DATE: July 13, 1982.

FOR FURTHER INFORMATION CONTACT: Roberta Baruch, Senior Attorney, Premerger Notification Office, Bureau of Competition, Room 303, Federal Trade Commission, Washington, D.C. 20580 (202) 523–3894.

SUPPLEMENTARY INFORMATION: Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Commission and Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

By direction of the Commission.

Carol M. Thomas,

Secretary.

[FR Doc. 82–20715 Filed 7–29–82; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 82N–0172]

Aflatoxins in Cottonseed Meal; Revised Action Level

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing a revised action level of 300 parts per billion (ppb) for aflatoxins in cottonseed meal intended for use as an animal feed ingredient for beef cattle, swine, and poultry. The revised action level is a result of an FDA evaluation of its overall policy for regulating aflatoxin contamination of fedstuffs for food-producing animals. Although the total evaluation is not completed, it has progressed to the point where FDA has determined that a change in the action level fro 20 ppb to 300 ppb is needed to support, from a food safety point of view, the regulatory control of aflatoxin-contaminated cottonseed meal. Severe aflatoxin contamination of the 1981 cotton crop in the southwestern united States has led the agency to establish this action level. This notice is being issued to inform interested persons of FDA's decision on this matter, to advise such persons of the availability of material the agency has relied upon in establishing this action level, and to provide the opportunity to comment on the action level.

DATE: Comments by September 28, 1982.

ADDRESS: Written comments to the dockets Management branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: John R. Wessel, Office of Regulatory Affairs (HFC–6), Food and Drug Administration, 5600 Fishers Lane, rockville, MD 20857, 301–443–1815.

SUPPLEMENTARY INFORMATION: In accordance with the provisions of § 509.4(b)(2) of FDA's regulations governing unavoidable contaminants in animal food (21 CFR 509.4(b)(2)), the commissioner of food and Drugs is announcing a revised action level of 300 ppb total aflatoxins in cottonseed meal intended for use as an animal feed ingredient for beef cattle, swine, and poultry. The agency's current 20 ppb action level for total aflatoxins will remain in effect for all other animal feedstuffs as well as raw and processed food commodities which are directly susceptible to aflatoxin contamination.

Aflatoxins are toxic by-products of mold growth on certain foods. Since their discovery in the early 1960's, some aflatoxins have been shown to be carcinogenic to test animals. Because these substances cannot be totally avoided or eliminated from foods, FDA's regulatory policy has been aimed at limiting aflatoxins in the food supply to the lowest extent possible. Since 1969, this policy has specified that the agency would consider recommending enforcement action against food or feed contaminated with 20 ppb or more aflatoxins.

The need to limit aflatoxins in feed relates not only to concerns over animal safety, but also to aflatoxin residues which can occur in human foods of animal origin. However, scientific information has emerged since 1969 indicating that aflatoxin levels above 20 ppb will not be detrimental to animal safety or result in harmful residues in meat and eggs. Based on this information, the agency, in one situation, exempted corn moving in interstate commerce and intended as a feed ingredient for certain animals from compliance with the 20 ppb action level (see the **Federal Register** of January 23, 1981; 46 FR 7447).

On May 10, 1982, the State of Arizona requested that FDA grant limited regulatory relief for 76,730 tons of cottonseed meal remaining from the State's 1981 cotton crop. All the meal is contaminated with aflatoxins in excess of the current 20 ppb action level. The basis of the State's request is the economic impact on the oil mills in Arizona should they not be able to market the meal (valued at $10.7 million) for feed use. Additionally, if the meal cannot be marketed, it would prevent the mills from purchasing and processing cottonseed from Arizona's 1982 crop, which in turn could have major consequences for the economy of the State and its cotton industry.

For some time, the agency has been studying the problem of aflatoxin contamination of animal feed for the purpose of developing a regulatory policy that is both enforceable and consistent with FDA's goal of assuring a safe and plentiful food supply. This study has progressed to the point where

the agency has determined that the action level for aflatoxins in cottonseed meal as an animal feed ingredient for beef cattle, swine, and poultry should be established at 300 ppb. Because the agency is still assessing the safety and extent of aflatoxin residues which might occur in the milk of dairy animals consuming aflatoxin-containing feed, this action level will not apply to cottonseed meal intended for use in dairy animal feed. Although the establishment of a new action level was not requested in State of Arizona's proposal, the 300 ppb action level will permit about 70 percent of the contaminated meal to be marketed for use as an animal feed ingredient for beef cattle, swine, and poultry. The agency plans to continue for the foreseeable future to enforce the 300 ppb action level for aflatoxins in cottonseed meal.

The 300 ppb action level was established using the criteria of section 406 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346) and the regulations which implement it (21 CFR Part 509) which require, *inter alia*, that the agency limit contaminants of food to the extent necessary to protect the public health, while taking into account the extent to which the substance cannot be avoided by good manufacturing practice. Thus, FDA has attempted to strike an acceptable balance between the risk of consuming contaminated food and the availability of food. In making this judgment, the agency has concluded that:

1. A level of 100 ppb aflatoxins in the total rations of livestock and poultry does not present a reasonable possibility of injury to such animals, and

2. Human foods derived from beef cattle, swine, and poultry consuming up to 100 ppb aflatoxins in their total rations would not contain aflatoxin residue levels of toxicological significance (i.e., generally well below 0.1 ppb for meat and eggs).

Cottonseed meal normally constitutes no more than 11 percent of the total ration of beef cattle and less for swine and poultry. Therefore, this feed ingredient could contain aflatoxins substantially above 20 ppb without causing the total rations of these animals to exceed 100 ppb. Nonetheless, because of the possibility that aflatoxin-contaminated cottonseed meal could be used with other aflatoxin-contaminated ingredients in a finished feed or at concentrations higher than normal, the agency concluded that it is prudent to provide additional safety factors by setting the regulatory limit at 300 ppb. This limit provides a reasonable balance between the safety and the availability of these feedstuffs. Thus, FDA concluded that permitting up to 300 ppb aflatoxins in cottonseed meal as a feed ingredient for beef cattle, swine, and poultry will not result in dietary exposures that pose an unacceptable risk to the health of animals or humans.

A detailed description of the agency's basis for arriving at the 300 ppb action level is contained in an FDA support document for this notice entitled, "Revised Action Level for Aflatoxins in Cottonseed Meal as a Feed Ingredient for Beef Cattle, Swine, and Poultry." A copy of this report and each of the references cited in the report are available for public examination in the Dockets Management Branch (address above), from 9 a.m. to 4 p.m., Monday through Friday. Interested persons are invited to submit comments, referring to Docket No. 82N0172, by September 28, 1982, to the Dockets Management Branch (address above). The agency will review any comments received and modify the action level if comments warrant such action.

Dated: July 23, 1982.

Arthur Hull Hayes, Jr.,

Commissioner of Food and Drugs.

[FR Doc. 82-20638 Filed 7-27-82; 10:29 am]

BILLING CODE 4160-01-M

Doboy Feeds, Domain Industries, Inc.; Doboy Tylan 10 Premix; Withdrawal of Approval of NADA

Correction

In FR Doc. 82-19517 appearing on page 31430 in the issue for Tuesday, July 20, 1982, please make the following correction:

On page 31430, in the first column, in the next to last paragraph, in the last line, the date "July 30, 1920" should have been "July 30, 1982".

BILLING CODE 1505-01-M

[Docket No. 82M-0094]

Genetic Laboratories, Inc.; Premarket Approval of Bioflow ®

Correction

In FR Doc. 82-19589, appearing at page 31428 in the issue for Tuesday, July 20, 1982, please make the following correction:

On page 31428, in the third column, in the Supplementary Information section, in the second paragraph, in the ninth line, "(MFR-" should have been "(HFK-".

BILLING CODE 1505-01-M

[Docket No. 80P-001]

RINN Corp.; Approval of Extension of Variance for "Condy Ray" Film Holder and X-Ray Beam Alignment Instrument

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that an extension of a variance from the performance standard for diagnostic x-ray systems and their major components has been approved by the Bureau of Radiological Health for the "Condy Ray" Film Holder and X-ray Beam Alignment Instrument, catalog No. 54-500 manufactured by RINN Corp., Elgin, IL. The instrument is a device used for radiography of the temporomandibular joint (TMJ).

DATE: The termination date of Variance No. 80P-0001 is extended from March 24, 1982, to March 24, 1987.

ADDRESS: The application and all correspondence on the application have been placed on public display in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD. 20857.

FOR FURTHER INFORMATION CONTACT: Robert Phillips, Bureau of Radiological Health (HFX-460), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD. 20857, 301-443-3426.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of April 25, 1980 (45 FR 27989), FDA announced that a variance from the provisions of § 1020.31(f)(4) (21 CFR 1020.31(f)(4)) requiring that the maximum x-ray field size be the size of the image receptor plus 2 percent of the source image receptor distance (SID) in the plane of the image receptor. The variance was granted under § 1010.4 (21 CFR 1010.4) for the RINN "Condy Ray" Film Holder and X-ray Beam Alignment Instrument, catalog No. 54-500 and was assigned variance No. 80P-0001.

RINN has submitted to FDA an application for an unspecified extension of the March 24, 1982, expiration date of variance No. 80P-0001. The application for extension of the variance cites the same arguments used in support of the original variance application together with supplemental information requested by the agency.

The Director of the Bureau of Radiological Health has determined that the arguments that led to the original granting of variance No. 80P-0001 are still valid. Furthermore, the Director has concluded that the "Condy Ray" Film Holder and X-ray Beam Alignment

Instrument still provides adequate means of radiation safety and protection. Therefore, by letter of June 1, 1982, the Director approved an extension of the variance which terminates on March 24, 1987. This extension is being granted under the same terms and conditions as the original variance.

This variance is being extended for 5 years instead of the requested indefinite period. This will allow the Bureau the opportunity in 5 years to reevaluate the need and basis for the variance. Such a reevaluation will consider the possible amendment of the performance standard, the then current state of the art, medical usefulness, radiation protection criteria, and other relevant factors.

In accordance with § 1010.4, the application and all related correspondence on the application (including the data and information in support of the original request and the written notice of approval) have been placed on public display in the Dockets Management Branch (address above), and may be seen in that office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 22, 1982.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 82-20653 Filed 7-29-82; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

Medicare Program; Annual Notice of 1982 Target Reimbursement Rates for Institutions Furnishing Home Dialysis Supplies, Equipment, and Support Services

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

ACTION: General notice.

SUMMARY: This notice sets forth a schedule of target reimbursement rates for End-Stage Renal Disease (ESRD) program reimbursement to approximately 20 approved hospital-based and independent dialysis facilities that have entered into an optional agreement with HCFA to accept target rate reimbursement for all home dialysis patients under their direct supervision. The schedule establishes the calendar year 1982 regionally adjusted rates per treatment for home hemodialysis and home peritoneal dialysis. These rates are the amounts to be paid for supplies, equipment, and support services furnished to patients who dialyze themselves at home.

EFFECTIVE DATES: The rates are applicable to home dialysis services furnished on or after January 1, 1982, through December 31, 1982, or until target reimbursement for home dialysis is superseded by implementation of a new prospective reimbursement system in accordance with Pub. L. 976-35.

FOR FURTHER INFORMATION CONTACT: Bernadette Schumaker, (301) 597-1048.

SUPPLEMENTARY INFORMATION:

I. Background

The End-Stage Renal Disease (ESRD) program amendments of 1978 (Pub. L. 95-292) added section 1881(b)(6) to the Social Security Act. This section requires HCFA, establish target reimbursement rates for home dialysis for patients under the direct supervision of a hospital-based or independent renal dialysis facility. The rates must be established for each calendar year, and must be adjusted for regional variations. This is an optional reimbursement method available only to facilities that make an agreement with HCFA to furnish all home dialysis supplies, equipment, and support services (including the services of qualified home dialysis aides) that are medically necessary for patients to dialyze at home.

If facilities do not have this type of agreement, they are paid according to the usual Medicare reimbursement principles. That is, hospital-based facilities are paid on a reasonable costs basis (the lower of their allowable costs or their charges), and independent facilities are paid reasonable charges on a fee-for-service basis. Under generally applicable Medicare rules (see 42 CFR 405.240), the beneficiary has a coinsurance responsibility for 20 percent of the charge per treatment. (Under the target rate system, we pay 80 percent of the target rate per treatment, and the beneficiary is liable for the remaining 20 percent of the rate.)

Regulations governing these optional agreements between HCFA and facilities are found at 42 CFR 405.691. Regulations governing the target rate reimbursement method and applications are at 42 CFR 405.440. Notices setting forth schedules for target rates have been published each year for the past three years.

Until amended by section 2145 of the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35), section 1881(b)(6) limited the maximum target rate to no more than 70 percent of the national average payment for in-facility maintenance dialysis services furnished by approved hospital-based and independent facilities during the preceding fiscal year. The national average payment is determined before application of the Medicare deductible and coinsurance requirements, and is adjusted for regional variations. Section 2145 increased the maximum rate to 75 percent. The rates must be used without recomputation throughout the calendar year for which they are established. Accordingly, there can be no administrative appeal if actual costs for covered services exceed the target reimbursement rate payments (see regulations at 42 CFR 405.440).

In the most recent notice for calendar year 1981 (46 FR 3985, January 16, 1981), we set forth our methodology for calculating the rates, and set the rates at 70 percent of the average in-facility payment, which was the maximum then allowed by statute. Since the target rate method has been used only since 1979, we have not acquired sufficient cost information on the new services required under this optional reimbursement method (that is, providing home dialysis aides) to enable us to evaluate the impact of alternate target rates. Therefore, in order not to discourage the use of home dialysis, we have decided to continue using the same methodology, and to set the target reimbursement rate per treatment at 75 percent, which is the maximum rate permitted under section 1881(b)(6) of the Social Security Act, as amended by section 2145. By increasing the 1982 rates to the new maximum, the average payment increases approximately $9 per treatment.

In addition to establishing a new maximum level for the optional target rate reimbursement method for home dialysis under section 1881(b)(6), section 2145 of Pub. L. 97-35, added a new section 1881(b)(7) of the Act, requiring us to establish a prospective reimbursement method for outpatient maintenance dialysis. The statute requires this payment method to promote home dialysis, preferably by means of composite rates under which a facility would receive the same amount of payment for a treatment regardless of whether it was furnished in the facility or in a patient's home. Subsequently, on February 12, 1982 we published proposed regulations that, if published as a final rule, would establish a comprehensive prospective reimbursement system for dialysis that would include home dialysis and supersede the target rate system (47 FR 6556). However, since the law requires that target rates be updated annually, we are publishing these rates to apply to the interim period between January 1, 1982, and the effective date of the final

regulations establishing the proposed prospective system. This fulfills our obligation to the small number of affected facilities that have elected the target method.

We recognize that comparison will be made between the proposed prospective rates published on February 12, 1982 and these target rates. However, we wish to note that, under the proposed prospective payment method, we would calculate rates on the basis of cost data, while, under the statute, we must base target rates on payment data. In addition, these target rates are intended to pay for the services of home dialysis aides, which would not be included under the proposed prospective rates. Further, since the clear statutory intent of section 2145 was to provide strong incentives for dialysis to be furnished at home, we have increased the 1982 target rates to the maximum permitted by law.

II. Basis for Rate-Setting

A. Development of Average Maintenance Dialysis Payment Data

As indicated above, the target rates equal 75 percent of the national average payment, adjusted for regional variations, for in-facility maintenance dialysis services furnished by hospital-based and independent renal dialysis facilities during the preceding fiscal year. The national average payment is determined before application of the coinsurance and deductible requirements.

The basis for determining the national average payment is our Renal Disease Program Cost Analysis System, which maintains Facility Cost Questionnaire Profiles, for each HHS regional area. The Facility Cost Questionnaire Profile is a computerized summary of the average maintenance dialysis cost per treatment, broken down into the various components of cost per treatment (e.g., supplies, salaries) for facilities on a regional and national basis. Until recently, the costs and other statistical information (e.g., number of treatments) were derived from the Renal Dialysis Facility Cost and Statistical Questionnaire (form HCFA–9734), which were submitted annually based on cost data from a facility's most recently completed fiscal year. For cost reporting periods ending on or after September 30, 1981, independent dialysis facilities will complete a new cost report form (HCFA–265) annually. However, this change has not affected the reporting of the costs on which these rates are based.

In developing national average payments for dialysis furnished in hospital-based facilities, we used cost data for the accounting periods ending in the calendar year 1980, since this was the best and most recent data available. Hospital-based facilities are paid their reasonable costs. If its costs are in excess of a payment screen of $138 per treatment, a hospital may receive payment in excess of the screen only if it requests an exception. Many hospitals have requested and have been granted an exception to the screen of $138 per treatment. The profile system does not always reflect how costs differ from actual payment to a particular facility. However, given the limitations of the data, the average cost per treatment is the best available proxy for accurately estimating the average payment per treatment for hospital-based facilities.

While reasonable costs are the basis for the program payments made to hospital-based facilities, payments to independent facilities are made on a reasonable charge basis, under regulations at 42 CFR 405.541. Analysis of data submitted to us established that the average reasonable charge payment per dialysis equalled the screen amount. Therefore, in developing the average payments for independent facilities, the Medicare payment screen of $138 was used as the average maintenance dialysis payment for independent facilities in all regions.

In developing the average payments, we excluded the portion of the payment applicable to physicians' direct patient care services, because reimbursement for these services is not included in the target rates. Under this reimbursement method, we pay for these physicians' services separately.

B. Equipment Costs

Facilities electing target rate reimbursement are required to provide medically necessary dialysis equipment, including installation, maintenance, and repair. A facility may fulfill this requirement by arranging for equipment for its home dialysis patients under the provisions (established by section 1881(e) of the Social Security Act and implemented by 42 CFR 405.438) for 100 percent reimbursement to dialysis facilities for purchase of home dialysis equipment. Under these provisions, if a facility has an agreement with HCFA (under 42 CFR 405.690), we will pay, without regard to Medicare deductible and coinsurance, the full reasonable cost of purchase, installation, maintenance, and reconditioning for subsequent use of dialysis equipment used exclusively by beneficiaries dialyzing at home. Alternatively, a facility may own, lease, or otherwise arrange for equipment to be provided to patients whose self-care home dialysis it is furnishing.

Accordingly, we computed two sets of target payment rates for home hemodialysis. The higher target rate, entitled "Including Equipment Costs", includes an amount for the costs of equipment installation, depreciation or rental, maintenance and repair. This rate applies to services to patients using dialysis equipment that is furnished by the facility, but not under the provisions for 100 percent reimbursement of equipment costs. The lower target rate, entitled "Excluding Equipment Costs," does not include payment for any of these equipment costs. It applies when the facility provides dialysis equipment under the 100 percent equipment cost reimbursement provision.

C. Adjustment of Data to Fiscal Year Basis

The law requires that the maximum target rate be based on the adjusted national average payment for dialysis services furnished in the previous fiscal year. In other words, this requires us to base the calendar year 1982 target rate maximum on payments made for the fiscal year October 1, 1980 to September 30, 1981. Section 1881(b)(6) of the statute requires the Secretary to base the determination of the level of payment under the target rate system on "the most recent data available to the Secretary at the time". Dialysis facilities are not able to report FY 1981 data timely enough for us to use in determining this rate. Therefore, to estimate fiscal year 1981 payments to hospital-based facilities, we have used cost data from calendar year 1980—the most recent available data—and have converted it to a 1981 fiscal year basis by estimating increases in costs that hospitals are likely to claim. In order to make such an estimate, we needed to determine the base period (or time period) that the available data represented. The ESRD reporting system could be used only to develop data for facility accounting periods *ending* in calendar year 1980. As these accounting periods had varied date spans, there was no obvious well-defined base period. In the absence of evidence to the contrary, for purposes of estimating fiscal year 1981 payments, we assumed that the data represented costs that were evenly distributed throughout a calendar year 1980 base period.

III. Calculation of Target Rates

A. Hospital-based Facility Payments for In-Facility Dialysis

We derived the fiscal year 1981 average in-facility maintenance dialysis payments for hospital-based facilities by increasing the average dialysis payments for the 1980 base period data by a weighted increase factor adjusted for regional variations. These factors were derived as follows:

1. We calculated the full year national increase for each of the three major components of the average payment (i.e., salaries, excluding payment for physicians' direct patient care services; supplies; and overhead), using appropriate data from the "Employment and Earnings Series" and "Comsumer Price Index—Urban Wage Earners and Clerical Workers—Revised," both from the Bureau of Labor Statistics (BLS). We derived salary increases from the data on hourly earnings in finance, insurance, and real estate because they represent workers in physicians' offices in the economic index computations. We derived supply cost increases from the consumer price index (CPI) for medical commodities, and used the CPI for all items to represent increases in overhead. These estimates of increases are not an attempt to determine the actual costs of furnishing dialysis in an efficient manner, but are simply a method for estimating what costs hospital-base facilities probably claimed, and hence what payments were made, during fiscal year 1981.

2. We multiplied the component increase factors by the corresponding national weights to produce a weighted full year national increase factor (1981 over 1980).

3. We had to adjust the full-year national increase factor in order to project fiscal year data from calendar year data. We used a compounding formula reflecting three-fourths of the full-year increase (raising the full-year factor to the three-fourths power) to obtain the final adjusted weighted national increase factor.

4. We multiplied this final national factor by regional adjustment factors to obtain the regional increase factors. The regional adjustment factors were derived from the ratios of regional "per capita" ESRD reimbursement to the national "per capita" ESRD reimbursement for the most recent calendar years for which data were available.

5. These regional increase factors were then multiplied by the appropriate 1980 base period values for hospital-based facilities to obtain the projected fiscal year 1981 average in-facility maintenance dialysis payment to hospital-based facilities by region.

B. Independent Facility Payments for In-Facility Dialysis

Independent facilities are not reimbursed on a cost basis. They are paid reasonable charges on a fee-for-service basis, subject to a screen limit of $138 per treatment. The per treatment reimbursement for dialysis in independent facilities has remained constant over the period in question. Therefore, it was not necessary to apply regional increase factors to payment data for independent facilities.

C. Establishing Target Reimbursement Rates for Home Hemodialysis

The following procedure was used to establish the 1982 home hemodialysis target reimbursement rates per treatment for each region:

1. We multiplied each regional fiscal year 1981 average in-facility dialysis payment to hospital-based facilities, calculated in A. above, by the corresponding number of treatments provided in the 1980 base period by hospital-based facilities for each region.

2. We added to each value calculated in C.1. above the appropriate fiscal year 1981 average in-facility dialysis payment to independent facilities times the number of in-facility treatments provided in the 1980 base period by independent facilities for each region.

3. We divided each resulting value from C.2. above by the total number of in-facility treatments provided in the 1980 base period by both hospital-based and independent facilities. The resulting values are the projected fiscal year 1981 average in-facility maintenance dialysis payments weighted between hospital-based and independent facilities by region.

4. We multiplied the regional average payments calculated in C.3. above by 75 percent to derive the target reimbursement rates per treatment for 1982.

D. Example: Hypothetical Calculation of the "With Equipment" Rate for Region "A"

(The following numbers are for illustrative purposes only.)

1. We derive a total national increase factor from appropriate data from BLS, weighted by the portion of the total national average payment that is assigned to each of three cost component categories. In this example we use representative percentages of 35 percent, 35 percent, and 30 percent for, respectively, supplies, overhead, and salaries (excluding payment for physicians' direct patient care services).

Cost component	In percentage		
	BLS increase factors	Weighting	Result
Supplies	8.04	35	2.81
Overhead	13.40	35	4.69
Salaries	8.46	30	2.54

NOTE.—Total national increase factor=10.04 pct=.1004 pct.

2. To index base period data from calendar 1980 to fiscal year 1981, we apply a compounding formula to the national increase factor (raising it to the three-fourths power).

$1.0000+.1004=1.1004$

$(1.1004^{3/4}=1.0744$ or a 7.44 percent increase (final adjusted weighted national increase factor)

3. We calculate regional variation from the ratio:

$$\frac{\text{Region "A" per capita ESRD reimbursement/calendar year}}{\text{National per capita ESRD reimbursement/calendar year}}$$

If the 1979 regional per capita equals $14,175.03 and the 1979 national per capita equals $15,012.87 then:

$$\frac{\$14,175.03}{\$15,012.87}=0.944192 \text{ (1979 ratio)}$$

The ratio is computed for each of the last five calendar years for which data are available. For the 1982 target rate calculations, these years are 1975 to 1979. The regional adjustment factor is then computed as the arithmetic mean of these five ratios. Assume the ratios are computed to be as follows:

1979 ratio=0.944192
1978 ratio=0.917155
1977 ratio=1.034681
1976 ratio=0.973868
1975 ratio=1.092437

The regional adjustment factor for region "A" is the mean of these numbers:

$$\frac{0.944192+0.917155+1.034681+0.973868+1.092437}{5}=0.9925$$

4. We calculate the increase factor for region "A" by multiplying the adjusted weighted national increase factor by the regional adjustment factor.

$7.44 \text{ percent} \times 0.9925=7.38 \text{ percent}$

5. We calculate the projected fiscal year 1981 average in-facility maintenance dialysis payment to hospital-based facilities for region "A" by mulitplying the increase factor by the 1980 base period value for hospital-

based facilities. If the 1980 base period value is $156.91, then:

$156.91×1.0738=$168.49 (projected average payment)

6. Based on historical program data, we assume that the fiscal year 1981 average in-facility maintenance dialysis payent to independent facilities will remain constant at $138.00, which is the national payment screen under the current retrospective payment method.

7. We compute the average in-facility maintenance dialysis payment for region "A" as a weighted average. We weight the average hospital-based dialysis rate (computed in D. 5) by the proportion of total treatments which are hospital-based, and we weight the average independent-based dialysis rate ($138.00 in D. 6) by the proportion of total treatments which are independent-based. Assume the following data for calendar year 1980:

Number of hospital-based treatments in region "A"=109,341
Number of independent-based treatments in region "A"=91,565

The average in-facility maintenance dialysis payment for region "A" is then:

$$\frac{(\$168.49\times 109{,}341)+(\$138.00\times 91{,}565)}{109{,}341+91{,}565}=\$154.59$$

B. Finally, we derive the target rate by multiplying the regional average in-facility payment by 75 percent.

$159.59×.75=$115.94, rounded to $116

This would be the "with equipment" target rate per treatment for home dialysis in region "A".

IV. Schedule of Target Reimbursement Rates for Home Hemodialysis

Shown below is the schedule of regionally adjusted 1982 target reimbursement rates per treatment for home hemodialysis. Two sets of rates are shown. The higher set, entitled "Including Equipment Costs," applies where the facility is furnishing hemodialysis equipment, but not under the provision for 100 percent reimbursement of home dialysis equipment costs described in 42 CFR 405.438. The lower set, entitled "Excluding Equipment Costs," applies where the facility is furnishing the home dialysis equipment under the 100 percent reimbursement provisions of 42 CFR 405.438. In either case, if the facility chooses the target rate reimbursement option, it must furnish home dialysis equipment, including installation, maintenance, and repair, either directly or under arrangements.

SCHEDULE OF TARGET REIMBURSEMENT RATES PER TREATMENT FOR HOME HEMODIALYSIS—CALENDAR YEAR 1982

[Effective for Services Furnished on or After Jan. 1, 1982 Through Dec. 31, 1982]

HHS region	Including equipment costs [1]	Excluding equipment costs [1]
Boston—Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont	$119	$117
New York—New Jersey, New York, Puerto Rico, Virgin Island	116	114
Philadelphia—Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia	108	106
Atlanta—Alabama, North Carolina, South Carolina, Florida, Georgia, Kentucky, Mississippi, Tennessee	106	103
Chicago—Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin	126	124
Dallas—Arkansas, Louisiana, New Mexico, Oklahoma, Texas	104	102
Kansas City—Iowa, Kansas, Missouri, Nebraska	114	111
Denver—Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming	115	113
San Francisco—American Samoa, Arizona, California, Guam, Hawaii, Nevada	130	127
Seattle—Alaska, Idaho, Oregon, Washington	122	119

[1] Depreciation or rental, installation, maintenance and repair.

V. Establishing Target Reimbursement Rates For Home Peritoneal Dialysis

Under Medicare, peritoneal dialysis has always been subject to the same reimbursement rules as hemodialysis. As a result of medical consultations, we established and equivalence between peritoneal dialysis and hemodialysis furnished in the facility. Peritoneal dialysis is usually done in sessions of 10–12 hours duration, three times per week. The dialysate, tubing, machines and level of skilled labor required for hemodialysis and peritoneal dialysis are similar, and in the absence of cost data to the contrary, we set the reimbursement for normal peritoneal dialysis sessions at the same level as for hemodialysis.

Later case experience showed that sometimes peritoneal dialysis was furnished in a single extended session of 30 hours or more in a week, in place of three separate sessions. Because the labor, overhead and supplies were more related to the total time in dialysis than the number of separate sessions, we reimbursed the extended session the same as three normal dialysis sessions in a week. Further case experience indicated the need for another intermediate reimbursement level to correspond to changing medical patterns. As a result, we provided that peritoneal dialysis sessions of 20 hours duration furnished twice per week be reimbursed at a rate equivalent to one and one-half times the payment for a normal hemodialysis session.

In view of the limited data available on the cost of home peritoneal dialysis, a separate target rate has not been computed for that mode of dialysis. Because the target rate is related to the in-facility payment, we have set the following equivalencies between home peritoneal dialysis and home hemodialysis target rates to parallel the reimbursement for these respective modes of treatment furnished in the facility.

1. *Peritoneal dialysis sessions of less than 20 hours duration.* If a home peritoneal patient dialyzes for under 20 hours a session, the facility will be reimbursed routinely an amount per session equal to the reimbursement for one home hemodialysis treatment.

2. *Peritoneal dialysis sessions of less than 30 hours, but 20 hours or more duration.* If a home peritoneal dialysis patient dialyzes for 20–29 hours a session, the facility will be reimbursed routinely and amount per session equal to one and a half times the rate for one home hemodialysis treatment.

3. *Peritoneal dialysis sessions of 30 hours or more duration.* If a home peritoneal dialysis patient dialyzes for 30 hours or more per session, the facility will be reimbursed routinely and amount per session equal to three times the rate for one home hemodialysis treatment.

VI. Impact Analysis

A. Executive Order 12291

We have determined that this notice is not a major rule under Executive Order 12291, since it does not meet the criteria set forth in section 1(b) of the order. That is, the notice will not:

- Have an annual effect on the economy of $100 million or more;
- Cause a major increase in costs or prices for consumers, individual industries, government agencies, or geographic regions; or
- Have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The rates published in this notice will affect only the facilities participating in this optional reimbursement system, and less than one percent of all ESRD patients and outpatient maintenance dialysis treatments. The rate increase reflects both statutory changes and changes in the costs of furnishing dialysis in facilities. We expect that it will encourage home dialysis to some extent, and will increase program

expenditures for calendar year 1982 slightly less than $500,000 over calendar year 1981.

B. Regulatory Flexibility Act

The Secretary certifies, under section 605(b) of the Regulatory Flexibility Act (Pub. L. 96–354), that this notice will not have a significant economic impact on a substantial number of small businesses, nonprofit entities, or small local governments. The Secretary's negative certification is based on the small size of the affected facility population and the relatively small total effect of these rate increases, as explained in the Executive Order discussion above.

VII. Waiver Of Proposed Notice And 30-Day Delay in Effective Date

As explained above, we have published annual notices setting forth target reimbursement rates for the past three years (44 FR 60412, October 19, 1979; 45 FR 14249, March 5, 1980; and 46 FR 3985, January 16, 1981). We received several comments on the rates and methodology as set forth in the two earlier notices, and in the January 1981 notice we responded to these comments and improved our explanation of the methodology. These revised target rates for calendar year 1982 are calculated by applying the same methodology, except that we are using the new statutory maximum rate level, in accordance with Pub. L. 97–35, and we do not believe it would be either necessary or useful to request comments again. Therefore, we find good cause to waive publication of a proposed notice, and publish this notice of updated target reimbursement rates in final form.

Generally, we attempt to allow a 30-day period between the effective date of publication of a regulation or notice and its effective date. However, the notice published on January 16, 1981 set forth rates only for calendar year 1981. This notice is needed to establish rates of payment for the calendar year already begun. Since implementation of these rates effective January 1, 1982 will benefit the affected dialysis facilities and prompt publication would be in the public interest, there is good cause to waive the customary 30-day delay between publication and effective dates and to apply these revised target reimbursement rates to home dialysis treatments furnished on or after January 1, 1982.

(Sections 1102, 1814(b), 1833, 1861(v)(1), 1871, and 1881 of the Social Security Act (42 U.S.C. 1302, 1395f(b), 1395l, 1395(v)(1), 1395hh and 1395rr))

(Catalog of Federal Domestic Assistance Program No. 13,773 Medicare—Hospital Insurance and No. 13,774, Medicare—Supplementary Medical Insurance)

Dated: June 23, 1982.

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

[FR Doc. 82-19557 Filed 7-29-82; 8:45 am]

BILLING CODE 4120-03-M

Public Health Service

Health Research and Teaching Facilities and Training of Professional Health Personnel Title VII of the Public Health Service Act; Delegation of Authority

Notice is hereby given that in furtherance of the delegation of October 8, 1980, by the Secretary of Health and Human Services to the Assistant Secretary for Health (45 FR 76516–76517), the Acting Assistant Secretary for Health has delegated to the Administrator, Health Resources Administration, with authority to redelegate subject to Section 707 of the Public Health Service Act, the following authorities under Title VII of the Public Health Service Act:

1. Part A, Title VII of the Public Health Service Act (42 U.S.C. 292a–292j), as amended, concerning the administration of the general provisions under Title VII, excluding certain authorities under Section 708 which are administered by the Deputy Assistant Secretary for Health Research, Statistics, and Technology, Office of the Assistant Secretary for Health, and under Section 710 of the Public Health Service Act which are administered by the Administrator, Health Services Administration.

2. Part B, Title VII of the Public Health Service Act (42 U.S.C. 293–293i), as amended, providing for grants and loan guarantees and interest subsidies for construction of teaching facilities for medical, dental, and other health personnel.

3. Part D, Title VII of the Public Health Service Act (42 U.S.C. 295e–1–295e–5), as amended, providing for grants to provide professional and technical training in the field of family medicine.

4. Part E, Title VII of the Public Health Service Act (42 U.S.C. 295f–295f–5), as amended, providing for grants to improve the quality of schools of medicine, osteopathy, dentistry, public health, veterinary medicine, optometry, pharmacy, and podiatry.

5. Part F, Title VII of the Public Health Service Act (42 U.S.C. 295g–295g–10), as amended, providing for grants and contracts for programs and projects, excluding the authority under Section 785 and certain authorities under Section 790 which are administered by the Director, Centers for Disease Control.

6. Part G, Title VII of the Public Health Service Act (42 U.S.C. 295h–295h–7), as amended, providing for programs for personnel in health administration and in allied health, excluding the authority under Section 794 which is administered by the Deputy Assistant Secretary for Health Research, Statistics, and Technology, Office of the Assistant Secretary for Health.

The March 27, 1981 delegation (46 FR 21699–21700), from the Acting Assistant Secretary for Health to the Administrator, Health Resources Administration, as it pertains to authorities under Title VII of the Public Health Service Act has been superseded. Provision has been made for previous delegations and redelegations of authority under Title VII of the Public Health Service Act to officials within the Health Resources Administration to continue in effect for no more than 90 days from the effective date of this delegation, provided they are consistent with the delegation to the Administrator, Health Resources Administration.

The delegation to the Administrator, Health Resources Administration, became effective on July 12, 1982.

Dated: July 12, 1982.

James F. Dickson,

Acting Assistant Secretary for Health.

[FR Doc. 82-20716 Filed 7-29-82; 8:45 am]

BILLING CODE 4160-15-M

Office of the Secretary

Agency forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on July 23.

Public Health Service

Office of the Assistant Secretary for Health

Subject: National Registry of Health Maintenance Organizations Financing Needs—New

Respondents: Health Maintenance Organizations

OMB Desk Officer: Richard Eisinger

Food and Drug Administration

Subject: Study of Consumer Use of Prescription Drug Information Sources—New
Respondents: Individuals and households

National Institutes of Health

Subject: International Research Fellowship Application (0925-0010)—Revision
Respondents: Individuals
OMB Desk Officer: Fay S. Iudicello

Social Security Administration

Subject: AFDC Quality Control Integrated Review Schedule (SSA-4357)—New
Respondents: Individuals or households
Subject: Medical Examination Survey—Assessment of the SSI and DI Programs (SSA-4220 (5-82))—New
Respondents: Individuals or households
OMB Desk Officer: Milo Sunderhauf

Health Care Financing Administration

Subject: Report on Provider Participation in the Medicare Program (HCFA-350)—New
Respondents: States
OMB Desk Officer: Fay S. Iudicello

Copies of the above information collection clearance packages can be obtained by calling the HHS Reports Clearance Officer on 202-245-6511.

Written comments and recommendations for the proposed information collections should be sent directly to both the HHS Reports Clearance Officer and the appropriate OMB Desk Officer designated above at the following addresses:

J. J. Strnad, HHS Reports Clearance Officer, Hubert H. Humphrey Building, Room 524-F, Washington, D.C. 20201
OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, D.C. 20503, Attn: (name of OMB Desk Officer)

Dated: July 23, 1982.

Dale W. Sopper,

Assistant Secretary for Management and Budget.

[FR Doc. 82-20807 Filed 7-29-82; 8:45 am]
BILLING CODE 4150-04-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Utah; Public Comment Period on Wilderness Study Areas Site Specific Analyses

ACTION: Notice.

SUMMARY: This notice announces a public comment period on the draft site specific analyses (SSAs) for 56 individual wilderness study areas (WSAs) under wilderness review in Utah. The public comment period is scheduled to begin on July 30, 1982, and will end on September 30, 1982. Comments and/or information submitted by the public and received on or before the close of business on September 30, 1982, will be considered by BLM in arriving at a "preliminary preferred alternative" on each WSA under study in Utah.

The Federal Land Policy and Management Act (FLPMA) of 1976 directs BLM to manage the public lands and their resources under principles of multiple use and sustained yield.

In FLPMA wilderness values are identified as part of the spectrum of public land resource values and uses to be considered in BLM's planning, inventory and management activities. Section 603 of FLPMA specifically directs the BLM to carry out a wilderness review of roadless islands and roadless areas of 5,000 acres or more and to report to the President recommendations as to the suitability or nonsuitability of each such area or island for preservation as wilderness.

After the passage of FLPMA, the BLM began an orderly sequence of identifying, inventorying, and analyzing wilderness values on BLM administered public land. The following shows the steps and timing of the actions required to complete the Wilderness Study process:

Step I

Identify roadless areas of 5,000 contiguous acres or larger, or smaller areas where roadless areas are contiguous to wilderness areas on other agency administered land.

Completed August 1979.

Step II

Inventory the roadless areas to determine if Wilderness Characteristics are present. Identification of Wilderness Study Areas (WSA).

Completed November 1980.

Step III

Study and analyze each WSA to determine if it is suitable or non-suitable for recommendation as a Wilderness Area.

In addition to the site specific analysis and prior to reporting recommendations to the President, a statewide environmental impact statement (EIS), evaluating the cumulative effects, will be prepared for Utah. This is scheduled to be complete in late 1984. Prior to the preparation of the EIS each individual WAS is being analyzed individually on a site specific basis using the "Wilderness Study Policy; policies, criteria, and guidelines for conducting wilderness studies on public lands."

These guidelines directed that eight specific study criteria and quality standards be addressed. They are: *Wilderness Study Criteria* (1) Evaluation of Wilderness Values, (2) Manageability; and *Quality Standards* (3) Energy and Mineral Resource Values, (4) Impacts on Other Resources, (5) Impact of Nondesignation on Wilderness Values, (6) Public Comment (7) Local Social and Economic Effects, and (8) Consistency with Other Plans. The guidelines were used to conduct an interdisciplinary evaluation which is now subject to public comment. Four basic management options, or alternatives, are evaluated in the SSA's; all wilderness, partial wilderness, no wilderness and no action.

The purpose of the wilderness site specific analysis is to determine the environmental, social, and economic effects of recommending or not recommending any, all, or portions of WSAs within the State of Utah for inclusion into the National Wilderness Preservation System (NWPS).

To be completed by October 1984.

Step IV

The Secretary of Interior recommends to the President whether or not a WSA should be designated a wilderness area.

To be completed no later than October 1991.

Step V

The President has two years after receipt of the recommendation from the Secretary to make his recommendation to Congress.

Step VI

Congress has unlimited time to act on the recommendation. Only Congress can designate a wilderness area.

BLM is currently in Step III. After public comment on the SSAs and the comments analyzed and information reviewed, BLM will finalize the SSAs and begin work on the statewide EIS.

Twenty-three WSAs in the State of Utah are not being evaluated at this time. Site specific analyses on these WSA's within the San Juan, Price River, and San Rafael Resource Areas will be made available for public comment at a later date. Currently, these SSAs are scheduled for public comment sometime in March 1983. In addition nine WSAs are contiguous with WSAs in adjacent states and will be analyzed by those states. The Utah public will have an opportunity to comment on these WSAs when they are studied by the adjacent states. For further information on these WSAs contact the appropriate state office.

WSAs currently under study in Utah and draft SSAs subject to public comment at this time:

WSA No.	WSA name	WSA acreage	BLMs "preliminary recommendation"		
			All wilderness	Partial wilderness (approximate acres)	Not suitable
	Salt Lake District				
UT-020-089	North Stansbury	10,480		10,000	
UT-020-094	Cedar Mtns	50,500			X.
UT-020-105	Big Hollow	3,593			X.
	Cedar City District				
UT-040-046	Cottonwood Canyon	11,330			X.
UT-040-061	Steep Creek	22,034		18,350	
UT-040-076	Carcass Canyon	46,711			X.
UT-040-077	Mud Spring Canyon	38,075			X.
UT-040-080	Fifty Mile Mtn	146,143		51,540	
UT-040-082	Scorpion	35,884			X.
UT-040-123	Cougar Canyon	10,568			X.
UT-040-132	Red Mtn	18,250			X.
UT-040-143	Canaan Mtn	53,619		48,080	
UT-040-145	Orderville Canyon	1,750			X.
UT-040-146	Deep Creek	3,320			X.
UT-040-147	Red Butte	804			X.
UT-040-148	Spring Canyon	4,433			X.
UT-040-149	The Watchman	600			X.
UT-040-150	North Fork Virgin River	1,040			X.
UT-040-153	LaVerkin Creek Canyon	567			X.
UT-040-154	Taylor Creek Canyon	35			X.
UT-040-176	Goose Creek Canyon	89			X.
UT-040-177	Beartrap Canyon	40			X.
UT-040-217	Moquith Mtn	14,830			X.
UT-040-230	Parunuweap Canyon	30,800			X.
UT-040-247	Paria-Hackberry	135,822		53,447	
UT-040-263	The Blues	19,030			X.
ISA	North Escalante Canyon	119,725		54,765	
ISA	The Gulch				
ISA	Phipps Death Hollow	42,731		39,256	
ISA	Escalante Canyons	760			X.
	Richfield District				
UT-050-035	Conger Mountain	20,400			X.
UT-050-020/020-060	Deep Creek Mtns	68,910		49,000	
UT-050-061	Swasey Mtns	49,500		34,500	
UT-050-070	King Top	84,770			X.
UT-050-073/040-265	Wah Wah Mtns	42,500	42,140		
UT-050-077	Howell Peak	24,800			X.
UT-050-078	Notch Peak	51,130		11,000	
UT-050-127	Fish Springs Range	52,500		33,840	
UT-050-070	King Top	84,770			X.
UT-050-073/040-265	Wah Wah Mtns	42,500	42,140		
UT-050-077	Howell Peak	24,800			X.
UT-050-078	Notch Peak	51,130		11,000	
UT-050-127	Fish Springs Range	52,500		33,840	
UT-050-186	Rockwell	9,150			X.
UT-050-221	Fremont Gorge	2,500			X.
UT-050-236A	Dirty Devil	61,000	61,000		
UT-050-236B	French Springs—Happy Canyon	25,000			X.
UT-050-237	Horseshoe Canyon	40,840	40,840		
UT-050-238	Blue Hills—Mt. Ellen	58,480	58,480		
UT-050-241	Fiddler Butte	26,400		1,800	
UT-050-242	Bull Mtn	11,800			X.
UT-050-247	Little Rockies	38,700	38,700		
UT-050-248	Mt. Pennel	27,300			X.
UT-050-249	Mt. Hillers	20,000			X.
	Moab District				
UT-060-100B	Flume Canyon	48,440			X.
UT-060-100C	Coal Canyon	44,020			X.
	Spruce Canyon	20,650			X.
UT-060-118	Westwater Canyon	30,800		26,000	
UT-060-131B	Lost Spring Canyon	3,880			X.
UT-060-140A	Behind the Rocks	12,930	12,930		
	Vernal District				
UT-080-414	Daniels Canyon	2,496			X.

WSAs not under study at present, but which will be available for public comment at a later date:

WSA No.	WSA name	Acreage
	Moab district	
UT-060-023	Sids Mtn	80,530
UT-060-025	Devils Canyon	9,610
UT-060-028A	Crack Canyon	25,315
UT-060-029A	San Rafael Reef	55,540
UT-060-045/050-237A.	Horseshoe Canyon	20,550
UT-060-054	Mexican Mtn	60,360
UT-060-067	Turtle Canyon	33,970
UT-060-068A	Desolation Canyon	257,975
UT-060-138	Negro Bill Canyon	[1]7,620
UT-060-164	Indian Creek	7,300

WSA No.	WSA name	Acreage
UT-060-167	Bridger Jack Mesa	5,300
UT-060-169	Butler Wash	22,120
UT-060-188	Pine Canyon	11,300
UT-060-191	Cheese Box Canyon	15,410
UT-060-196	Bullet Canyon	8,730
UT-060-197/198	Slickhorn Canyon	46,800
UT-060-201	Road Canyon	65,000
UT-060-204	Fish Creek Canyon	48,530
UT-060-205B.	Mule Canyon	5,600
UT-060-224	Sheiks Canyon	3,070
ISA	Dark Canyon	49,904
ISA	Grand Gulch	34,928
UT-060-007	Muddy Creek	31,360

[1]This acreage is subject to change—final WSA decision has not been determined.

The following list shows those WSAs which will be analyzed by other states:

WSA name	Adjacent State involved	Acreage [1]
Starvation Point	Arizona	8,575
White Rock range	Nevada	2,600
Black Ridge Canyon West	Colorado	5,100
Squaw Canyon	Colorado	6,580
Cross Canyon	Colorado	1,000
West Cold Springs	Colorado	3,330
Wild Mountain	Colorado	130
Diamond Breaks	Colorado	3,900
Bull Canyon	Colorado	520

[1]Acreage in Utah with wilderness characteristics.

A SSA for each WSA currently under study is available for review at all County Court Houses, BLM District Offices, Area Offices and at the State Office (Public Room) for in-state publics. The addresses are:

County Courthouses

Beaver County Courthouse, Beaver, Utah
Box Elder County Courthouse, Brigham City, Utah
Cache County Courthouse, 160 N. Main, Logan, Utah
Carbon County Courthouse, Price, Utah
Daggett County Courthouse, Manila, Utah
Davis County Courthouse, Farmington, Utah
Duchesne County Courthouse, Duchesne, Utah
Emergy County Courthouse, Castledale, Utah
Garfield County Courthouse, Panquitch, Utah
Grand County Courthouse, Moab, Utah
Iron County Courthouse, Parowan, Utah
Juab County Courthouse, Nephi, Utah
Kane County Courthouse
Millard County Courthouse, Fillmore, Utah
Weber County Courthouse, Municipal Building, 2550 Washington, Ogden, Utah
Morgan County Courthouse, Morgan, Utah
Piute County Courthouse, Junction, Utah
Rich County Courthouse, Randolph, Utah
Salt Lake County Courthouse, 240 East 400 South, Salt Lake City, Utah
San Juan County Courthouse, Monticello, Utah
Sanpete County Courthouse, Manti, Utah
Sevier County Courthouse, Richfield, Utah
Summit County Courthouse, Coalville, Utah
Tooele County Courthouse, Tooele, Utah
Uintah County Courthouse, Vernal, Utah
Utah County Courthouse, 51 S. University, Provo, Utah
Wasatch County Courthouse, Heber, Utah
Washington County Courthouse, 196 E. Tabernacle, St. George, Utah
Wayne County Courthouse, Loa, Utah

BLM Offices in Utah

Utah State Office, 136 East South Temple, Salt Lake City, Utah 84111
Salt Lake Distict Office, Bear River Resource Area, Pony Express Resource Area, 2370 South 2300 West, Salt Lake City, Utah 84119
Cedar City, Distict Office 1579 North Main, Cedar City, Utah 84720
Beaver River Resource Area, 444 South Main, Cedar City, Utah 84720
Dixie Resource Area, Dixie Office Building, St. George, Utah 84770
Kanab Resource Area, 320 North First East, Kanab, Utah 84741
Escalante Resource Area, Escalante, Utah 84726
Richfield Distict Office, 150 East 900 North, Richfield, Utah 84701
House Range Resource Area, Warm Springs Resource Area, Fillmore, Utah 84631
Sevier River Resource Area, 180 North 100 East, Richfield, Utah 84701
Henry Mountains Resource Area, Hanksville, Utah 84734
Moab Distict Office 125 West 2nd South Main, Moab, Utah 84532
Price River Resource Area, San Rafael Resource Area, 900 North 7th East, Price, Utah 84501
Grand Resource Area, Sand Flats Road, Moab, Utah 84532
San Juan Resource Area, 284 South First West, Monticello, Utah 84535
Vernal District Office, Diamond Mountain Resource Area, Bookcliffs Resource Area, 170 South 500 East, Vernal, Utah 84078

A letter of notification of availability of documents (SSAs) has been mailed to out-of-state publics which are on the wilderness mailing list.

BLM District offices have scheduled open houses/workshops and public involvement meetings throughout the state to help the public in their review and to provide information relative to the WSAs under study. The schedule is as follows:

WILDERNESS OPEN HOUSE

Date	Time	Location
August 3	2:00 p.m. through 7:00 p.m.	Grand Resource Area Office, Sand Flats Road, Moab, Utah.
August 9	3:30 p.m. through 6:00 p.m.	Escalante Resource Area Office, Escalante, Utah.
August 12	3:30 p.m. through 6:00 p.m.	Kanab Resource Area Office, Kanab, Utah.
August 18	3:30 p.m. through 6:00 p.m.	Dixie Resource Area Office, 24 East St. George Blvd., St. George, Utah.
August 24	6:00 p.m. through 10:00 p.m.	Tooele High School, Tooele, Utah.
August 24	3:00 p.m. through 8:p.m.	Fillmore BLM Office, Fillmore, Utah.
*August 25	6:00 p.m. through 10:00 p.m.	East High School, 840 South 13th East, Salt Lake City, Utah.
August 25	3:00 p.m. through 8:00 p.m.	Henry Mountain Resource Area Office, Hanksville, Utah.
August 25	3:00 p.m. through 8:00 p.m.	Juab County Courthouse, Nephi, Utah.
August 26	3:00 p.m. through 8:00 p.m.	Utah BLM State Office, 13th Floor Conference Room, 136 East South Temple, Salt Lake City, Utah.
September 15.	2:00 p.m. through 6:00 p.m.	Vernal District Office, 170 South 500 East, Vernal, Utah.

*Meetings held in conjunction with land use planning process—the identification of preferred alternatives for the land use plan will be discussed for Salt Lake District.

Comments and/or information on the SSAs should be mailed to the appropriate BLM District Office which administers the specific WSA. Comments and information will be accepted until close of business, September 30, 1982.

FOR FURTHER INFORMATION CONTACT: Kent Biddulph, Utah State Office (801)524–4257.

Dated: July 16, 1982.

Dean Stepanek,

Associate State Director.

[FR Doc. 82-19780 Filed 7-29-82; 8:45 am]

BILLING CODE 4310-84-M

[AA-43767]

Alaska Native Claims Selection

On June 22, 1981, Cook Inlet Region, Inc., filed selection application AA-43767, under the provisions of section 12(b)(6) of the act of January 2, 1976 (89 Stat. 1151), and I.C.(2) of the Terms and Conditions for Land Consolidation and Management in the Cook Inlet Area, as clarified August 31, 1976 (90 Stat. 1935), for the surface and subsurface estates of certain lands located near Kashwitna, Alaska.

Section 12(b)(6) of the act of January 2, 1976, authorizes conveyance of lands

to Cook Inlet Region, Inc., from a selection pool established by the Secretary of the Interior and the General Services Administrator.

The lands are located inside the boundaries of Cook Inlet Region. With the agreement of the State of Alaska and Cook Inlet Region, Inc., the lands within selection AA–43767 were placed in the pool of properties available for Cook Inlet Region, Inc., subject to valid existing rights, by notice dated September 11, 1980.

The selection application of Cook Inlet Region, Inc., as to the lands described below, is properly filed and meets the requirements of the act and of the regulations issued pursuant thereto. These lands do not include any lawful entry perfected under or being maintained in compliance with Federal laws leading to acquisition of title.

In view of the foregoing, the surface and subsurface estates of the following described lands are considered proper for acquisition by Cook Inlet Region, Inc., and are hereby approved for conveyance pursuant to Sec. 12(b)(6) of the act of January 2, 1976:

Seward Meridian, Alaska (Surveyed)

T. 24 N., R. 4 W.,
Sec. 7, S½NE¼.
Containing 80 acres.
T. 20 N., R. 5 W.,
Sec. 1, lot 6, NE¼SW¼, N½SE¼.
Containing 153.89 acres.
Aggregating 233.89 acres.

There are no easements to be reserved to the United States pursuant to Sec. 17(b) of the Alaska Native Claims Settlement Act (ANCSA).

The grant of the above-described lands shall be subject to:

Valid existing rights therein, if any, including but not limited to those created by any lease (including a lease issued under Sec. 6(g) of the Alaska Statehood Act of July 7, 1958 (48 U.S.C. Ch. 2, Sec. 6(g))), contract, permit, right-of-way, or easement, and the right of the lessee, contractee, permittee, or grantee to the complete enjoyment of all rights, privileges, and benefits thereby granted to him. Further, pursuant to Sec. 17(b)(2) of the Alaska Native Claims Settlement Act of December 18, 1971 (43 U.S.C 1601, 1616(b)(2)) (ANCSA), any valid existing right recognized by ANCSA shall continue to have whatever right of access as is now provided for under existing law.

Section 12(b)(6) of Public Law (Pub. L.) 94–204 provides that conveyances pursuant to this section shall be made in exchange for lands or rights to select lands outside the boundaries of Cook Inlet Region as described in Sec. 12(b)(5) of this act and on the basis of values determined by appraisal. The lands described above have been appraised at a value of $149,000. Under Sec. I.C.(2)(e) of the Terms and Conditions, this property constitutes 298.00 acre/equivalents. Upon acceptance of title to these lands, Cook Inlet Region, Inc., will relinquish its selection rights to 298.00 acres of its out-of-region entitlement.

Conveyance of the remaining entitlement to Cook Inlet Region, Inc., shall be made at a later date.

There are no inland water bodies considered to be navigable within the lands described.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice of this decision is being published once in the **Federal Register** and once a week, for four (4) consecutive weeks, in the ANCHORAGE DAILY NEWS.

Any party claiming a property interest in lands affected by this decision, an agency of the Federal government, or regional corporation may appeal the decision to the Interior Board of Land Appeals, Office of Hearings and Appeals, in accordance with the attached regulations in Title 43 Code of Federal Regulations (CFR), Part 4, Subpart E as revised. However, pursuant to Pub. L. 96–487, this decision constitutes the final administrative determination of the Bureau of Land Management concerning navigability of water bodies.

If an appeal is taken the notice of appeal must be filed in the Bureau of Land Management, Alaska State Office, Division of ANCSA and State Conveyances (960), 701 C Street, Box 13, Anchorage, Alaska 99513. Do not send the appeal directly to the Interior Board of Land Appeals. The appeal and copies of pertinent case files will be sent to the Board from this office. A copy of the appeal must be served upon the Regional Solicitor, 510 L Street, Suite 100, Anchorage, Alaska 99501.

The time limits for filing an appeal are:

1. Parties receiving service of this decision shall have 30 days from receipt of this decision to file an appeal.

2. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, and parties who failed or refused to sign the return receipt shall have until August 30, 1982 to file an appeal.

Any party known or unknown who is adversely affected by this decision shall be deemed to have waived those rights which were adversely affected unless an appeal is timely filed with the Bureau of Land Management, Alaska State Office, Division of ANCSA and State Conveyances.

To avoid summary dismissal of the appeal, there must be strict compliance with the regulations governing such appeals. Further information on the manner of and requirements for filing an appeal may be obtained from the Bureau of Land Management, 701 C Street, Box 13, Anchorage, Alaska 99513.

If an appeal is taken, the parties to be served with a copy of the notice of appeal are:

Cook Inlet Region, Inc., P.O. Drawer 4–N, Anchorage, Alaska 99509.

State of Alaska, Department of Natural Resources, Division of Research and Development, Pouch 7–005, Anchorage, Alaska 99510.

Ann Johnson,

Chief, Branch of ANCSA Adjudication.

[FR Doc. 82–20679 Filed 7–29–82; 8:45 am]

BILLING CODE 4310–84–M

National Park Service

Proposed 1982 United States World Heritage Nominations

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: The Department of the Interior, through the National Park Service, announces the identification of two properties listed herein as proposed 1982 U.S. nominations to the World Heritage List. These properties were selected from among the potential 1982 nominations that were published in the **Federal Register** on April 21, 1982 (47 FR 17120), with a request for public comment. A draft nomination document will be prepared for each property listed herein, and will serve as the basis for determining later this calendar year whether to formally nominate the properties for World Heritage status.

DATES: The Federal Interagency Panel for World Heritage will meet in November 1982 to review the accuracy and completeness of the draft nomination documents, and to make recommendations to the Department of the Interior. Subject to this review and necessary approvals, the Assistant Secretary for Fish and Wildlife and Parks will transmit nomination(s) to the United Nations Educational, Scientific, and Cultural Organization (UNESCO), through the Department of State, so that they are received by UNESCO no later than December 31, 1982, for evaluating during 1983. If approved and forwarded to UNESCO, notice of U.S. World Heritage nominations will be published in the **Federal Register** in December 1982.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Ritsch, Associate Director, Recreation Resources, National Park Service, U.S. Department of the Interior, Washington, D.C. 20240 (202/343–4462).

SUPPLEMENTARY INFORMATION: The Convention Concerning the Protection of the World Cultural and Natural Heritage, now ratified by the United States and 62 other countries, has established a system of international cooperation through which cultural and natural properties of outstanding universal value to mankind may be recognized and protected. The Convention seeks to put into place an orderly approach for coordinated and consistent heritage resource protection and enhancement throughout the world.

Participating nations identify and nominate their sites for inclusion on the World Heritage List, which currently includes 112 cultural and natural properties. The World Heritage Committee judges all nominations against established criteria. Under the Convention, each participating nation assumes responsibility for taking appropriate legal, scientific, technical, administrative, and financial measures necessary for the identification, protection, conservation, and rehabilitation of World Heritage properties situated within its borders.

In the United States, the Department of the Interior is responsible for directing and coorrdinating U.S. participation in the World Heritage Convention. The Department implements its responsibilities under the Convention in accordance with the statutory mandate contained in Title IV of the National Historic Preservation Act Amendments of 1980 (Pub. L. 96–515; 16 U.S.C. 470a–1, a–2). On May 27, 1982, the Interior Department published in the **Federal Register** the policies and procedures which will be used to carry out this legislative mandate (47 FR 23391). These rules contain additional information on the Convention and its implementation in the United States, and identify the specific requirements that U.S. properties must satisfy before they can be nominated for World Heritage status, i.e., the property must have previously been determined to be of national significance, its owner must concur in writing to its nomination, and its nomination must include evidence of such legal protections as may be necessary to ensure preservation of the property and its environment.

The Federal Interagency Panel for World Heritage assists the Department in implementing the Convention by making recommendations on U.S. World Heritage policy, procedures, and nominations. The Panel is chaired by the Assistant Secretary for Fish and Wildlife and Parks, and includes representatives from the Office of the Assistant Secretary for Fish and Wildlife and Parks, the National Park Service, and the U.S. Fish and Wildlife Service within the Department of the Interior; the President's Council on Environmental Quality; the Smithsonian Institution; the Advisory Council on Historic Preservation; National Oceanic and Atmospheric Administration, Department of Commerce; and the Department of State.

Proposed 1982 United States World Heritage Nominations

The one cultural and one natural property listed below have been identified as proposed 1982 U.S. nominations to the World Heritage List. The identification of these properties as proposed nominations indicates that a draft nomination document will be prepared for each property. This document will subsequently be evaluated by the Federal Interagency Panel for World Heritage when it convenes in November 1982, at which time a decision on whether to formally nominate the properties to the World Heritage List will be made.

The following cultural property, indicated by major theme, and natural property, indicated by natural region, have been identified as proposed 1982 U.S. World Heritage nominations. Also listed are the World Heritage criteria which the properties appear most nearly to satisfy:

I. Cultural Property

European Exploration and Colonial Settlement

La Fortaleza-San Juan National Historic Site, Puerto Rico. Spanish defenses at San Juan guarded their sea lanes to the Caribbean; at this site they founded one of their earliest colonies in the Americas. La Fortaleza, the first fortification of San Juan (built 1533–40), has been the residence of the island's governors since the 1620s. The massive masonry citadel of El Morro was begun in 1591. A comparative study of similar resources will be undertaken to assess the relative importance of this complex. Criteria: (iv) an outstanding example of a type of structure which illustrates a significant stage in history; and (vi) directly and tangibly associated with events of outstanding universal significance.

II. Natural Property

Appalachian Ranges

Great Smoky Mountains National Park, Tennessee/North Carolina. This tract, which includes one of the oldest uplands on earth, has a diversity of lush vegetation associated with its varied topography, including spruce-fir, hemlock, deciduous, and mixed forests. The area has been designated a Biosphere Reserve. *Criteria:* (ii) an outstanding example of biological evolution, and (iii) contains superlative natural phenomena and areas of exceptional natural beauty.

Dated: July 16, 1982.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 82–20649 Filed 7–29–82; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent Corporation: Purolator Automotive and Industrial Products Inc., 255 Old New Brunswick Road, Piscataway, New Jersey 08854.

2. Wholly-owned subsidiaries which will participate in the operations, and state of incorporation:

(i) Purolator Products Inc., 970 New Brunswick Avenue, Rahway, New Jersey 07065, Delaware Corporation

(ii) Purolator Products Ltd., 1180 Lakeshore Road, East, Mississauga L5E 3B7, Canada, Ontario Corporation

(iii) Stant Inc., 1620 Columbia Avenue, Connersville, Indiana 47331, Delaware Corporation

(iv) Purolator Technologies Inc., 950 Rancho Conejo Boulevard, Newbury Park, California 91320, Delaware Corporation

1. Parent corporation and address of principal office: IC Industries, Inc., One Illinois Center, 111 East Wacker Drive, Chicago, IL 60601.

2. Wholly-owned subsidiaries which will participate in the operations and address of their respective principal offices:

Abex Corporation, 530 Fifth Avenue, New York, New York 10036

Accent International, Inc., One Red Devil Lane, Westwood, Massachusetts 02090
Alton Manufacturing Company, 12999 St. Charles Rock Road, Bridgeton, Missouri 63144
Black Diamond, Inc., 222 S. Riverside Plaza, Suite 1920, Chicago, Illinois 60606
Bolingbrook 55 Corporation, 111 East Wacker Dr., 27th Floor, Chicago, Illinois 60601
Boston Bean Pot, Inc., One Red Devil Lane, Westwood, Massachusetts 02090
Bubble-Up Company, Inc., 2800 North Talman Avenue, Chicago, Illinois 60618
Buffalo Refrigerating Co., Inc., 400 South Fourth Street, St. Louis, Missouri 63102
Chesley Industries, Inc., 12999 St. Charles Rock Road, Bridgeton, Missouri 63144
Chicago Intermodal Company 233 North Michigan Avenue, Chicago, Illinois 60601
Colony Financial Corporation, 111 E. Wacker Dr., 27th Floor, Chicago, Illinois 60601
Cosmic Enterprises, Inc., 222 S. River side Plaza, Suite 1920, Chicago, Illinois 60606
Cosmic Stores, Inc., 222 S. Riverside Plaza, Suite 1920, Chicago, Illinois 60601
Cove Development Corporation, 111 E. Wacker Dr., 27th Floor, Chicago, Illinois 60601
Cypress Bend Corporation, 111 E. Wacker Dr., 27th Floor, Chicago, Illinois 60601
Dad's Root Beer Company, 2800 North Talman Avenue, Chicago, Illinois 60618
Endro, Inc., 111 East Wacker Dr., 27th Floor, Chicago, Illinois 60601
Environ of Inverrary, Inc., 111 E. Wacker Dr., 27th Floor, Chicago, Illinois 60601
Friend Brothers, Inc., One Red Devil Lane, Westwood, Massachusetts 02090
Frolic Homes, Inc., 222 S. Riverside Plaza, Suite 1920, Chicago, Illinois 60606
GM&O Land Company, 233 North Michigan Avenue, Chicago, Illinois 60601
Gas Welding, Inc., 12999 St. Charles Rock Road, Bridgeton, Missouri 63144
Genadco Advertising Agency, Inc., 1745 North Kolmar Avenue, Chicago, Illinois 60639
Gulf Transport Company, 233 North Michigan Avenue, Chicago, Illinois 60601
Helvetia Redevelopment Corporation, 400 South Fourth Street, St. Louis, Missouri 63102
Helvetia Leasing Corporation, 400 South Fourth Street, St. Louis, Missouri 63102
Hussman Acceptance Company, 12999 St. Charles Rock Road, Bridgeton, Missouri 63144
Hussman Corporation, 12999 St. Charles Rock Road, Bridgeton, Missouri 63144
Hussman Refrigeration Company, 12999 St. Charles Rock Road, Bridgeton, Missouri 63144
Huth Manufacturing Company, 222 S. Riverside Plaza, Suite 1920, Chicago, Illinois 60606
IC Equipment Leasing Company, 111 E. Wacker Dr., 27th Floor, Chicago, Illinois 60601
IC Equities, Inc. (Delaware), 111 East Wacker Dr., 27th Floor, Chicago, Illinois 60601
IC Industries, Inc., 111 E. Wacker Dr., 27th Floor, Chicago, Illinois 60601
IC Leasing, Inc., 111 East Wacker Dr., 27th Floor, Chicago, Illinois 60601
IC Products Company, 111 East Wacker Dr., 27th Floor, Chicago, Illinois 60601
IC Sub, Inc., 111 East Wacker Dr., 27th Floor, Chicago, Illinois 60601
ICP Holding Corp., 111 East Wacker Dr., 27th Floor, Chicago, Illinois 60601
Illinois Center Corporation, 111 East Wacker Dr., 27th Floor, Chicago, Illinois 60601
International Stamping Co., Inc., 222 S. Riverside Plaza, Suite 1920, Chicago, Illinois 60606
Ken-Kraft Products, Inc., 222 S. Riverside Plaza, Suite 1920, Chicago, Illinois 60606
Kolmar Products Corporation, 1745 N. Kolmar Avenue, Chicago, Illinois 60639
Krack Corporation, 12999 St. Charles Rock Road, Bridgeton, Missouri 63144
LaSalle Properties, Inc., One Shell Square, Suite 3740, New Orleans, Louisiana 70139
Midas International Corporation, 222 S. Riverside Plaza, Suite 1920, Chicago, Illinois 60606
Midas Properties, Inc., 222 S. Riverside Plaza, Suite 1920, Chicago, Illinois 60606
Midas Realty Corporation, 222 S. Riverside Plaza, Suite 1920, Chicago, Illinois 60606
Midas Steel Processing Services, Inc., 222 S. Riverside Plaza, Suite 1920, Chicago, Illinois 60606
Midas Truck Body, Inc., 222 S. Riverside Plaza, Suite 1920, Chicago, Illinois 60606
Mississippi Valley Corporation, 233 N. Michigan Avenue, Chicago, Illinois 60601
Muffler Corporation of America, 222 S. Riverside Plaza, Suite 1920, Chicago, Illinois 60606
Nine-O-Five Stores, Inc., 400 South Fourth Street, St. Louis, Missouri 63102
Norris Homes, Incorporated, 222 S. Riverside Plaza, Suite 1920, Chicago, Illinois 60606
North Carolina Corp., One Red Devil Lane, Westwood, Massachusetts 02090
Oak Village Development Corp., 111 E. Wacker Dr., 27th Floor, Chicago, Illinois 60601
Old Brazos Forge, Corp., 12999 St. Charles Rock Road, Bridgeton, Missouri 63144
Pepsi-Cola General Bottlers, Inc., 1745 N. Kolmar Avenue, Chicago, Illinois 60639
Pet Incorporated, 400 South Fourth Street, St. Louis, Missouri 63102
Pet Warhousing Co. of California, 400 South Fourth Street, St. Louis, Missouri 63102
Richardson & Robbins Co., One Red Devil Lane, Westwood, Massachusetts 02090
S & T of Mississippi, Inc., 111 E. Wacker Dr., 27th Floor, Chicago, Illinois 60601
S & T South, Inc., 111 E. Wacker Dr., 27th Floor, Chicago, Illinois 60601
St. Louis Lithographing Company, 400 South Fourth Street, St. Louis, Missouri 63102
South Properties, Inc., 111 E. Wacker Dr., 27th Floor, Chicago, Illinois 60601
Southland Canning & Packing Co. Inc., 400 South Fourth Street, St. Louis, Missouri 63102
Spartanburg Dairy, Inc., 400 South Fourth Street, St. Louis, Missouri 63102
Star Cooler Corporation, 12999 St. Charles Rock Road, Bridgeton, Missouri 63144
Stuckey's Inc., 400 South Fourth Street, St. Louis, Missouri 63102
Stuckey's Stores, Inc., 400 South Fourth Street, St. Louis, Missouri 63102
William Underwood Company (Maine), One Red Devil Lane, Westwood, Massachusetts 02090
William Underwood Company (Mass.), One Red Devil Lane, Westwood, Massachusetts 02090
Vendome Stores, Inc., 400 South Fourth Street, St. Louis, Missouri 63102
Violet Packing Company, Inc., 400 South Fourth Street, St. Louis, Missouri 63102
Hussmann International, Inc., 12999 St. Charles Rock Road, Bridgeton, Missouri 63144
Illinois Central Export Corporation, 530 Fifth Avenue, New York, New York 10036

Krack Corporation International, 12999 St. Charles Rock Road, Bridgeton, Missouri 63144
Pet International Sales, Inc., 400 South Fourth Street, St. Louis, Missouri 63102
ACR Maine, Inc., 12999 St. Charles Rock Road, Bridgeton, Missouri 63044
Applied Air Systems, Inc., 12999 St. Charles Rock Road, Bridgeton, Missouri 63044
Hussmann Distributing Company, Inc., 12999 St. Charles Rock Road, Bridgeton, Missouri 63044
IC Acquisition Company, 111 E. Wacker Dr., 27th Floor, Chicago, Illinois 60601
IC Merger Company, 111 E. Wacker Dr., 27th Floor, Chicago, Illinois 60601
Mexican Holding Co., 12999 St. Charles Rock Road, Bridgeton, Missouri 63044
Midas Euro, Inc., 222 S. Riverside Plaza, Suite 1920, Chicago, Illinois 60606.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-20665 Filed 7-29-82; 8:45 am]

BILLING CODE 7035-01-M

Long-and-Short-Haul Application for Relief (Formerly Fourth Section Application)

July 26, 1982.

This application for long-and-short-haul relief has been filed with the I.C.C.

Protests are due at the I.C.C. within 15 days from the date of publication of the notice.

No. 43973, Southwestern Freight Bureau, Agent (No. B-161), carload rates on cottonseed hulls between stations in Southwestern Territory, including Mississippi River Crossings Memphis, TN and South; also between points in Southwestern Territory, on the one hand, and stations in Illinois and Western Trunk Line Territories, on the other hand, and only for account of the ICG and/or WLO, in Supplement 278 to its tariff ICC SWFB 4450, effective August 22, 1982, Grounds for relief: Rate Relationships.

By the Commission.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-20644 Filed 7-29-82; 8:45 am]

BILLING CODE 7035-01-M

[Docket AB-3 (Sub-No. 29)]

Missouri Pacific Railroad Co.—Abandonment—in Saline and Lafayette Counties, MO; Findings

Notice is hereby given pursuant to 49 U.S.C. 10903 that the Commission, Review Board Number 3, has issued a certificate authroizing the Missouri Pacific Railroad Company to abandon its rail line known as the Lexington Subdivision extending from railroad milepost 243.5 near Lexington to the end of the line, railroad milepost 210.0 at Sweet Springs, a distance of 33.5 miles, in Saline and Lafayette Counties, MO, subject to certain conditions. Since no investigation was instituted, the requirement of Section 1121.38(b) of the Regulations that publication of notice of abondonment decisions in the **Federal Register** be made only after such a decision becomes administratively final was waived.

Upon receipt by the carrier of an actual offer of financial assistance, the carrier shall make available to the offeror the records, accounts, appraisals, working papers, and other documents used in preparing Exhibit I (Section 1121.45 of the Regulations). Such documents shall be made available during regular business hours at a time and place mutually agreeable to the parties.

The offer must be filed with the Commission and served concurrently on the applicant, with copies to Louis E. Gitomer, Room 5417, Interstate Commerce Commission, Washington, DC 20423, no later than 10 days from publication of this Notice. The offer, as filed, shall contain information required pursuant to Section 1121.38(b)(2) and (3) of the Regulations. If no such offer is received, the certificate of public convenience and necessity authorizing abandonment shall become effective 30 days from the service date of the certificate.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-20663 Filed 7-29-82; 8:45 am]

BILLING CODE 7035-01-M

Permanent Authority Decisions; Decision-Notice

The following applications, filed on or after February 9, 1981, are governed by Special Rule of the Commission's Rules of Practice, see 49 CFR 1100.251. Special Rule 251 was published in the **Federal Register** on December 31, 1980, at 45 FR 86771. For compliance procedures, refer to the **Federal Register** issue of December 3, 1980, at 45 FR 80109.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.252. Applications may be protested *only* on the grounds that applicant is not fit, willing, and able to provide the transportation service or to comply with the appropriate statutes and Commission regulations. A copy of any application, including all supporting evidence, can be obtained from applicant's representative upon request and payment to applicant's representative of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated a public need for the proposed operations and that it is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. This presumption shall not be deemed to exist where the application is opposed. Except where noted, this decision is neither a major Federal Action significantly affecting the quality of the human environment not 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. OP1-127

Decided: July 26, 1982.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier.

MC 141710 (Sub-3), filed June 21, 1982. Applicant: CAPITOL CITY TRANSFER, INC., 200 West First Street, Topeka, KS 66603. Representative: John E. Jandera, P.O. Box 1979, Topeka, KS 66601. Transporting *general commodities* (except classes A and B explosives, commodiites in bulk and household goods as defined by the Commission), between Riley, KS, on the one hand, and, on the other, points in the U.S. (except AK and HI). Condition: issuance of a certificate in this proceeding is conditioned upon applicant submitting another certification that all rail service has ceased at Riley, KS.

Note.—The purpose of this application is to substitute motor carrier for abandoned rail carrier service.

Volume No. OP2-165

Decided: July 21, 1982.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier. (Member Fortier not participating.)

MC 162942, filed July 12, 1982. Applicant: GENE WESTPHAL, d.b.a. WESTPHAL TRUCKING, Olivia, MN 56277. Representative: Charles E. Johnson, P.O. Box 2056. Bismarck, ND 58502-2056, 701-223-5300. 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 162963, filed July 14, 1982. Applicant: SIDNEY GOULD, 8504 Evangeline N.E., Albuquerque, NM 87111. Representative: Sidney Gould (same as applicant), (505) 293-7714. 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. OP4-277

Decided: July 26, 1982.

By the Commission, Review Board No. 2, Members Carleton, Fisher, and Williams.

MC 154766 (Sub-2), filed July 15, 1982. Applicant: JOHN A. VERIHA, d.b.a. PAPER RECLAIM, Route 1, Box 271A, Porterfield, WI 54159. Representative: Daniel R. Dineen, 710 North Plankinton Ave., Milwaukee, WI 53203, (414) 273-7410. Transporting, for or on behalf 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 162846, filed July 7, 1982. Applicant: PAUL G. ALLEN, d.b.a. MONTANA WYOMING EXPRESS, 3114 Silverwood, Billings, MT 59102. Representative: Paul G. Allen (same address as applicant), (406) 252-8448. (1) Transporting *shipments weighing 100 pounds or less if transported in a motor vehicle in which no one package exceeds 100 pounds*, between points in the U.S. (except AK and HI) and (2) As a *broker of general commodities* (except household goods), between points in the U.S. (except AK and HI).

Agatha L. Mergenovich,

Secretary.

[FR Doc.82-20666 Filed 7-29-82; 8:45 am]

BILLING CODE 7035-01-M

Permanent Authority Decisions; Decision-Notice

The following applications, filed on or after February 9, 1981, are governed by Special Rule of the Commission's Rules of Practice, see 49 CFR 1100.251. Special Rule 251 was published in the **Federal Register** of December 31, 1980, at 45 FR 86771. For compliance procedures, refer to the **Federal Register** issue of December 3, 1980, at 45 FR 80109.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.252. A copy of any application, including all supporting evidence, can be obtained from applicant's representative upon request and payment to applicant's representative of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated a public need for the proposed operations and that it is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. This presumption shall not be deemed to exist where the application is opposed. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient opposition in the form of verified statements filed on or before 45 days from date of publication, (or, if the application later becomes unopposed) apporpriate 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. OP1-126

Decided: July 26, 1982.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier.

MC 61440 (Sub-219), filed June 7, 1982, previously noticed in the **Federal Register** issue of June 24, 1982. Applicant: LEE WAY MOTOR FREIGHT, INC., PO Box 12750, Oklahoma City, OK 73157. Representative: T. M. Brown, PO Box 12750, Oklahoma City, OK 73157, (405) 840-7579. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Phillips Petroleum Co., of Bartlesville, OK, and its subsidiaries, namely Phillips Products Co., Inc., Applied Automation, Inc., Phillips Pipe Line Company, Phillips Chemical Company, Phillips Natural Gas Company, and Drilling Specialties Company, all of Bartlesville, OK; Phillips Driscopipe, Inc., of Dallas, TX, American Fertilizer & Chemical Co., of

Henderson, CO, American Thermoplastics Corporation, of Houston, TX, Phillips Fibers Corporation, of Greenville, SC, Sealright Co., Inc., of Kansas City, MO, H. P. Smith Paper Co., of Chicago, IL, Phillips Uranium Corporation, of Albuquerque, NM, Phillips Coal Company, of Richardson, TX, Phillips Puerto Rico Core, Inc., of Guayama, PR, Phillips Extruded Products, Inc., of Voucherville, CAN, Phillips Pacific Chemical Company, of Spokane, WA, and Interplastic Corporation, of Minneapolis, MN.

Note.—The purpose of this republication is to identify all of the subsidiaries to be served under contract carrier authority as proposed.

Volume No. OP2-164

Decided: July 22, 1982.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier. (Member Fortier not participating.)

MC 52793 (Sub-108), filed July 8, 1982. Applicant: BEKINS VAN LINES CO., 333 South Center St., Hillside, IL 60162. Representative: David A. Gallagher (same address as applicant), 312–547–2184. Transporting *household goods*, between points in the U.S. (except AK and HI), under continuing contract(s) with Amoco Oil Company, of Chicago, IL.

MC 107012 (Sub-775), filed July 12, 1982. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Highway 30 West, Fort Wayne, IN 46818. Representative: Bruce W. Boyarko (same address as applicant), 219–429–2224. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S., under continuing contract(s) with Steelcase, Inc., of Grand Rapids, MI.

MC 121463 (Sub-3), filed July 13, 1982. Applicant: LEGGETT EXPRESS, INC., 95 Leggett St., East Hartford, CT 06108. Representative: John E. Fay, 663 Maple Ave., Hartford, CT 06114, (203) 525–2661. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in CT, on the one hand, and, on the other, oints in MA, ME, NH, NJ, NY, RI and VT. Condition: Issuance of this certificate is subject to prior or coincidental cancellation of applicant's written request, of certificate No. MC–121463 Sub 1, issued July 28, 1976.

MC 128573 (Sub-14), filed July 16, 1982. Applicant: BARNETT TRUCK LINE, INC., 3404 Wheat St., Kinston, NC 28501. Representative: Lawrence E. Lindeman, 4660 Kenmore Ave., Suite 1203, Alexandria, VA 22304, (703) 751–2441. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in PA, NJ, DE, MD, WV, VA, KY, TN, NC, SC, GA, FL and DC.

MC 148203 (Sub-7), filed July 19, 1982. Applicant: COPPER CITY TRANSPORT, INC., Old Route 5 S, RD #2, Frankfort, NY 13340. Representative: Murray J. S. Kirshtein, 118 Bleecker St., Utica, NY 13501, (315) 797–1970. Transporting *foodstuffs*, between Boston, MA, on the one hand, and, on the other, points in the U.S. (except AK and HI), under continuing contract(s) with Schrafft's Candy Co., of Boston, MA.

MC 149492 (Sub-7), filed July 16, 1982. Applicant: CHICAGOLAND QUAD CITIES EXPRESS, INC., 817 West 21st St. Chicago, IL 60608. Representative: Philip A. Lee, 120 West Madison St., Chicago, IL 60602, (312) 236–8225. Transporting *titanium-dioxide-*, between Gloucester City, NJ, and, Chicago, IL.

Volume No. OP2-166

Decided: July 21, 1982.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier. (Member Fortier not participating.)

MC 143553 (Sub-15), filed July 12, 1982. Applicant: CONTINENTAL TRANSPORT SYSTEMS, INC., 35 Main St., Versailles, CT 06383. Representative: Ronald I. Shapss, 450 Seventh Ave., New York, NY 10123, (212) 239–4610. Transporting *metals, alloys and metal products*, between points in the U.S. (except AK and HI), under continuing contract(s) with Ulbrich Stainless Steels and Special Metals, Inc., of Wallingford, CT.

MC 151813 (Sub-5), filed July 12, 1982. Applicant: CONERTY-HENIFF TRANSPORT, INC., 4220 West 122nd St., Alsip, IL 60658. Representative: Abraham A. Diamond, 29 South La Salle St., Chicago, IL 60603, (312) 236–0548. Transporting (1) *petroleum, petroleum products, chemicals, chemical products, and plastics*, and (2) *such commodities as are used or useful in the manufacture, sale, distribution and installation of refractory products*, between points in the U.S. (except AK and HI).

MC 160183, filed July 12, 1982. Applicant: LONE STAR TRANSPORTATION, INC., 3–7 West 1st St., Clifton, NJ 07011. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934, (201) 234–0301. Transporting: *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI).

MC 160973, filed July 13, 1982. Applicant: BLACK DIAMOND ENTERPRISES, INC., P.O. Box 9276, Yakima, WA 98909. Representative: Philip G. Skofstad, 529 S. E. Grand Ave., Portland, OR 97214, (503) 239–4157. Transporting: *pulp, paper and related products, printed matter, chemicals and related products, rubber and plastic products, clay, concrete, glass or stone products, metal products, machinery and waste or scrap materials not identified by industry producing*, between points in King and Yakima Counties, WA, Washington County, OR and Santa Clara and Los Angeles Counties, CA, on the one hand, and, on the other, points in AZ, CA, CO, ID, MT, NM, NV, OR, TX, UT, WA and WY.

MC 162813, filed July 12, 1982. Applicant: LEHIGH PORTLAND CEMENT CO., d.b.a. LEHIGH TRUCKING, 537 East Lafayette St., Marianna, FL 32446. Representative: Robert R. Brinker, Suite 1100, 1660 L Street, N.W., Washington, D.C. 20036, (202) 452–7456. Transporting: *furniture and fixtures*, between points in the U.S. (except AK and HI), under a continuing contract(s) with Continental Specialties, Inc., of Ty Ty, GA.

MC 162843, filed July 6, 1982. Applicant: LONE OAK, INC., 2957 Hamner Ave., Norco, CA 91760. Representative: Miles L. Kavaller, 315 S. Beverly Dr., Suite 315, Beverly Hills, CA 90212, 213–277–2323. Transporting: *general commodities* (except household goods), between points in the U.S. (except AK and HI), under continuing contract(s) with Interstate Freight Service, Inc., of Downey, CA.

Condition To the extent any permit issued in this proceeding authorizes the transportation of classes A and B explosives, it shall be limited to a period expiring 5 years from its date of issuance.

MC 162943, filed July 12, 1982. Applicant: COLORADO TRANSPORTATION GROUP, INC., d.b.a. ALPINE COACHES, INC., 1000 Lionsridge Loop, Vail, CO 81657. Representative: Thomas J. Burke, Jr., 1600 Lincoln Center, 1660 Lincoln Street, Denver, CO 80264, (303) 861–4028. Transporting: *passengers and their baggage* in the same vehicle with passengers, in charter and special operations, (1) between points in CO and WY, and (2) between points in CO and WY, on the one hand, and, on the other, points in the U.S. (except AK and HI).

Volume No. OP2-167

Decided: July 20, 1982.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier. (Member Fortier not participating.)

MC 14582 (Sub-15), filed July 12, 1982. Applicant: ELFRINK TRUCK LINES, INC., P.O. Box 92, Advance, M0 63730. Representative: Herman W. Huber, 101 East High St., Jefferson City, MO 65101, (314) 636–9131. Over *regular* routes, transporting *general commodities* (except classes A and B explosives): (1) between Dexter and Poplar Bluff, MO, over U.S. Hwy 60, serving all intermediate points; (2) between Poplar Bluff and Holcomb, MO, over MO Hwy 53, serving all intermediate points; (3) between Fredericktown and the MO–AR State Line, over U.S. Hwy 67, serving all intermediate points; (4) between Neelyville and Doniphan, MO, over MO Hwy 142, serving all intermediate points; (5) between Doniphan and Poplar Bluff, MO, over U.S. Hwy 160, serving all intermediate points and serving all points in Butler and Ripley Counties as off-route points; (6) between Lutesville and Piedmont, MO, over MO Hwy 34, serving all intermediate points; (7) between Piedmont and Old Mines, MO; from Pieimont over MO Hwy 34 to junction MO Hwy 49, then along MO Hwy 49 to junction MO Hwy 21, then along MO Hwy 21 to Old Mines and return over the same routes, serving all intermediate points and all points in Iron and Washington Counties, MO, as off-route points; (8) between Ste. Genevieve and Caledonia, MO, over MO Hwy 32, serving all intermediate points, and serving all points in Ste. Genevieve and St. Francois Counties as off-route point; (9) between Flat River and Potosi, MO, over MO Hwy 8, serving all intermediate points: (10) between Old Mines, MO. and the junction of U.S. Hwy 67 and MO Hwy 47, over MO Hwy 47, serving all intermediate points; (11) between Fredericktown and Ironton, MO, over MO Hwy 72, serving all intermediate points.

.—Applicant requests authority to tack or join the above routes with applicant's presently authorized regular route authority to perform a through service.

MC 151653 (Sub-9), filed July 14, 1982. Applicant: GLOSSON ENTERPRISED, INC., Route 15, Box 55, Lexington, NC 27292. Representative: Eric Meierhoefer, 915 Pennsylvania Bldg., 425 13th St., NW., Washington, DC 20004, 202–737–1030. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between those points in the U.S. in and east of ND, SD, NE, CO, and NM.

MC 160522 (Sub-1), filed July 7, 1982. Applicant: TRANSPORT DORLINE LTEE, 880 Rue Begin, St. Laurent, Quebec, Canada H4M2N5. Representative: James Gogo, Jr. (same address as applicant), 514–334–6091 Transporting *electronic equipment,* between ports of entry on the international boundary line between the U.S. and Canada at points in NY, VT, ME, MI, NH, and MN.

Volume No. OP4–275

Decided: July 26, 1982.

By the Commission, Review Board No. 2, Members Carleton, Fisher, and Williams.

MC 58956 (Sub–7), filed July 16, 1982 Applicant: HASTINGS TRUCK CO., INC., 738 E Walnut St., Kalamazoo, MI 49007. Representative: Dennis Dean Kirk, 425–13th St., NW, Suite 929, Washington, D.C. 20004, (202) 347–2857. Transporting *those commodities which because of their size or weight require the use of special handling or equipment, machinery and metal products,* between points in MI and OH, on the one hand, and, on the other, points in NY, DE, MD, NJ, TN, PA, NC, IN, IL, WI, MI, OH, SC, MO, AR and KY.

MC 136646 (Sub–7), filed July 16, 1982. Applicant: LE MARS TRANSPORT, INC., P.O. Box 353, LeMars, IA 51031. Representative: Bradford E. Kistler, P.O. Box 82028, Lincoln, NE 68501, (402) 475–6761. Transporting *petroleum, natural gas and their products,* between Tulsa, OK, and Plymouth and Lyon Counties, IA, on the one hand, and, on the other, points in IA, MN, NE, and SD.

MC 154316 (Sub–1), filed July 16, 1982 Applicant: ATLANTIC TRUCKING, INCORPORATED, 15 Coachman Dr., Branford, CT 06405. Representative: William E. Hitchcock III (same address as applicant) (203) 488–9003. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S., under continuing contract(s) with Universal Wire Products, Inc., of North Haven, CT.

MC 157416 (Sub–1), filed July 13, 1982 Applicant: BURGESS TRANSPORTATION COMPANY, INC., Route 2, Box 336, Ashford, AL 36312. Representative: Rodney Steve Burgess (same address as applicant) (205) 899–5020. Transporting *such commodities* as are dealt in or used by grocery and food business houses, between points in AL and GA, on the one hand, and, on the other, points in IL, MO, IA, and NE.

MC 161896 filed May 10, 1982, previously noticed in the **Federal Register** issue of May 24, 1982, and republished in this issue. Applicant: FREE STATE TRANSPORT, INC., 406 Railroad Ave., Federalsburg, MD 21632. Representative: M. Bruce Morgan, 100 Roseler Rd., Suite 200, Glen Burnie, MD 21061, (301) 761–2579. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. on and east of a line beginning at the mouth of the Mississippi River, and extending along the Mississippi River to its junction with the western boundary of Itasca County, MN, then northward along the western boundaries of Itasca and Koochiching Counties, MN, to the International Boundary line between the U.S. and Canada, under continuing contract(s) with East Coast Foods, Inc., of Federalsburg, MD.

Note.—The purpose of this republication is to include the contracting shipper.

Volume No. OP4–276

Decided: July 25, 1982.

By the Commission, Review Board No. 2, members Carleton, Fisher, and Williams.

MC 105636 (Sub-45), filed July 16, 1982. Applicant: ASRMELLINI EXPRESS LINES, INC., P.O. Box 2394, Stuart, FL 33494. Representative: Wilmer B. Hill, 1030 15th St., NW, Suite 366, Washington, DC 20005, (202) 296–5188. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in TX, on the one hand, and, on the other, points in FL.

MC 141786 (Sub-1), filed July 16, 1982. Applicant: LEEWAY TRANSPORT, INC., 962 Herbert St., Philadelphia, PA 19124. Representative: Alan Kahn, 1430 Land Title Bldg., Philadelphia PA 19110, (215) 561–1030. Transporting *metal products, and those commodities which because of their size or weight require the use of special handling or equipment,* between Philadelpha, PA, on the one hand, and, on the other, points in the U.S. in and east of MI, IN, KY, TN and AL.

MC 158786, filed July 15, 1982. Applicant: ILCON, INC., 2105 Anthony Dr., Tyler, TX 75701. Representative: Paul D. Angenend, P.O. Box 2207, 1806 Rio Grande, Austin, TX 78768, (512) 476–6391. Transporting *Mercer commodities,* between points in TX, on the one hand, and, on the other, points in AR, CO, LA, MS, MN, OK, TX, and WY.

MC 161046 (Sub-1), filed July 16, 1982. Applicant: S & B ENTERPRISES, 273 S. 1375 East, Bountiful, UT 84010. Representative: Steve Facer, P.O. Box 510872, Salt Lake City, UT 84151, (801) 292–2984 Transporting *general commodities* (except classes A and B explosives and household goods), between points in AZ, CA, ID, NV, and UT.

MC 162566, filed July 15, 1982. Applicant: LEONARD & IRS PALMER TRUCKING, INC., P.O. Box 187, Wilsonville, NE 69046. Representative: Bradford E. Kistler, P.O. Box 82028, Lincoln, NE 68501, (402) 475–6761. Transporting *food and related products,* between points in Anderson County, KS, and points in NE, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 162976, filed July 15, 1982. Applicant: RON JEFFRIES, R.R. 2, Campbellsburg, IN 47108. Representative: Donald W. Smith, P.O. Box 40248, Indianapolis, IN 46240, (317) 846–6655. Transporting *lumber and wood products,* between points in the U.S. (except AK and HI), under continuing contract(s) with Kerr McGee Corporation, of Oklahoma City, OK.

MC 153146 (Sub-1), filed April 20, 1982, previously noticed in the **Federal Register** issue of May 6, 1982, and republished this issue. Applicant: DONALD CITRON, d.b.a. D & B TRUCKING, P.O. Box 872, Ceres, CA 95307. Representative: Arden Riess, P.O. Box 7965, Stockton, CA 95207. (209) 957–6128. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in CA, OR, WA, NV, and AZ.

Note.—The purpose of this republication is to include the state of NV. Upon issuance of a certificate in this proceeding the certificate served July 8, 1982 will be canceled.

Volume No. OP4–278

Decided: July 26, 1982.

By the commission, Review Board No. 2, Members Carleton, Fisher, and Williams.

MC 32967 (Sub-8), filed July 14, 1982. Applicant: ATLANTIC COAST EXPRESS, INC., 2170 N. Fleet St., Elizabeth, NJ 07201. Representative: Edward D. Greenberg, 1054 31st St., NW., Washington, DC 20007, (202) 342–5277. Transporting *general commodities* (except classes A and B explosives, commodities in bulk, and household goods), between Baltimore, MD, Boston, MA, New York, NY, Norfolk, VA, Philadelphia, PA, and Providence, RI, on the one hand, and, on the other, points in GA, KY, SC, and TN.

MC 3647 (Sub-468), filed July 13, 1982. Applicant: NJ TRANSIT BUS OPERATIONS INC., 180 Boyden Ave., Maplewood, NJ 07070. Representative: Irwin I. Kimmelman, McCarter Highway & Market St., P.O. Box 10009, Newark, NJ 07101, (201) 648–6908. Transporting *passengers* and *their baggage,* and *express,* in the same vehicle with passengers, (1) between Somerville and Newark, NJ, serving all intermediate points: (a) from junction East Main St. and Grove St., then over Grove St. to junction East High St., then over East High St. to junction North Gaston Ave., then over North Gaston Ave. to junction Union Ave., (NJ Hwy 28) over Bridgewater and Bound Brook, to junction Bound Brook Rd., Middlesex, then over Bound Brook Rd. to North Ave., Dunellen, then over Bound Brook Rd. to junction Madison Ave., then over Madison Ave. to junction Grove St. then over Grove St. to junction New Market Rd., then over New Market Rd. to junction Vail Ave., Piscataway, then over Vail Ave. to junction West Seventh St., then over West Seventh St., South Plainfield, to junction Park Ave., Plainfield, then over Park Ave. to junction West Front St., then over West Front St. to junction East Front St., then over East Front St. to junction Terrill Rd., then over Terrill Rd. to junction Midway Ave., Fanwood, then over Midway Ave. to junction North Ave., (NJ Hwy 28), then over North Ave., Scotch Plains, Westfield, Garwood, Cranford, to junction Westfield Ave., Roselle Park, then over Westfield Ave. to junction Chestnut St., then over Chestnut St. to junction Salem Rd., Union, then over Salem Rd. to junction Liberty Ave., Hillside, then over Liberty Ave. to junction Bloy St., then over Bloy St. to junction U.S. Hwy 22, then over U.S. Hwy 22, Hillside, to junction U.S. Hwy 1, Newark, (b) from U.S. Hwy 1, Newark, to junction U.S. Hwy 1 and U.S. Hwy 22, then over U.S. Hwy 22 to junction Bloy St., Hillside, then over Bloy St. to junction Leo St., then over Leo St. to junction U.S. Hwy 22 overpass, then over U.S. Hwy 22 overpass to junction Bloy St., then over Bloy St. to junction Liberty Ave., then over Liberty Ave. to junction Salem Rd., Union, then over Salem Rd. to junction Chestnut St., then over Chestnut St. to junction Westfield Ave., then over Westfield Ave. to junction North Ave. (NJ Hwy 28), then over North Ave. to junction Midway Ave., Fanwood, then over Midway Ave. to junction Terrill Rd., then over Terrill Rd. to junction East Front St., then over East Front St. to junction Watchung Ave., then over Watchung Ave. to junction West Seventh St., Plainfield, then over West Seventh St. to junction Vail Ave., then over Vail Ave. to junction New Market Rd., then over New Market Rd. to junction Grove St., then over Grove St. to junction Madison Ave., then over Madison Ave. to junction North Ave., then over North Ave. to junction Bound Brook Rd., then over Bound Brook Rd. to junction Union Ave., then over Union Ave. to junction North Gaston Ave., then over North Gaston Ave. to junction East Main St., then over East Main St. to Grove St., Somerville, (2) between Plainfield and Carteret, NJ, serving all intermediate points: from junction West Seventh St. and Park Ave., Plainfield, then over Park Ave. to junction Oak Tree Rd., then over Oak Tree Rd. to junction Wood Ave., then over Wood Ave. to junction New Dover Rd., then over New Dover Rd. to junction Chain-O-Hills Rd., then over Chain-O-Hills Rd. to junction Avenel St., then over Avenel St. to junction Rahway Ave., then over Rahway Ave. to junction Homestead Ave., then over Homestead Ave. to junction Blair Rd., then over Blair Rd. to junction Randolph Ave. and Roosevelt Ave. at the Woodbridge-Carteret boundary line and return over the same route, (3) between Dunellen, NJ and Plainfield, NJ, serving all intermediate points: from junction Madison Ave. and North Ave., Dunellen, then over North Ave. to junction W. Front St., Plainfield, then over W. Front St. to junction Watchung Ave., Plainfield, and return over the same route, (4) between Plainfield and Hillside, NJ, serving allintermediate points: from junction Park Ave. and West Seventh St., Plainfield, then over West Seventh St. to junction East Seventh St., then over East Seventh St. to junction Watchung Ave., Plainfield, then over Watchung Ave. to junction Mountain Ave., North Plainfield, then over Mountain Ave. to junction U.S. Hwy 22 (Mountain Ave.), then over U.S. Hwy 22 to junction Terrill Rd., then over Terrill Rd. to junction Front St., then over Front St. to junction Park Ave., then over Park Ave. to junction Mountain Ave., then over Mountain Ave. to junction U.S. Hwy 22, then over U.S. Hwy 22 to junction Bloy St., HIllside, and return over the same route, (5) between Plainfield and Westfield, NJ, serving all intermediate points: from junction West Seventh St. and Watchung Ave., then over Watchung Ave. to junction West Fifth St., then over West Fifth St. to junction South Ave., then over South Ave. to junction West Broad St., then over West Broad St. to junction North Ave., Westfield, and return the same route, (6) between Westfield and Mountainside, NJ, serving all intermediate points: (a) from junction North Ave. and Elm St., Westfield, then over Elm St. to junction Quimby St., then over Quimby St. to junction Central Ave., then over Central Ave. to junction Mountain Ave., then over Mountain Ave. to junction U.S. Hwy 22, Mountainside, (b) from junction U.S. Hwy 22 to junction Mountain Ave., then over Mountain Ave. to junction East Broad St., Westfield, then over East Broad St. to junction Elm St., and then

over Elm St. to junction North Ave. in Westfield, (7) between Mountainside and Union, NJ, serving all intermediate points: from junction U.S. Hwy 22 and Mountain Ave., Mountainside, then over Mountain Ave. to junction Morris Ave., (NJ Hwy 82), Springfield, then over Morris Ave., (NJ Hwy 82) to junction North Ave., Union, and return over route, (8) between points in Elizabeth, NJ, serving all intermediate points: (a) from junction U.S. Hwy 1 (Spring St.) and North Ave., then over North Ave. to junction Elmora Ave., then over Elmora Ave. to junction U.S. Hwy 1, (Spring St.) at the Bayway Circle and return over the same route, (b) from junction Elmora Ave. and Rahway Ave., then over Rahway Ave. to junction Pearl St., then over Pearl St. to junction Broad St., then over Broad St. to juction West Jersey St., (c) from junction West Jersey and Broad St., then over Broad St. to junction Rahway Ave., then over Rahway Ave. to junction Elmora Ave., (9) between Roselle Park and Elizabeth, NJ, serving all intermediate points: from junction Chestnut St. and Westfield Ave., Roselle Park, then over Westfield Ave. to junction Broad St., then over Broad St. to junction Newark Ave. then over Newark Ave. to junction North Ave, Elizabeth, and return over the same route, (10) between Fanwood and Newark, NJ, serving all intermediate points: from junction Midway Ave. Martine Ave., (Park Ave.), then over Martine Ave. to junction Lake Ave., then over Lake Ave. to junction Raritan Rd., then over Raritan Rd. to junction Drapkin Ave., then over Drapkin Ave. to junction Wood Ave., Linden, then over Wood Ave. to junction Amsterdam Ave., then over Amsterdam Ave. to junction First Ave., Roselle, then over First Ave. to junction Laurel St., then over Laurel St. to junction Second Ave., then over Second Ave. to junction Sheridan Ave., then over Sheridan Ave. to junction Third Ave., then over Third Ave. to junction Jersey Ave., then over Jersey Ave. to junction West Jersey St., then over West Jersey St. to junction Broad St., Elizabeth, then over Broad St. to Junction Elizabeth Ave., then over Elizabeth Ave. to junction Meeker Ave., then over Meeker Ave. to junction Empire St., then over Empire St. to junction Victoria St., then over Victoria St. to junction Frelinghuysen Ave., then over Frelinghuysen Ave. to junction U.S. Hwy 22, then over U.S. Hwy 22 to junction U.S. Hwy 1, Newark, and return over the same route. NOTE: Applicant states it intends to tack the authority herein with its presently authorized operations.

MC 13367 (Sub-16), filed July 15, 1982. Applicant: AG TRUCKING, INC., P.O. Box 1946, Elkhart, IN 46516. Representative: Paul D. Borghesani, Suite 300, Communicana Bldg., 421 S. Second St., Elkhart, IN 46516, (219) 293–3597. Transporting *coke and coal products,* between points in Marion County, IN, on the one hand, and, on the other, points in IA, IL, KY, MI, MO, NY, OH, PA, VA, WV, and WI.

MC 141867 (Sub-33), filed July 16, 1982. Applicant: SPECIALIZED TRUCKING SERVICE, INC., 2301 Milwaukee Way, Tacoma, WA 98421. Representative: Jack R. Davis, 1100 IBM Bldg., Seattle, WA 98101, (206) 624–7373. Transporting *general commodities* (except household goods and classes A and B explosives), between those points in the U.S. in and west of ND, SD, IA, MO, AR, and LA.

MC 163007, filed July 16, 1982. Applicant: DUFF'S GENERAL CONTRACTING, P.O. Box 297, Wade Drive, Holmen, WI 54636. Representative: Richard L. Daffinson (same address as applicant), (608) 526–4949. Transporting *salt and salt products,* between points in IL, IA, MN, and WI.

Volume No. OP4–279

Decided: July 26, 1982.

By the Commission, Review Board No. 2, Members Carleton, Fisher, and Williams.

MC 39507 (Sub-6), filed July 16, 1982. Applicant: PAWTUXET VALLEY MOTOR EXPRESS, INC., 303 Jefferson Blvd., Warwick, RI 28888. Representative: Ronald N. Cobert, Suite 501, 1730 M St., NW, Washington, DC 20036, (202) 296–2900. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Ocean Brokerage, Inc., of Warwick, RI.

MC 126327 (Sub-23), filed July 16, 1982. Applicant: TRAILS TRUCKING, INC., 1825 De La Cruz Blvd., Suite 11, Santa Clara, CA 95050. Representative: William J. Monheim, P.O. Box 1756, Whittier, CA 90609, (213) 945–2745. Transporting *general commodities* (except classes A and B explosives and household goods), between points in the U.S. (except AK and HI).

MC 145906 (Sub-10), filed July 19, 1982. Applicant: GENERAL TRUCKING COMPANY, INC., P.O. BOX 269, Columbia, TN 38401. Representative: Edward C. Blank II, P.O. Box 1005 Columbia, TN 38401, (615) 388–3200. Transporting *general commodities* (except classes A and B explosives and household goods), between points in the U.S., under continuing contract(s) with CE Cast Division of Combustion Engineering, of Pittsburgh, PA.

MC 162816, filed July 19, 1982. Applicant: JAMES L. KENNEDY, d.b.a. PIONEER EXPRESS, 1013 Woodbine Circle West, Galesburg, IL 61401. Representative: Edward D. McNamara, Jr., 907 S. Fourth St., Springfield, IL 62703, (217) 528–8476. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in IL, MN, NE, MO, IA, WI, IN, MI, and MS.

MC 162897, filed July 19, 1982. Applicant: SOUTH COAST TRANSPORT, INC., P.O. Box 267, Warren, OH 44482. Representative: Paul F. Beery, 275 E. State St., Columbus, OH 43215, (614) 228–8575. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Copperweld Corporation, of Pittsburgh, PA, and its subsidiaries. Condition: The person or persons who appear to be engaged in common control of another regulated carrier must either file an application under 49 U.S.C. 11343(A) or submit an affidavit indicating why such approval is unnecessary to the Secretary's office. In order to expedite issuance of any authority please submit a copy of the affidavit or proof of filing the application(s) for common control to team 4, Room 2410.

MC 162967, filed July 15, 1982. Applicant: HANDI-TRANSPORT COMPANY, 1351 Hawthorne Lane, West Chicago, IL 60185. Representative: Joel H. Steiner, 29 S. LaSalle St., Suite 905, Chicago, IL 60603. Transporting *rubber and plastic products, chemicals and related products, machinery* and *pulp, paper and related products,* between Chicago, IL; San Francisco, CA; New York, NY; Seattle, WA; Salt Lake City, UT; Cleveland, OH; Atlanta, GA, and Dallas, TX, on the one hand, and, on the other, points in the U.S. (except AK and HI).

Volume No. OP4–280

Decided: July 26, 1982.

By the Commission, Review Board No. 2, Members Carleton, Fisher, and Williams.

MC 134806 (Sub-81), filed July 19, 1982. Applicant: B-D-R TRANSPORT, INC., P.O. Box 1277, Vernon Dr., Brattleboro, VT 05301. Representative: Edward T. Love, 4401 East West Hwy., Suite 404, Bethesda, MD 20814, (301) 986–9030. Transporting (1) *paper products,* between points in the U.S. (except AK and HI), under continuing contract(s) with Byron Weston Company, Div. of

Crane & Company, of Dalton, MA; (2) *office equipment,* between points in the U.S. (except AK and HI), under continuing contract(s) with Dahle U.S.A., of Oxford, CT; and (3) *groceries and foodstuffs,* between points in the U.S. (except AK and HI), under continuing contract(s) with NEOPC, Inc., of North Leominster, MA.

MC 143776 (Sub-56), filed July 19, 1982. Applicant: C.D.B., INCORPORATED, 155 Spaulding, S.E., Grand Rapids, MI 49506. Representative: Karl L. Gotting, 1200 Bank of Lansing Bldg., Lansing, MI 48933, (517) 482–2400. Transporting *food and related products,* between points in the U.S. (except AK and HI), under continuing contract(s) with Chef Pierre, Inc., of Traverse City, MI.

MC 143776 (Sub-57), filed July 20, 1982. Applicant: C.D.B., INCORPORATED, 155 Spaulding Ave., S.E., Grand Rapids, MI 49506. Representative: C. Michael Tubbs, (same address as applicant), (800) 253–9527. Transporting *metal products,* between points in the U.S. (except AK and HI), under continuing contract(s) with United States Bronze Powders, Incorporated, of Flemington, NJ.

MC 144186 (Sub-10), filed July 19, 1982. Applicant: SUPERIOR TRANSFER, INC., 56 Pebble Dr., Baltimore, MD 21225. Representative: Robert L. Cope, 1730 M St., NW., Suite 501, Washington, DC 20036, (202) 296–2900. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI).

MC 147196 (Sub-26), filed July 19, 1982. Applicant: ECONOMY TRANSPORT, INC., P.O. Box 741, Slidell, LA 70459. Representative: Donald B. Sweeney, Jr., P.O. Box 2366, Birmingham, AL 35201, (205) 254–3880. Transporting (1) *food and related products,* (2) *pulp, paper and related products,* (3) *printed matter,* (4) *chemicals and related products,* (5) *coal and coal products,* (6) *rubber and plastic products,* and (7) *building materials,* between points in the U.S. (except AK and HI).

MC 154026 (Sub-4), filed July 19, 1982. Applicant: ADVANCE EXPRESS, INCORPORATED, 1200 South State St., Girard, OH 44420. Representative: A. David Millner, 7 Becker Farm Rd., P.O. Box Y, Roseland, NJ 07068, (201) 922–2200. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI).

MC 160586, filed July 7, 1982. Applicant: M. A. WORBEL BROKERS, INC., 7000 West Southwest Hwy, Stoney Creek Terrace No. 201, P.O. Box 207, Chicago, Ridge, IL 60415–0205. Representative: Mark A. Worbel (same address as applicant), (312) 448–5951. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI).

MC 163006, filed July 16, 1982. Applicant: R. FERGUSON ENTERPRISES, LTD., 9986 Lucean Dr., Surrey, B.C. Canada V3T 4W2. Representative: Kenneth R. Mitchell, 2320A Milwaukee Wy, Tacoma, WA 98421, (206) 383–3998. Transporting *general commodities* (except classes A and B explosives and household goods), between points in the U.S. (including AK but excluding HI), under continuing contract(s) with Reichhold Ltd., of Port Moody, B.C., Canada.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82–20667 Filed 7–29–82; 8:45 am]

BILLING CODE 7035–01–M

Motor Carriers; Permanent Authority Decisions; Decision-Notice

Correction

In FR Doc. 82–18164, published at page 29384, on Tuesday, July 6, 1982, on page 29388, in the second column, in the third paragraph, in the first line "MC 107012 (Sub-775)" should be corrected to read "MC 107012 (Sub-773)".

BILLING CODE 1505–01–M

DEPARTMENT OF JUSTICE

Agency Forms Under Review

July 16, 1982.

OMB has been sent for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. The list has all the entries grouped into new forms, revisions, extensions, or revisions. Each entry contains the following information:

(1) The name and telephone number of the Agency Clearance Officer (from whom a copy of the form and supporting documents is available); (2) The office of the agency issuing this form; (3) The title of the form; (4) The agency form number, if applicable; (5) How often the form must be filled out; (6) Who will be required or asked to report; (7) An estimate of the number of responses; (8) An estimate of the total number of hours needed to fill out the form; (9) An indication of whether Section 3504(h) of Pub. L. 96–511 applies; (10) The name and telephone number of the person or office responsible for OMB review.

Copies of the proposed forms and supporting documents may be obtained from the Agency Clearance Officer whose name and telephone number appear under the agency name. Comments and questions about the items on this list should be directed to the reviewer listed at the end of each entry and to the Agency Clearance Officer. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the reviewer and the Agency Clearance Officer of your intent as early as possible.

DEPARTMENT OF JUSTICE

Agency Clearance Officer—Larry E. Miesse—202–633–4312

New

- None

Revision

- Immigration and Naturalization Service

Prototype Test of revised Arrival/Departure Record, Form I–94
Nonrecurring
Individuals or households
Nonimmigrants arriving or departing U.S.: 10,000 responses; 833 hours; not applicable under 3504(h)
Andy Uscher—395–4814

Reinstatement

- Immigration and Naturalization Service

Application for Issuance or Extension of Refugee Travel Document
Nonrecurring
Individuals or households
Refugees: 11,000 responses; 11,000 hours; not applicable under 3504(h)
Andy Uscher—395–4814

- Immigration and Naturalization Service

Departure Information Card
Nonrecurring
Individuals or households
Deportable aliens granted permission to depart voluntarily from the U.S.: 50,000 responses; 1,667 hours; not applicable under 3504(h)
Andy Uscher—395–4814

- Immigration and Naturalization Service

Application for Nonresident Alien's Canadian Border Crossing Card
Nonrecurring
Individuals or households
Nonresident aliens crossing the Canadian Border: 55 responses; 60 hours; not applicable under 3504(h)

Andy Uscher—395–4814

• Immigration and Naturalization Service
Supplement to Application to File Petition for naturalization (Seaman)
Nonrecurring
Individuals or households
Persons applying for naturalization: 25 responses; 4 hours; not applicable under 3504(h)
Andy Uscher—395–4814

• Immigration and Naturalization Service
Application to Correct Certificate of Naturalization
Nonrecurring
Individuals or households
Naturalized persons: 3,000 responses; 240 hours; not applicable under 3504(h)
Andy Uscher—395–4814

• Immigration and Naturalization Service
Biographic Information
Nonrecurring
Individuals or households
Applicants for permanent residence and naturalization: 500,000 responses; 125,000 hours; not applicable under 3504(h)
Andy Uscher—395–4814

• Immigration and Naturalization Service
Registration for Classification as Refugee
Nonrecurring
Individuals or households
Refugees: 150,000 responses; 50,000 hours; not applicable under 3504(h)
Andy Uscher—395–4814

• Immigration and Naturalization Service
Application for Status as Permanent Resident
Nonrecurring
Individuals or households
Applicants for status as permanent resident: 135,000 responses; 67,500 report; not applicable under 3504(h)
Andy Uscher—395–4814

Extension

• Immigration and Naturalization Service
Application for Change of Nonimmigrant Status
Nonrecurring
Individuals or households
Aliens admitted to U.S. as nonimmigrants: 50,000 responses; 25,000 hours; not applicable under 3504(h)
Andy Uscher—395–4814

• Immigration and Naturalization Service
Application for Nonresident Alien's Mexican Border Crossing Card
On Occasion
Individuals or households
Nonresident aliens: 250,000 responses; 28,333 hours; not applicable under 3504(h)
Andy Uscher—395–4814

• Immigration and Naturalization Service
Notice to Student or Exchange Visitor and Request for Report on IAP–66
Nonrecurring
Individuals or households
Students or exchange aliens admitted to U.S. under provisions of Section 101(a)(15)(F) or (J) of the I&N Act: 5,000 responses; 417 hours; not applicable under 3504(h)
Andy Uscher—395–4814

Larry E. Miesse,

Department Clearance Officer, Systems Policy Staff, Office of Information Technology, Justice Management Division, Department of Justice.

[FR Doc. 82–20657 Filed 7–29–82: 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

United States v. ARA Services, Inc.; Proposed Consent Judgment and Competitive Impact Statement; Correction

On June 23, 1982, a proposed Consent Judgment and Competitive Impact Statement, filed with the United States District Court for the Southern District of Ohio, Eastern Division, in *United States* v. *ARA Services, Inc., et al.*, Civil Action Number C–2–82–436, was published in the Federal Register in Volume 47, No. 121 at page 27164.

In publishing the above-stated material, there were errors made in the manner and sequence in which certain of the materials were published. The following corrections should be noted:

1. *Paragraph IV of the Proposed Consent Decree.* Footnote one (1) to part 2 of paragraph IV also applies to Parts one (1) and three (3) of Paragraph IV. Exhibits A, B, and C, the agreements of sale regarding the Akron, Ohio, Columbus, Ohio and Huntington, West Virginia textile rental operations, all were attached to and incorporated in the proposed Consent Judgment which was filed with the United States District Court for the Southern District of Ohio, Eastern Division.

2. *Attachments to Exhibit C to the Proposed Consent Judgment.* Exhibit C to the proposed Consent Judgment is an Agreement of Sale, dated April 26, 1981, between the defendants and Mid-West Towel & Linen Service, Inc. with respect to the Huntington, West Virginia textile rental operations. That Agreement (Exhibit C) contained a number of documentary attachments. Those documentary attachments were published in the **Federal Register** after Exhibit B (the Columbus agreement) and before Exhibit C (the Huntington agreement). The documentary attachments are a part of Exhibit C not Exhibit B. They should have appeared after Exhibit C rather than after Exhibit B.

In addition, the documentary attachments to Exhibit C, which incorrectly follow Exhibit B, were published in the wrong order. The documentary attachments to Exhibit C should have been published in the following order:

1. Exhibit A
2. Exhibit A–1 (Major Accounts)
3. Exhibit B (Assets File)
4. Deed
5. Exhibit B–2
6. Exhibit C (Negotiable Promissory Note)
7. Exhibit D (Security Agreement)
8. Exhibit E (Guaranty)
9. Memorandum of Additional Understandings

3. *Omission of Documentary Attachment B to Exhibit C.* Finally, documentary attachment B (Assets File) to Exhibit C (Huntington agreement) was not published in the **Federal Register** because it is in a computer printout format that cannot be reproduced for printing. Documentary attachment B is, however, available for examination at the offices the Clerk of Courts, United States District Court for the Southern District of Ohio, Eastern Division, at the Federal Courthouse, Room 328, Columbus, Ohio 43215, and at the Great Lakes Office, Antitrust Division, United States Department of Justice, 995 Celebrezze Federal Building, Cleveland, Ohio 44199.

July 27, 1982.

Charles F. B. McAleer,

Special Assistant, Office of Operations.

[FR Doc. 82–20571 Filed 7–29–82: 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Labor Advisory Committee for Trade Negotiations And Trade Policy; Steering Subcommittee; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (P.L. (92–463 as amended), notice is hereby given of a meeting of the Steering Subcommittee of the Labor Advisory Committee for Trade Negotiations and Trade Policy.

Date, time and place: August 10, 1982, 9:30 a.m., N3437 A & B Frances Perkins Department of Labor Building, 200

Constitution Avenue NW., Washington, D.C. 20210

Purpose: To discuss trade negotiations and trade policy of the United States.

This meeting will be closed under the authority of Section 10(d) of the Federal Advisory Committee Act. The Committee will hear and discuss sensitive and confidential matters concerning U.S. trade negotiations and trade policy.

For further information, contact: Joseph S. Papovich, Executive Secretary, Labor Advisory Committee, Phone: (202) 523-6171, July 26, 1982.

Signed at Washington, D.C. this 27th day of July 1982.

Robert W. Searby,

Deputy Under Secretary, International Affairs.

[FR Doc. 82-20700 Filed 7-29-82; 8:45 am]

BILLING CODE 4510-28-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-537]

Department of Energy and Tennessee Valley Authority and Project Management Corp.; Availability of Draft Supplement to the Final Environmental Statement for the Clinch River Breeder Reactor Plant

Pursuant to the National Environmental Policy Act of 1969 and the United States Nuclear Regulatory Commission's regulations in 10 CFR Part 51, notice is hereby given that a Draft Supplement to the Final Environmental Statement (NUREG-0139) has been prepared by the Commission's Office of Nuclear Reactor Regulation related to the proposed construction and operation of the Clinch River Breeder Reactor Plant (CRBRP), located on the Clinch River in the town of Oak Ridge, Roane County, Tennessee. The applicants are the U.S. Department of Energy, Tennessee Valley Authority, and Project Management Corporation.

The Draft Supplement to the Final Environmental Statement (FES) addresses the changes to the CRBRP application and the relevant additional information acquired since the FES was issued in 1977. Federal, State, and specified local agencies are being provided with copies of the Draft Supplement (individuals and other local agencies may obtain these documents upon request).

Interested persons may submit comments on the Draft Supplement for the Commission's consideration. The comments should be addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Clinch River Breeder Reactor Program Office.

Comments by Federal, State and local officials, or other members of the public received by the Commission will be made available for public inspection at the Commission's Public Document Room, 1717 H Street, NW, Washington, D.C., and the local public document rooms at the Oak Ridge Public Library, Civic Center, Oak Ridge, Tennessee, and the Lawson McGhee Public Library, 500 West Church Street, Knoxville, Tennessee. Comments are due September 13, 1982. No extension of this comment period is contemplated. After consideration of the comments submitted on the Draft Supplement, the Commission's staff will prepare a final Supplement to the Final Environmental Statement, the availability of which will be noticed in the **Federal Register.**

The Draft Supplement is available for inspection by the public in the Commission's Public Document Room in Washington, D.C., and at the local public document rooms listed above. Requests for copies should be addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Dirctor, Technical Information and Document Control.

Dated at Bethesda, Maryland, this 23rd day of July 1982.

For the Nuclear Regulatory Commission.

Cecil O. Thomas,

Acting Director, Clinch River Breeder Reactor Program Office, Office of Nuclear Reactor Regulation.

[FR Doc. 82-20712 Filed 7-29-82; 8:45 am]

BILLING CODE 7590-01-M

[Byproduct Material License No. 13-11822-01, EA 82-94]

Midstate Testing Laboratory, Inc.; Order To Show Cause and Order Suspending License Effective Immediately

I

Midstate Testing Laboratory, Inc. (the "licensee") 7943 New Jersey Avenue, Hammond, Indiana 46323, holds Byproduct Material License No. 13-11822-01 (the "license") issued by the Nuclear Regulatory Commission. The license authorizes the licensee to use and possess byproduct material in the performance of radiographic operations under conditions specified in the license and the Commission's regulations. The license expires on February 29, 1984.

II

On June 2, 1982 the Senior Inspector of Midstate Testing Laboratory, Inc., contacted the NRC Region III office and stated that Midstate Testing Laboratory, Inc., was going bankrupt and was "locked out" of their facility on June 2, 1982.

On June 2, 1982 the NRC Region III office contacted the landlord, Kennedy Industrial Parks, and verified that Midstate Testing Laboratory, Inc. had been locked out of its facility located at 7943 New Jersey Avenue in Hammond, Indiana.

The NRC Region III office made numerous attempts to contact the president of Midstate Testing Laboratory, Inc. by telephone during the period June 4 through June 17, 1982, but was not able to establish contact.

On June 18, 1982 the NRC Region III office inspected the Midstate Testing Laboratory, Inc. facility with the landlord's permission. It was noted the licensee's inventory consisted of five radiographic exposure devices, three sealed radiography sources, and one soil moisture probe containing radioactive material.

On June 22, 1982 the NRC Region III office sent a letter to the president of Midstate Testing Laboratory, Inc., at the Hammond, Indiana address. The letter stated that if the licensee did not contact NRC by 4:00 p.m. on June 28, 1982, and make arrangements to transfer the radioactive material the NRC would take measures to ensure that the radioactive material would be placed in a safe storage location pending final disposal.

The licensee, Midstate Testing Laboratory, Inc., has not contacted the NRC or made arrangements to transfer the radioactive material. Therefore, the president of Midstate Testing Laboratory, Inc., has apparently abandoned the radioactive material.

The abandonment of radioactive material by a licensee is a condition that would warrant the Commission to refuse to grant a license on an original application. Under 10 CFR 30.34(f), licensees are required to notify the Commission in writing when the licensee decides to permanently discontinue all activities involving materials authorized under a license. In the circumstances at hand, the licensee has apparently abandoned his place of business and the licensed material at the business premises, and the licensee has made no apparent arrangements to transfer the material or to ensure its continued safekeeping. Moreover, Commission representatives have been unable to determine the licensee's intended actions with respect to its license and the radioactive material. In these circumstances, there is no assurance that the licensee will conduct its activities in accordance with the Commission's requirements. Therefore, I

have determined that the licensee should show cause why License No. 13–11822–01 should not be revoked. In view of the foregoing circumstances surrounding the licensee's apparent abandonment of the material and its business premises, I have also determined that the public health, safety, and interest require an immediate suspension of License No. 13–11822–01and transfer of the material to an authorized recipient within 5 days of issuance of this Order.

III

Accordingly, pursuant to Sections 81, 161(b), and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2, 30 and 34, it is hereby ordered that:

A. Effective immediately, License No. 13–11822–01 is suspended pending further order, and the licensee shall cease and desist from any use of byproduct material in its possession and from any further acquisition or receipt of byproduct material;

B. Within 5 days of the issuance of this Order the licensee shall transfer or permit the transfer of all radioactive material within its possession to a person authorized to possess such material; and

C. The licensee shall show cause, as provided in Section IV below, why License No. 13–11822–01 should not be revoked.

IV

Within 25 days of the date of this Order, the licensee may show cause why the license should not be revoked, as required in Section III.C. above, by filing a written answer under oath or affirmation that sets forth the matters of fact and law on which the licensee relies. The licensee may answer, as provided in 10 CFR 2.202(d), by consenting to the entry of an Order in substantially the form proposed in this Order to Show Cause. Upon failure of the licensee to file an answer within the specified time, the Director of the Office of Inspection and Enforcement may issue without further notice an Order revoking License No. 13–11822–01.

V

The licensee may request a hearing on this Order within 25 days after the issuance of this Order. Any answer to the Order or request for a hearing shall be submitted to the Director, Office of Inspection and Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555. A copy shall also be sent to the Executive Legal Director at the same address. A request for a hearing shall not stay the immediate effectiveness of sections III.A and III.B of this order.

If the licensee requests a hearing on this Order, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether, on the basis of the matters set forth in Secton II of this Order, License No. 13–11822–01 should be revoked.

Dated at Bethesda, Maryland this 22 day of July 1982.

For the Nuclear Regulatory Commission.

Richard C. DeYoung,

Director Office of Inspection and Enforcement.

[FR Doc. 82–20711 Filed 7–29–82; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[File No. 81–651]

Oklahoma Bar Corp.; Notice of Application and Opportunity for Hearing

July 20, 1982.

Notice is hereby given that Oklahoma Bar Corporation ("Applicant") has filed an application pursuant to Section 12(h) of the Securities Exchange Act of 1934, as amended (the "1934 Act"), for an order exempting Applicant from the provisions of Section 12(g)(1) of the 1934 Act.

The Application states, in part that exemption from the reporting requirements of the 1934 Act would not be inconsistent with the public interest since there will be no public market for the securities of the Applicant and virtually no trading interest. Furthermore, adequate financial information will be provided to shareholders in an annual report.

For a more detailed statement of the information presented, all persons are referred to the application which is on file in the offices of the Commission at 1100 L Street, N.W., Washington, D.C. 20549.

Notice is further given that any interested person not later than AUG 16 1982 may submit to the Commission in writing his views or any substantial facts bearing on this application or the desirability of a hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 500 North Capitol Street N.W. Washington, D.C.20549, and should state briefly the nature of the interest of the person submitting such information or requesting the hearing, the reason for such request, and the issues of fact and law raised by the application which he desires to controvert. At any time after said date, an order granting the application may be issued upon request or upon the Commission's own motion.

For the Commission, by the Division of Corporation Finance, pursuant to delegate authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82–20704 Filed 7–29–82; 8:45 am]

BILLING CODE 8010–01–M

Sunshine Act Meetings

Federal Register
Vol. 47, No. 147
Friday, July 30, 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
Securities and Exchange Commission.	1, 2

1

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of August 2, 1982, in Room 6059, 450 5th Street, NW., Washington, D.C.

Closed meetings will be held on Tuesday, August 3, 1982, at 10:00 a.m. and on August 5, 1982 at 10:00 a.m.

The Commissioners, their legal assistants, the Secretary of the Commission, and recording secretaries will attend the closed meetings. Certain staff members who are responsible for the calendared matters may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, the items to be considered at the closed meetings may be considered pursuant to one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4)(8)(9)(A) and (10) and 17 CFR 200.402(a)(4)(8)(9)(i) and (10).

Chairman Shad and Commissioners Thomas and Longstreth voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Tuesday, August 3, 1982, at 10:00 a.m., will be:

Formal orders of investigation.
Settlement of administrative proceedings of an enforcement nature.
Access to investigative files by Federal, State, or Self-Regulatory authorities.
Institution of administrative proceeding of an enforcement nature.
Litigation matter.

The subject matter of the closed meeting scheduled for Thursday, August 5, 1982, at 10:00 a.m., will be:

Institution of injunctive actions.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Catherine McGuire (202) 272–2400.

July 28, 1982.

[S–1107–82 Filed 7–28–82; 2:40 pm]

BILLING CODE 8010–01–M

2

SECURITIES AND EXCHANGE COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 47 FR 32008, July 23, 1982.

STATUS: Closed meetings.

PLACE: Room 6059, 450 5th Street, N.W., Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: Wednesday, July 21, 1982.

CHANGES IN THE MEETING: Additional items. The following additional item will be considered at a closed meeting scheduled for Tuesday, July 27, 1982, at 10:00 a.m.

Authorization for former staff member to discuss non-public information concerning and enforcement matter.

The following additional items will be considered at a closed meeting scheduled for Wednesday, July 28, 1982, following the 10:00 a.m. open meeting:

Institution of injunctive action.
Litigation matters.
Reject settlement of administrative proceeding of an enforcement nature.

Chairman Shad and Commissioners Thomas and Longstreth determined by vote that Commission business required consideration of this matter and that no earlier notice thereof was possible.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any matters have been added, deleted or postponed, please contact: Richard Starr at (202) 272–3195.

July 28, 1982.

[S–1108–82 Filed 7–28–82; 2:41 pm]

BILLING CODE 8010–01–M

federal register

Friday
July 30, 1982

Part II

Department of Labor

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's Orders 12–71 and 15–71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR, Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

Modifications and Supersedeas Decisions to General Wage Determination Decisions

Modifications and supersedeas decisions to general wage determination decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the modifications and supersedeas decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's orders 13–71 and 15–71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in foregoing general wage determination decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and supersedeas decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Office of Government Contract Wage Standards, Division of Government Contract Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rulemaking procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Determination Decision.

Modifications to General Wage Determination Decisions

The numbers of the decisions being modified and their dates of publication in the **Federal Register** are listed with each State.

Alabama:	
AL81-1296	Oct. 2, 1981.
AL82-1020	Apr. 2, 1982.
Illinois:	
IL82-2001	Jan. 15, 1982.
IL82-2034	May 7, 1982.
New York: NY81-3030	May 1, 1981.
Oregon: OR82-5100	Mar. 12, 1982.
Pennsylvania:	
PA81-3027	July 17, 1981.
PA81-3029	July 10, 1981.
Mew Mexico: NM80-4101	Dec. 19, 1980.
Missouri: MO81-4055	July 10, 1981.

Supersedeas Decisions to General Wage Determination Decisions

The numbers of the decisions being superseded and their dates of publication in the **Federal Register** are listed with each State. Supersedeas decision numbers are in parentheses following the numbers of the decisions being superseded.

Alabama:	
AL81-1034 (AL82-1034)	Dec. 30, 1980.
AL81-1131 (AL82-1035)	Dec. 30, 1980.
AL81-1133 (AL82-1037)	Dec. 30, 1980.
AL81-1034 (AL82-1036)	Dec. 30, 1980.
Illinois:	
IL79-2078 (IL82-2038)	Sept. 21, 1979.
IL79-2080 (IL82-2038)	Sept. 14, 1979.

Please note that we are changing the format for **Federal Register** wage decisions to coincide with the provisions

of All Agency Memorandum No. 132 dated January 29, 1980 which provides that the Department of Labor will discontinue identifying fringe benefits separately. Rather, they will be stated as a composite figure which is the total hourly equivalent value of fringe benefits found to be prevailing. Fringe benefits which can not be stated in monetary terms will be shown in footnotes. This procedure is being phased in gradually.

Signed at Washington, D.C. this 23rd day of July 1982.

Dorothy P. Come,

Assistant Administrator, Wage and Hour Division.

BILLING CODE 4510-27-M

MODIFICATION PAGE 1

DECISION NO. AL81-1296
Mod. #1 (47 FR 50222 dated October 2, 1981)

	Basic Hourly Rates	Fringe Benefits
Lawrence, Limestone, & Morgan Counties, Alabama		
Building Construction		
CHANGE:		
BRICKLAYERS	$13.50	
CARPENTERS		
Carpenters	10.50	1.39
Millwrights	11.15	1.39
ELECTRICIANS	14.30	2.27
PLUMBERS & PIPEFITTERS	14.85	2.23

DECISION NO. AL82-1020 - Mod. # 2 (47 FR 14341 dated April 2, 1982)

Madison County, Alabama		
Building Construction		
CHANGE:		
BRICKLAYERS	$13.50	
CEMENT MASONS	13.75	
ELECTRICIANS	14.30	2.27
PAINTERS	10.65	.75
PLUMBERS & PIPEFITTERS	14.10	1.77
SHEET METAL WORKERS	14.67	1.96

DECISION NO. IL82-2001 - MOD. #3
(47 FR 2459 - January 15, 1982)
Alexander, Champaign, Christian, Clark, Clay, Coles, Crawford, Cumberland, DeWitt, Douglas, Edgar, Edwards, Effingham, Fayette, Ford, Franklin, Gallatin, Hamilton, Hardin, Iroquois, Jackson, Jasper, Jefferson, Johnson, Lawrence, Marion, Massac, Moultrie, Perry, Piatt, Pope, Pulaski, Richland, Saline, Shelby, Union, Vermilion, Wabash, Wayne, White, & Williamson Counties, Illinois

	Basic Hourly Rates	Fringe Benefits
Change:		
Laborers:		
Area 2:		
Unskilled	$14.75	$1.35
Semi-Skilled	14.95	1.35
Skilled	15.10	1.35
Area 3:		
Unskilled	14.05	2.05
Semi-Skilled	14.25	2.05
Skilled	14.40	2.05
Area 4:		
Unskilled	14.35	1.75
Semi-Skilled	14.55	1.75
Skilled	14.70	1.75
Area 6:		
Unskilled	14.75	1.35
Semi-Skilled	14.95	1.35
Skilled	15.10	1.35
Area 8:		
Unskilled	14.25	1.85
Semi-Skilled	14.45	1.85
Skilled	14.60	1.85
Area 9:		
Unskilled	13.55	2.55
Semi-Skilled	13.75	2.55
Skilled	13.90	2.55

DECISION NO. IL82-2034 - MOD. #1
(47 FR 19869 - May 7, 1982)
Champaign, Clark, Coles, Cumberland, DeWitt, Douglas, Edgar, Macon, Moultrie, Piatt, Shelby, & Vermilion Counties, Illinois

	Basic Hourly Rates	Fringe Benefits
Change:		
Laborers:		
Clark, Douglas, Edgar, Moultrie (E ½), & Piatt (S ½) Cos.:		
Unskilled	$14.60	$1.75
Semi-Skilled	14.80	1.75
Skilled	14.95	1.75
Macon & Moultrie (W ½) Cos.:		
Unskilled	14.30	2.05
Semi-Skilled	14.50	2.05
Skilled	14.65	2.05
Shelby Co.:		
Unskilled	14.50	1.85
Semi-Skilled	14.70	1.85
Skilled	14.85	1.85
Vermilion Co.:		
Unskilled	13.80	2.55
Semi-Skilled	14.00	2.55
Skilled	14.15	2.55

MODIFICATION PAGE 2

DECISION NO. NY81-3030 - MOD. #4
(46 FR 24850 - May 1, 1981)
CATTARAUGUS, CHAUTAUQUA & ERIE COUNTIES, NEW YORK

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
ASBESTOS WORKERS	16.10	3.02
BOILERMAKERS	14.80	3.280
BRICKLAYERS		
Erie County & Cattaraugus County (the township of Perrysburg and the town of Gowanda)		
Bricklayers, Tuck Pointers, Cleaners, Caulkers & Stone Masons	16.18	3.75
Marble Masons	15.895	3.75
Terrazzo Workers & TIle Setters	15.80	3.75
CEMENT MASONS		
Erie County		
Cement Masons	16.98	2.60
Swing Scaffold	17.25	2.60
ELEVATOR CONSTRUCTOR	17.335	2.465+ b+c
ELEVATOR CONSTRUCTOR HELPER	12.13	2.465+ b+c
ELEVATOR CONSTRUCTOR HELPERS PROBATIONARY	8.67	
GLAZIERS	14.44	4.00
IRONWORKERS		
Chautauqua County (Townships of Cherry Creek, Ellington, Sheridan, Pomfret, Charlotte, Arkwright, Hanover, Villenova & Brockton)		
Erie County (except the northern half of Grand Island)		
Cattaraugus County		
Structural Ornamental, Rodman, Reinforcing, Riggers	13.97	3.57
Sheeter	14.37	3.57
Fence Erectors	13.06	3.57
Erie County (Northern half of Grand Island)		
Structural, Ornamental, Reinforcing, Riggers, Rodman, & Fence Erectors	14.66	2.09
Chautauqua County (Remainder of County)		
Structural, Ornamental, Rodman, Reinforcing, Welders, Riggers, Machinery Movers &		
Fence Erectors	16.95	3.52
Sheeter	18.49	3.52
LABORERS, BUILDING		
Erie County		
Basic	11.795	3.46
Foundation Laborers (over 8' in depth), Hod Carriers, Plasterer tender, Plasterer		
Scaffold Bldr, Pneumatic, Gas, Electric Tool Opr. & Steel Brunners	11.895	3.46
Mortar Mixer	11.945	3.46
Tool Operator over 8' in depth	11.995	3.46
On Swing Scaffold, Blaster, Plumbing		
Laborers, Wagon Drill Operator, Bottom Man	12.045	3.46
Top Man, Wreckers	11.795	3.46
Chautauqua County, Cattaraugus County (Except the city of Gowanda & Twp. of Perrysburg)		
Laborers	10.18	2.20
Blasters, Curb & Form Setters, (Steel, Stone & Granite), Nozzlemen (gunite, seeding & Sandblasting) & Pipelayers	10.43	2.20
Work 40' and up	10.33	2.20

MODIFICATION PAGE 3

DECISION NO. NY81-3030 - (CONT'D)	Basic Hourly Rates	Fringe Benefits
LABORERS, FREE AIR TUNNEL		
Erie County		
Steel erectors, pile-drivers, riggers	14.095	3.71
Blasters, cement finishers, ironmen, miners, heading driller	13.845	3.71
Powder Monkey	13.445	3.71
Side or roofbolt driller, conveyor men, block layers, rod men, caulkers, miners helper, track men, nippers, burners, derail men, electrical cable men, hosemen, groutmen, gravel men, bottom bell, form workers, movers, shaft men	13.345	3.71
Top Bell	12.845	3.71
Mole nipper, top laborers	12.595	3.71
LABORERS, UTILITY		
Erie County		
CLASS A	12.595	3.71
CLASS B	12.795	3.71
CLASS C	12.995	3.71
CLASS D	13.195	3.71
LINE CONSTRUCTION		
Electrical Overhead & Underground Distribution Work		
Journeyman Lineman & Technician	12.00	5%+3.40 +a
Cable Splicer	16.00	"
Groundman Digging Machine Operator, Groundman Dynamite Man	10.80	"
Groundman Mobile Equipment Operator, Mechanic First Class, Ground Truck Driver	9.60	"
Groundman Truck Driver (Tractor Trailer)	10.20	"
Driver Mechanic, Groundman - Experienced	9.00	"
All Overhead Transmission Line Work and Lighting for Athletic Fields		
Journeyman Lineman & Technician	13.80	5%+3.40 +a
Groundman Digging Machine Operator, Groundman Dynamite Man	12.42	"
Groundman Mobile Equipment Operator, Mechanic First Class,		
Groundman Truck Driver	11.04	"
Groundman Truck Driver (Tractor Trailer Unit)	11.73	"
Driver Mechanic, Groundman - Experienced	10.35	"
Sub-Station, Switching Structures (when not part of the line), Electrical, Telephone or CATV Commercial Work, Street Lighting & Signal Systems		
Journeyman Lineman & Technician	14.55	"
Cable Splicer	16.005	"
Groundman Digging Machine Operator, Groundman Dynamite Man	13.095	"
Groundman Mobile Equipment Operator, Mechanic First Class, Groundman Truck Driver	11.64	"
Groundman Truck Driver (Tractor Trailer Unit)	12.37	"
Driver Mechanic, Groundman - Experienced	10.91	"
All Pipe type Cable Installation, Maintenance Job or Projects		
Journeyman Lineman	14.55	"
Certified Lineman Welder	15.28	"
Cable Splicer	16.005	"
Groundman Equipment Operator	14.55	"

MODIFICATION PAGE 4

DECISION NO. NY81-3030 - (CONT'D)	Basic Hourly Rates	Fringe Benefits
Groundman Truck Driver (Tractor Trailer Unit)	12.37	5%+3.40 +a
Groundman Truck Drivers Groundman	11.64 / 10.91	"
FOOTNOTE:		
a. Paid Holidays: New Year's Day, Washington's Birthday, Good Friday, Decoration Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day, and Election Day for the President of the United States and Election Day for the Governor of New York State, provided the employee works the day before or the day after a holiday		
PAINTERS:		
Erie County (North of White Haven Rd. on Grand Island)		
Brush	13.56	3.71
Spray Mastic, Steel, Steeple Jack, Swing Scaffold, Boatswain Chair using window jack on life belts, steel tanks, smoke stacks, church steeples or flag poles, sandblasting & waterblasting	14.56	3.71
Bridges	15.55	3.71
Erie County (Remainder of County), Chautauqua County (Townships of Dunkirk, Portland, Ponifret, Sheridan, Arkwright, Hanover, & Villanova), & Cattaraugus County (Townships of Perrysburg, Dayton, Persia, Otto, Ashford, Yorkshire, East Otto & Machias	14.35	3.54
Base	14.35	3.54
Bridges 35' in depth or 35' from road level	16.765	3.54
Steel, tank, towers, stacks, flag poles, bosun chair, radio & TV towers	15.10	3.54
Taping	14.85	3.54
Cattaragus County (Townships of Leon, Conewango, Randolph, S. Valley, New Albion & Napoli), Chautuaqua County (Remainder of County)		
Brush	11.50	2.04
Structural Steel, Bridge, Tanks and Stacks	12.75	2.04
Spray, Steam Cleaning, Sandblasting & Toxic Coatings	12.15	2.04
Swing Scaffold, Bosun Chair, Paperhangers, Taping	11.50	2.04
Roller	11.50	2.04
Cattaraugus County (Remainder of County)		
Brush	10.95	2.16
Steel above 20' Ladder or Scaffold over 30' high, Spray, Wall covering Hanging	11.55	2.16
Bridges	12.20	2.16
PLUMBERS & STEAMFITTERS		
Cattaraugus County	14.30	1.90
Chautauqua County (Remainder of County) & Erie County	15.06	2.74
ROOFERS		
Erie County		
Compsition, damp, waterproofers, steep roofers & siders	15.56	2.71
Slate, tile, asbestos, & precast tile roofers	15.71	2.71
SPRINKLER FITTERS:		
Chautauqua County and Cattaraugus County	16.92	2.83
Erie County	15.29	4.81
STEAMFITTERS: Erie Co.	16.17	5.10

MODIFICATION PAGE 5

DECISION NO. OR82-5100 - MOD #8 (47 FR 10954 - March 12, 1982) Statewide Oregon	Basic Hourly Rates	Fringe Benefits
CHANGE:		
ELECTRICIANS (Area 2):		
Electricians	$20.39	3.53+3%
Cable Splicers	21.41	3.53+3%
IRONWORKERS:		
Structural, Ornamental, Reinforcing, Rigging; Fence Erectors; Signal Men	18.04	3.80
PLUMBERS:		
Area 2	19.43	6.98
Area 7	21.19	3.10
DECISION NO PA81-3027 MOD. NO. 7 (46 FR 37212 - July 17, 1981) Franklin County, Pa.		
CHANGE:		
Carpenters	$13.80	25%
LINE CONSTRUCTION:		
Linemen	14.25	.60+ 3-3/8%
Winch truck operator	9.98	.60+ 3-3/8%
Groundmen	8.55	.60+ 3-3/8%
DECISION NO. PA81-3029 MOD. NO. 5 (46 FR 35891 - July 10, 1981) Blair County, Pennsylvania		
CHANGE:		
Carpenters	13.80	25%
Bricklayers	12.85	2.45
Stonemasons	12.85	2.45
Electricians	16.80	2.85+ 3%
Ironworkers:		
Structural	14.67	2.93
Reinforcing	14.67	2.93
Painters	12.34	3.02
Sheet Metal Workers	15.01	3.04

DECISION #NM80-4101-Mod. #5
45FR83811 - December 19, 1980
Statewide, New Mexico

CHANGE:	Basic Hourly Rates	Fringe Benefits
CARPENTERS	$6.92	
CEMENT MASONS	6.66	.26
IRONWORKERS:		
Reinforcing	7.49	.50
Structural	7.99	1.29
PAINTERS:		
Spray	6.31	.44
LABORERS:		
Group I	4.20	.35
Group II	4.50	.35
Group III	4.50	.35
Group IV	4.90	.35
POWER EQUIPMENT OPERATORS:		
Group I	6.17	.26
Group II	6.37	.26
Group III	6.95	.26
Group IV	6.97	.26
Group V	6.97	.26
Group VI	7.12	.26
Group VII	7.17	.26
Group VIII	7.32	.26
Group IX	7.82	.26
Group X	8.62	.26
TRUCK DRIVERS:		
Distributor (asphalt)	5.09	.26
Dump or batch trucks:		
Under 8 cy	4.69	.26
8 cy and under 16 cy	4.89	.26
Diesel-powered transport	5.29	.26
Flat bed, 1½ ton	4.69	.26
Flat bed, over 1½ ton	4.89	.26
Lowboy, heavy equipment	5.29	.26
Lowboy, light equipment	5.09	.26
Off-highway hauler	5.09	.26
Pick-up truck 3/4 ton or under	4.69	.26
Trailer or semi-trailer dump and transit-mix	4.69	.26
Warehousemen	4.69	.26

MODIFICATION PAGE 6

DECISION NO. MO81-4055 - Mod. #2 (46 FR 35884 dated July 10, 1981) Pulaski County, Missouri	Basic Hourly Rates	Fringe Benefits
CHANGE		
PAINTERS:		
Brush & Roller	$11.75	2.20
Taping, paperhanging and floor work	12.25	2.20
Spray, structural steel & sandblasting	13.00	2.20
BRICKLAYERS, Stonemasons & Tile Layers	13.90	.35
PIPEFITTERS	16.85	4.875
SHEET METAL WORKERS	15.16	3.35+ 3%
PLUMBERS	15.405	3.35
TRUCK DRIVERS:		
Group 1	11.35	1.75
Group 2	11.75	1.75
Group 3	11.82	1.75
Group 4	11.87	1.75
Group 5	12.02	1.75
Group 6	12.85	1.75
TRUCK DRIVERS:		
Ft. Leonard Wood Only:		
Group 1	12.35	1.75
Group 2	12.50	1.75
Group 3	12.57	1.75
Group 4	12.62	1.75
Group 5	12.77	1.75
Group 6	13.10	1.75
CARPENTERS:		
Projects under $350,000.00	14.36	1.67
Projects $350,000.00 and over	14.86	1.67

Basic Hourly Rates	Fringe Benefits

SUPERSEDEAS DECISION

STATE: ALABAMA

COUNTIES: CALHOUN, ETOWAH, ST. CLAIR, SHELBY, TALLADEGA, TUSCALOOSA, & WALKER

DECISION NO.: AL82-1034

DATE: DATE OF PUBLICATION

Supersedes Decision No.: AL81-1034 dated December 30, 1980 in 45 FR 86189.

DESCRIPTION OF WORK: HIGHWAY CONSTRUCTION (excluding tunnels, building structures in rest area projects and railroad construction; bascule, suspension & spandrel arch bridges; bridges designed for commercial navigation; bridges involving marine construction; and other major bridges).

	Basic Hourly Rates	Fringe Benefits
BRICKLAYERS	$ 5.75	
CARPENTERS	6.84	
CONCRETE FINISHERS	6.19	
CONCRETE SAW	3.75	
ELECTRICIANS	12.05	1.36
IRONWORKERS:		
Structural	7.79	
Reinforcing	6.49	
LABORERS:		
Air Tool Operators	4.00	
Asphalt Rakers	5.65	
Concrete Laborers	4.71	
Pipelayers	4.10	
Powdermen & Blasters	5.50	
Saw	3.75	
Side Rail or Form Setters	4.25	
Unskilled	3.50	
Wagon Drill	5.00	
PAINTERS	6.10	
PILEDRIVERMEN	6.00	
POWER EQUIPMENT OPERATORS:		
Aggregate Spreader	5.40	
Air Compressor	3.75	
Asphalt Distributor	6.41	
Asphalt Spreader	7.45	
Asphalt Mixer & Pug Mill & Batch Plant	4.87	
Asphalt Plant Driers	4.25	
Bulldozers	6.46	
Bull Floats	4.25	
Concrete Mixer (3 bags & Under)	4.25	
Concrete Mixer (over 3 bags)	4.75	
Concrete Paving Machine	6.35	
Concrete Paving Finishing Machine	6.35	
Concrete Paving Spreader	6.35	
Cranes, Clamshells, Backhoes Derricks, Draglines, or Shovels	6.55	
Conveyors	4.25	
Crusher & Screening Plant	4.50	
Drilling Machine	5.74	
Elevating Graders, Gradalls or Trenching	5.50	
PEO's continued:		
Firemen	$ 4.10	
Form Graders	3.75	
Hoist (2 drums or 2 cages or more)	4.50	
Hoist (1 drum)	4.25	
Mechanic	7.19	
Motor Patrol	7.00	
Oiler & Greaseman	5.43	
Paving Subgraders	4.25	
Piledrivers	7.00	
Pumps	4.25	
Pumpcretes	4.50	
Rollers (self-propelled)	4.74	
Rollers (self-propelled on asphalt bases & pavements)	6.35	
Scale Operators	4.25	
Scalemen	4.25	
Seeding & Mulching Machine	4.50	
Striping Machine (paint)	5.00	
Tractors & Loaders (80 h.p. or less, draw-bar capacity)	4.50	
Tractors & Loaders (over 80 h.p.)	5.75	
Tractors & Loaders (farm rubber-tired)	4.25	
TRUCK DRIVERS:		
Under 1-1/2 tons	3.75	
Single rear axle	3.75	
Multi-rear axle or heavy duty, off-road, single axle	4.50	
Winch Truck & A-Frame	4.50	
WELDERS-Receive rate prescribed for craft to which it is incidental.		
Unlisted classifications needed for work not included within the scope of this classification may be added only after award as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii)).		

SUPERSEDEAS DECISION

STATE: ALABAMA

COUNTY: JEFFERSON

DECISION NO.: AL82-1035

DATE: DATE OF PUBLICATION

Supersedes Decision No.: AL81-1131 dated December 30, 1980 in 45 FR 86188.

DESCRIPTION OF WORK: HIGHWAY CONSTRUCTION (excluding tunnels, building structures in rest area projects and railroad construction; bascule, suspension, and spandrel arch bridges; bridges designed for commercial navigation; bridges involving marine construction; and other major bridges).

	Basic Hourly Rates	Fringe Benefits
BRICKLAYERS	$ 5.75	
CARPENTERS	6.95	
CONCRETE FINISHERS	6.42	
CONCRETE SAW	4.25	
ELECTRICIANS	12.05	1.36
IRONWORKERS:		
Structural	13.07	
Reinforcing	10.45	
LABORERS:		
Air Tool Operators	4.10	
Asphalt Rakers	5.35	
Concrete Laborers	4.92	
Pipelayers	4.10	
Powdermen & Blasters	5.50	
Saw	4.25	
Side rail or Form Setters	5.50	
Unskilled	4.00	
Wagon Drill	5.00	
PAINTERS	6.35	
PILEDRIVERMEN	6.50	
POWER EQUIPMENT OPERATORS:		
Aggregate Spreader	5.40	
Air Compressor	4.25	
Asphalt Distributor	6.81	
Asphalt Spreader	7.16	
Asphalt Mixer & Pug Mills & Batch Plants	4.87	
Asphalt Plant Driers	4.25	
Bulldozer	6.50	
Bull Floats	4.25	
Concrete Mixers (3 bags & under)	4.25	
Concrete Mixers (over 3 bags)	4.75	
Concrete Paving Machine	6.35	
Concrete Paving Finishing Machine	6.35	
Concrete Paving Spreaders	6.35	
Cranes, Clamshells, Backhoe Derricks, Dragline or Shovels	6.55	
Conveyors	4.25	
Crusher & Screening Plants	4.50	
Drilling Machines	5.74	
Elevating Graders, Gradalls, or Trenching	7.00	
Firemen	4.10	
Form Graders	4.25	
PEO's continued:		
Hoist (2 drums or 2 cages or more)	$ 4.50	
Hoist (1 drum)	4.25	
Mechanics	7.50	
Motor Patrols	7.00	
Oilers & Greasemen	6.50	
Paving Subgraders	4.25	
Piledrivers	7.00	
Pumps	4.25	
Pumpcretes	4.50	
Rollers (self-propelled)	6.00	
Rollers (self-propelled on asphalt bases & pavements)	7.00	
Scale Operators	4.25	
Scalemen	4.25	
Scrapers	6.00	
Seeding & Mulching Machines	4.50	
Striping Machines (paint)	5.00	
Tractors & Loaders (farm rubber-tired)	4.25	
Tractors & Loaders (80 h.p. or less, draw-bar capacity)	4.98	
Tractors & Loaders (over 80 h.p.)	6.50	
TRUCK DRIVERS:		
Under 1-1/2 tons	4.25	
Single-rear axle	4.25	
Multi-rear axle or heavy duty, off-road single axle	4.50	
Winch Truck & A-Frame	4.50	
WELDERS-Receive rate prescribed for craft to which it is incidental.		
Unlisted classifications needed for work not included within the scope of this classification may be added only after award as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii)).		

SUPERSEDEAS DECISION

STATE: ALABAMA
COUNTIES: *SEE BELOW
DECISION NO.: AL82-1037
DATE: DATE OF PUBLICATION
Supersedes Decision No.: AL81-1133 dated December 30, 1980 in 45 FR 86190.
DESCRIPTION OF WORK: HIGHWAY CONSTRUCTION (excluding tunnels, building structures in rest area projects and railroad construction; bascule, suspension and spandrel arch bridges; bridges designed for commercial navigation; bridges involving marine construction; and other major bridges).
*COUNTIES: Autauga, Baldwin, Barbour, Bibb, Blount, Bullock, Butler, Chambers, Cherokee, Chilton, Choctaw, Clark, Clay, Coffee, Colbert, Conecuh, Coosa, Covington, Crenshaw, Cullman, Cleburne, Dale, Dallas, DeKalb, Elmore, Escambia, Fayette, Franklin, Geneva, Greene, Hale, Henry, Houston, Jackson, Lamar, Lauderdale, Lawrence, Lee, Limestone, Lowndes, Macon, Madison, Marengo, Marion, Marshall, Monroe, Montgomery, Morgan, Perry, Pickens, Pike, Randolph, Russell, Sumter, Tallapoosa, Washington, Wilcox, & Winston.

	Basic Hourly Rates	Fringe Benefits
BRICKLAYERS	$ 5.75	
CARPENTERS	6.25	
CONCRETE FINISHERS	5.91	
CONCRETE SAW	3.75	
ELECTRICIANS	7.25	
IRONWORKERS:		
Structural	7.79	
Reinforcing	6.49	
LABORERS:		
Air Tool Operators	4.00	
Asphalt Rakers	4.75	
Concrete Laborers	4.71	
Pipelayers	4.10	
Powdermen & Blasters	5.50	
Saw	3.75	
Side Rail or Form Setters	4.25	
Unskilled	3.50	
Wagon Drill	5.00	
PAINTERS	6.10	
PILEDRIVERMEN	6.00	
POWER EQUIPMENT OPERATORS:		
Aggregate Spreader Oper.	5.29	
Air Compressors	3.75	
Asphalt Distributor	5.88	
Asphalt Spreader	6.53	
Asphalt Mixer, Pug Mills & Batch Plants	4.87	
Asphalt Plant Driers	4.25	
Bulldozer	6.00	
Bull Floats	4.25	
Concrete Mixer (3 bags & under)	4.25	
Concrete Mixer (over 3 bags)	4.75	
Concrete Paving Machine	6.35	
Concrete Paving Finishing Machine	6.35	
PEO's continued:		
Concrete Paving Spreader	$ 6.35	
Cranes, Clamshells, Backhoe, Derricks, Draglines, or Shovels	6.55	
Conveyors	4.25	
Crusher & Screening Plant	4.50	
Drilling Machine	5.74	
Elevating Graders, Gradalls, or Trenching	5.50	
Firemen	4.10	
Form Graders	3.75	
Hoist (2 drum or 2 cages or more)	4.50	
Hoist (1 drum)	4.25	
Mechanics	7.00	
Motor Patrols	6.75	
Oilers & Greasemen	5.64	
Paving Subgraders	4.25	
Piledrivers	6.25	
Pumps	4.25	
Pumpcretes	4.50	
Roller (self-propelled)	4.89	
Roller (self-propelled, on aphalt bases & pavements)	6.35	
Scale Operators	4.25	
Scalemen	4.25	
Scrapers	6.00	
Seeding & Mulching Machine	4.50	
Striping Machine (paint)	5.00	
Tractors & Loaders (farm rubber tired)	4.25	
Tractors & Loaders (80 h.p. or less, draw-bar capacity)	4.50	
Tractors & Loaders (over 80 h.p.)	5.08	

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PAGE TWO

	Basic Hourly Rates	Fringe Benefits
TRUCK DRIVERS:		
Under 1½ tons	$ 3.75	
Single Rear Axle	3.75	
Multi-Rear Axle or Heavy Duty, Off-Road, Single Axle	4.50	
Winch Truck & A-Frame	4.50	
WELDERS-Receive rate prescribed for craft to which it is incidental		
Unlisted classifications needed for work not included within the scope of this classification may be added only after award as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii)).		

SUPERSEDEAS DECISION

STATE: ALABAMA COUNTY: MOBILE
DECISION NO.: AL82-1036 DATE: DATE OF PUBLICATION
Supersedes Decision No.: AL81-1134 dated December 30, 1980 in 45 FR 86191.
DESCRIPTION OF WORK: HIGHWAY CONSTRUCTION (excluding tunnels, building structures in rest area projects and railroad construction; bascule, suspension & spandrel arch bridges; bridges designed for commercial navigation; bridges involving marine construction; and other major bridges).

	Basic Hourly Rates	Fringe Benefits
BRICKLAYERS	$ 5.75	
CARPENTERS	6.50	
CONCRETE FINISHERS	6.10	
CONCRETE SAW	4.25	
ELECTRICIANS	12.05	1.36
IRONWORKERS:		
Reinforcing	8.00	
Structural	8.50	
LABORERS:		
Air Tool Operators	4.10	
Asphalt Rakers	4.33	
Concrete Laborers	4.92	
Pipelayers	4.10	
Powdermen & Blasters	5.50	
Saw	4.25	
Side Rail & Form Setters	5.50	
Unskilled	4.00	
Wagon Drill	5.00	
PAINTERS	6.35	
PILEDRIVERMEN	7.00	
POWER EQUIPMENT OPERATORS:		
Asphalt Spreader Oper.	7.00	
Air Compressor	4.25	
Asphalt Distributor	5.94	
Asphalt Spreader	7.00	
Asphalt Mixers & Pug Mills & Batch Plants	4.87	
Asphalt Plant Driers	4.25	
Bulldozers	6.00	
Bull Floats	4.25	
Concrete Mixer (3 bags & under)	4.25	
Concrete Mixer (over 3 bags)	4.75	
Concrete Paving Machine	6.35	
Concrete Paving Finishing Machine	6.35	
Concrete Paving Spreader	6.35	
Cranes, Clamshells, Backhoe Derricks, Draglines, or Shovels	7.00	
Conveyors	4.25	
Crusher & Screening Plants	4.50	
Drilling Machine	5.74	
Elevating Graders, Gradalls or Trenching	6.00	
Fireman	4.10	
Form Graders	4.25	
Hoist (2 drums or 2 cages or more)	4.50	
Hoist (1 drum)	$ 4.25	
Mechanics	7.00	
Motor Patrols	7.00	
Oilers & Greasemen	6.00	
Paving Subgraders	4.25	
Piledrivers	7.00	
Pumps	4.25	
Pumpcretes	4.50	
Roller (self-propelled)	4.75	
Roller (self-propelled on asphalt bases & pavements)	6.35	
Scale Operators	4.25	
Scalemen	4.25	
Scrapers	6.00	
Seeding & Mulching Machines	4.50	
Striping Machine (paint)	5.00	
Tractors & Loaders (farm rubber tired)	4.25	
Tractors & Loaders (80 h.p. or less, draw-bar capacity)	4.50	
Tractors & Loaders (over 80 h.p.)	5.75	
TRUCK DRIVERS:		
Under 1½ tons	4.25	
Single-rear Axle	4.25	
Multi-rear Axle or Heavy duty, off road, single axle	4.50	
Winch Trucks & A-frame	4.50	
WELDERS-Receive rate prescribed for craft to which it is incidental		
Unlisted classifications needed for work not included within the scope of this classification may be added only after award as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii)).		

SUPERSEDEAS DECISION

STATE: ILLINOIS COUNTIES: *SEE BELOW
DECISION NUMBER: IL82-2038 DATE: Date of Publication
Supersedes Decision Nos. IL79-2078, dated September 21, 1979 in 44 FR 54847 and IL79-2080, dated September 14, 1979 in 44 FR 53654
DESCRIPTION OF WORK: Heavy & Highway Construction Projects

*Alexander, Clay, Crawford, Edwards, Effingham, Fayette, Franklin, Gallatin, Hamilton, Hardin, Jackson, Jasper, Jefferson, Johnson, Lawrence, Marion, Massac, Perry, Pope, Pulaski, Randolph, Richland, Saline, Union, Wabash, Wayne, White, & Williamson

CARPENTERS; PILEDRIVERMEN:	Basic Hourly Rates	Fringe Benefits
Alexander, Franklin, Gallatin, Hardin, Jackson, Johnson, Massac, Perry, Pope, Pulaski, Union & Williamson Cos.	$13.95	2.00
Clay, Edwards, Effingham, Fayette, Hamilton, Jasper, Lawrence, Marion (Salem & Vic.), Richland, Wayne, & White Cos.:		
Carpenters	13.52	1.83
Piledrivermen	14.02	1.83
Jefferson & Saline Cos.:		
Carpenters	13.67	1.68
Piledrivermen	14.17	1.68
Marion (Centralia & Vic.) Co.:		
Carpenters	13.32	2.03
Piledrivermen	13.82	2.03
Randolph Co.	14.935	2.05
Wabash Co.:		
Carpenters	13.36	1.99
Piledrivermen	13.86	1.99
CEMENT MASONS:		
Alexander, Franklin, Gallatin, Hardin, Jackson, Johnson, Massac, Perry, Pope, Pulaski, Randolph, Saline, Union, & Williamson Cos.	14.10	
Clay, Edwards, Effingham, Fayette (except N. part), Hamilton, Jasper, Jefferson, Marion, Richland, Wayne, & White Cos.	14.60	.75
Crawford (N ½ of Co.) Co.	14.10	.50
Crawford (S ½ of Co.), Lawrence, & Wabash Cos.	13.00	1.60
Fayette (N. part) Co.	13.85	.75
ELECTRICIANS:		
Crawford, Jasper, Lawrence, & Richland Cos.	17.00	2.17
Effingham (Banner, Bishop, Douglas, Liberty, Lucas, Moccasin, St. Francis, Summit, & Teulopolis Twps.), Fayette (Hurricane, S. Hurricane, Ramsey, Bowling Green, Carson & Loudon Twps.) Cos.	17.60	2.12
Randolph (Red Bud Twp.) Co.	17.37	2.56
Wabash Co.	16.15	2.22
Remaining Cos.	16.96	3.02
IRONWORKERS:		
Alexander, Franklin, Gallatin, Hardin, Jackson (exclu. Ava. & Elkville), Johnson, Massac, Pope, Pulaski, Saline (exclu. Vic. of El Dorado & Area NE), Union & Williamson Cos.	15.35	1.90
Clay (exclu. Louisville & S.), Crawford, Effingham (Dexter & E. thereof), Jasper, Lawrence (N ½ of Co., exclu. Lawrenceville), & Richland (N. of Olney) Cos.	14.15	3.80
Effingham (exclu. Dexter & E. thereof), & Fayette (Avena & N. thereof) Cos.	16.25	1.93
Fayette (S ½ below Brownstown), Jackson (Rem. of Co.), Jefferson (Mt. Vernon & Area W. Thereof), Marion, Perry & Randolph Cos.	15.85	1.90
LABORERS:		
Alexander, Franklin, Gallatin, Hardin, Jackson, Johnson, Massac, Perry, Pope, Pulaski, Saline, Union & Williamson Cos.	11.30	.935
Randolph (Chester & Vic.) Co.:		
Heavy Construction:		
Class 1	13.10	1.70
Class 2	13.35	1.70
Class 3	13.60	1.70

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LABORERS (CONT'D)	Basic Hourly Rates	Fringe Benefits
Class 4	14.60	1.70
Highway Construction:		
Class 1	13.20	1.70
Class 2	13.30	1.70
Class 3	13.45	1.70
Class 4	13.70	1.70
Class 5	14.725	1.70
Randolph (Sparta & Vic.) Co.:		
Heavy Construction:		
Class 1	13.60	1.20
Class 2	13.85	1.20
Class 3	14.10	1.20
Class 4	15.20	1.20
Highway Construction:		
Class 1	13.70	1.20
Class 2	13.80	1.20
Class 3	13.95	1.20
Class 4	14.20	1.20
Class 5	15.225	1.20
Remaining Counties	12.05	.935
LINE CONSTRUCTION:		
Fayette (Portion N. of Avena) Co.:		
Linemen	17.16	1.74
Groundman Equipment Operator Class 1	16.01	1.65
Groundman Truck Driver w/Winch	12.16	1.36
Groundman Truck Driver wo/Winch	11.45	1.31
Groundman	10.91	1.27
Remaining Cos.:		
Linemen	15.80	2.58
Groundman Equipment Operator Class 1	13.51	2.27
Groundman Equipment Operator Class 2	12.10	2.08
Groundman	10.09	1.81
PAINTERS:		
Alexander, Johnson, & Pulaski Cos.:		
Commercial Brush (Old)	11.67	
Commercial Brush (New)	13.35	
Commercial Spray & Sandblast	12.17	
Industrial Brush	14.51	
Industrial Spray & Sandblast	15.01	
Dams; Power Tools; Tanks & High Line Towers	15.42	
Bridges	17.51	
Clay, Edwards, Hamilton, Jefferson, Marion (exclu. Salem city limits), & Wayne Cos.:		
Commercial Brush	10.25	1.00
Industrial Brush	10.50	1.00
Bridges; Sandblasing & Spray	11.00	1.00
Crawford, Effingham, Jasper, Lawrence, Richland, & Wabash Cos.:		
Brush up to 30 ft.	14.30	1.00
Brush over 30 ft.	15.10	1.00
Roller up to 30 ft.	15.15	1.00
Roller over 30 ft.	15.95	1.00
Sandblasting up to 30 ft.	15.80	1.00
Sandblasting over 30 ft.	16.60	1.00
Spray up to 30 ft.	15.30	1.00
Spray over 30 ft.	16.10	1.00
Fayette Co.:		
Commercial Brush	14.72	1.30
Commercial Spray & Blast	15.72	1.30
Industrial Brush	14.97	1.30
Industrial Spray & Blast	15.97	1.30
Bridges	16.22	1.30
Franklin Co.:		
Commercial Brush	9.50	
Commercial Sandblast & Spray	10.50	
Industrial Brush	11.50	
Industrial Sandblast & Spray	12.50	
Jackson, Perry, & Randolph Cos.:		
Commercial:		
Brush	12.70	.30
Epoxy; Sandblast; & Spray	13.70	.30
Steel	13.20	.30
Industrial:		
Brush	14.45	.30
Epoxy; Sandblast; & Spray	15.45	.30
Steel	14.95	.30
Marion (Salem City limits) Co.	10.00	

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PAINTERS (CONT'D)	Basic Hourly Rates	Fringe Benefits
Massac Co.:		
Commercial:		
Brush; Roller	11.60	.80
Sandblast; Power Tools	12.50	.80
Industrial:		
Brush; Roller	13.65	.80
Sandblast; Power Tools	14.20	.80
Bridges	14.65	.80
Steeplejacks	14.80	.80
Union Co.:		
Commercial	11.75	
Industrial	12.25	
Williamson (Marion & Vic.) Co.:		
Commercial:		
Brush	11.55	
Sandblast; Spray	12.65	
Industrial:		
Brush	12.40	
Sandblast; Spray	13.40	
POWER EQUIPMENT OPERATORS:		
Alexander, Franklin, Gallatin, Hamilton, Hardin, Jackson, Johnson, Massac, Pope, Pulaski, Saline, Union, White & Williamson Cos.		
Class A	14.80	2.085
Class B	13.40	2.085
Class C	13.10	2.085
Class D	12.45	2.085
Class E	11.85	2.085
Clay, Crawford, Edwards, Effingham, Jasper, Lawrence, Richland, Wabash, & Wayne Cos.		
Class I	14.95	1.58
Class II	14.85	1.58
Class III	14.65	1.58
Class IV	9.25	1.58
Fayette, Jefferson, Marion, Perry & Randolph Cos.		
Master Mechanic	15.67	2.48
Group I	15.17	2.48
Group II	12.64	2.48
Group III	11.99	2.48
Group IV	11.89	2.48
Group V	11.64	2.48
Group VI:		
a.	17.32	2.48
b.	17.62	2.48
c.	13.74	2.48
d.	14.24	2.48
TRUCK DRIVERS:		
Group I	14.325	1.15+a
Group II	14.725	1.15+a
Group III	14.925	1.15+a
Group IV	15.175	1.15+a

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CLASSIFICATION DEFINITIONS - Laborers - Randolph county

Heavy Construction

Class 1 - Unskilled

Class 2 - Workmen while Cutting & burning with a Torch; Men working on the Bottom of Sewer Trenches on the final Grading, laying or caulking of preformed sectional Sanitary or Storm Sewer Pipe, including Reinforced Concrete Tile, but not including Box Culverts, Tin Whistles or Multiplate Culverts

Class 3 - Tenders to all Brick & Plaster Masons

Class 4 - Dynamite Men

Highway Construction

Class 1 - Laborers

Class 2 - Asphalt Raker; Weighman on Asphalt Platform

Class 3 - Men working on the Bottom of Sewer Trenches on the final grading, laying or caulking of preformed sectional Sanitary or Storm Sewer Pipe (including reinforced concrete tile but not including box culverts)

Class 4 - Brickmasons Tenders

Class 5 - Dynamite Men

CLASSIFICATION DEFINITIONS - Power Equipment Operators

Alexander, Franklin, Gallatin, Hamilton, Hardin, Jackson, Johnson, Massac, Pope, Pulaski, Saline, Union, White, & Williamson Counties

Class A - APSCO or equal Spreading machine, Backhoe, Boom or Winch Cat, Bituminous Mixplane Machine, Blacksmith, Bituminous Surfacing Machine, Bulldozer, Crane, Shovel, Dragline, Truck Crane, Pile Driver, Concrete Finishing Machine or Spreader Machine, Concrete Breaker, Concrete or Pumpcrete Pumps, Dinky or Standard Locomotives, Well or Caisson Drills, Elevating Grader, Fork Lifts, Flexplane, Gradall, Hi-Lift, Hoists, Guy-Derricks, Hyster, Mechanic, Motor Patrol, Mixers - 21 cu. ft. or over, Push Cats, Pulls, and Scrapers, Two Well Point Pumps, Pulverizer or Tiller, Pugmill, Rubber-Tired Farm Type Tractor with Bulldozer/blade/Auger or Hi-Lift over ½ yd., Jersey Spreader, Tract Air used with Drill or Hi-Lift, Trenching or Ditching Machines, Wood Chipper w/Tractor, Self-Propelled Roller W/Blade, Equipment Greaser, Self-Propelled Bump Grinder on Concrete Highway pavement

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CLASSIFICATION DEFINITIONS - Power Equipment operators (Cont'd)

Class B - Air Compressor W/Valve driving piling, Two Air Compressors (220 cu. ft. capacity or over), Two Airtract Drills, Airtrack Drill w/ Compressor, Automatic Bins or Scales W/Compressor or Generator, Pipeline Boring Machine, Bulk Cement Plant W/Separate Compressor, Power Operated Bull Float, Hydra-Lift W/Single Motor, Straw Mulcher Blower W/Spout, Self-Propelled Roller/Compactor, Back-End Man on Bituminous Surfacing Machine

Class C - Boom or Winch Truck, Two Conveyors, Self-Propelled Concrete Saw, Self-Propelled Vibrator, any Type Tractor pulling any type Roller or Disc, Rubber Tired Farm Type Tractor W/Blade/Bulldozer/Auger/Hi-Lift ½ yd. or less, Elevator Operator, Self Propelled Chip Spreader, Form Grader, Truck Crane Oiler

Class D - Air-Track Drill (one), Belt Drag Machine, Power Broom, Mechanical Plasterer Applicator, Trac-Air, Air Compressor (220 cu. ft. or over) One, Air Compressor (under 220 cu. ft.) four, Automatic Bin, bulk Cement Plant w/Built-in Compressor running off same Motor or Electric Motor, Fireman, Self-Propelled Form Tamper, Light Plants (4), Welding Machine (4), Pumps (4), or Combination of four (4) Pumps, Light Plants, Welding Machines, Air-Compressors (under 220 cu. ft.), Mudjacks or Wood Chipper, Mixer - less than 21 cu. ft., Mortar Mixer w/skip or Pump, Pipeline Tract Jack

Class E - One Air Compressor (under 220 cu. ft.), One Conveyor, One Motor Driven Heater, One Light Plant, One Pump, One Welding Machine, One Ulmac or Equal Spreader, Conveyor Operator on Self-Propelled Chip Spreader Oilers

CLASSIFICATION DEFINITIONS - Power Equipment Operators

Clay, Crawford, Edwards, Effingham, Jasper, Lawrence, Richland, Wabash, & Wayne Cos.

Class I - Master Mechanic

Class II - Utility Operator

Class III - Power Cranes, Draglines, Derricks, Shovels, Gradalls, Mechanics, Concrete Mixers with Skip, Tournamixers, Two Drum Machine, One Drum Hoists with Tower or Boom, Cableways, Tower Machines, Motor Patrol, Boom Tractor, Boom or Winch Truck, Winch or Hydraulic Boom Truck, Truck Crane, Tournapull, Tractor Operating Scoops, Bulldozer, Push Tractor, Asphalt Planer, Finishing Machine on Asphalt, Large Rollers on Earth, Rollers on Asphalt Mix, Ross Carriers or similar Machine, Gravel Processing Machine, Asphalt Plant Engineer, Paver Operator, Farm Tractor w/half yard Bucket and/or Backhoe Attachment, Dredging Equipment or Dredge Engineer or Dredge Operator, Central Mix Plant Engineer, CMI or similar type machine, Concrete Pump, Truck or Skid Mounted, Tower Crane, Engine or Rock Crusher Plant, Concrete Plant Engineer, Ditching Machine with dual attachment, Tractor Mounted Loaders, Cherry Picker, Hydro Crane, Standard or Dinkey Locomotives, Scoopmobiles, Euclid Loader, Soil Cement Machine, Back Filler, Elevating Machine, Power Blader, Drilling Machines, incl. Well Testing, Caissons, Shaft or any similar type Drilling Machines, Motor Driven Paint Machine, Pipe Cleaning

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CLASSIFICATION DEFINITIONS (CONT'D)

Machine, Pipe Wrapping Machine, Pipe Bending Machine, Apsco Paver, Boring Machine, Head Equipment Greaser, Barber-Greene Loaders, Formless Paver, Well Point System, Concrete Spreader, Hydra Ax, Resco Concrete Saw, Marine Scoops, Brush Mulcher, Brush Burner, Mesh Placer, Tree Mover, Helicopter Crew (3), Piledriver - Skid or Crawler, Stump Remover, Root Rake, Tug Boat Operator, Refrigerating Machine, Freezing Operator, Chair Cart - Self-Propelled, Hydra- Seeder, Straw Blower, Power Sub Grader, Bull Float, Finishing Machine, Self-Propelled Pavement Breaker (Backhoe Attached), Lull (or similar type machine), Two Air Compressors, Compressors hooked in Manifold, Overhead Crane, Chip Spreader, Mud Cat, Sull-Air

Class IV - Concrete Mixers without Skips, Rock Crusher, Ditching Machine under 6', Curbing Machine, One Drum Machines without Tower or Boom, Air Tugger, Self Propelled Concrete Saw, Machine Mounted Post Hole Digger, Two to Four Generators, Water Pumps, or Welding Machines, within 400 feet, Air Compressor 600 cu. ft. and under, Rollers on Aggregate and Seal Coat Surfaces, Fork Lift, Concrete and Blacktop Curb Machine, Farm Tractor with less than half yard Bucket, One Water Pump, Oilers, Air Valves or Steam Valves, One Welding Machine, Truck Jack, Mud Jack, Gunite Machine, House Elevators when used for Hoisting Material, Engine Tenders, Fireman, Wagon Drill, Flex Plane, Conveyor, Siphons and Pulsometer, Fireman on Paint Pots, Fireman on Asphalt Plants, Distributor Operator on Trucks, Tampers, Self-Propelled Power Broom, Striping Machine (motor driven), Form Tamper, Seaman Tiller, Bulk Cement Plant Equipment Greaser, Deck Hands, Truck Crane, Oiler Driver, Cement Blimps, Form Grader, Temporary Heat, Throttle Valve, Farm Tractor

CLASSIFICATION DEFINITIONS - Power Equipment Operators:

Fayette, Jefferson, Marion, Perry and Randolph Counties

Group 1 - Cranes, Draglines, Shovels, Skimmer Scoops, Clamshells or Derrick Boats, Pile Drivers, Crane-Type Backhoes, Asphalt Plant Opers. Plant Opers., Ditching Machines or Backfillers, Dredges, Asphalt Spreading Machines, Heavy Duty Mechanic, Ass't Master Mechanic, All Locomotives, Cableways or Tower Machines, Hoists 2 Drum or more, Hoists - 2 Drum or more, Hydraulic Backhoes, Ditching machines or Backfiller, Cherry Pickers, Overhead Cranes, Roller (Steam or Gas) Concrete Pavers, Excavators, Concrete Breakers, Concrete Pumps, Bulk Cement Plants, Cement Pumps, Derrick-Type Drills, Mixers (over 3 bags) and Boat Oprs., (25' & over), Motor Graders or Pushcats, Scoops or Tournapulls, Bulldozers, End Loaders or Fork-Lift, Power Blade or Elevating Graders, Winch Cats, Boom Tractors, and Pipe Wrapping or Painting Machines, Drill (other than derrick type) 1 drum-hoists, Mud Jacks, Mixers (2 or 3 bags), Conveyors (2), Air Compressors (2), Water Pumps regardless of size (2), Welding Machines (2)

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CLASSIFICATION DEFINITIONS - Power Equipment Operators (Cont'd)

Siphons or Jets (2), Winch Heads or Apparatus (2) and Light Plants (2), Mixers (under 2 bags), all Tractors regardless of size (Straight Tractor Only), Fireman on Stationary Boilers, Automatic Elevators, Form Grading Machines, Finishing Machine, Power-Sub-Grader or Ribbon Machine, Longitudinal Floats, Boat Oprs., (under 25 ft. conveyors (1) Distribution Opers., On Trucks, Siphons or Jets (1) Winch Heads or Apparatuses (1), Light Plant (1) Mixers (under 2 bags)

Group II - Air Compressor (1), Water Pumps regardless of size (1) Welding Machine (1)

Group III - Fireman and Asphalt Spreader Oilers

Group IV - Heavy Equipment Oilers (truck cranes, dredges, monigans, large cranes, etc.)
Group V - Oilers
Group VI
a. Engineers Operating under air pressure
b. Engineers Operating in air over 10 lbs. pressure
c. Oilers operating under air pressure
d. Oilers operating in air over 10 lbs. pressure

CLASSIFICATION DEFINITIONS - Truck Drivers

Group I - Drivers on 2 Axles hauling less than 9 tons; Air Compressor & Welding Machine incl. those pulled by separate units; Fork Lifts up to 6,000 lbs. cap.; Mechanic Tenders; Pick-ups when hauling materials, tools, or men to and from and on the job site; & Truck Driver Tenders

Group II - 2 or 3 Axles hauling more than 9 tons, but hauling less than 16 tons; A-Frame Winches; Fork Lifts over 6,000 lbs. cap.; 4-Axle Combination units; Hydrolifts or similar equipment when used for transportation purposes; & Winches

Group III - 2, 3, or 4 Axles hauling 16 tons or more; Dispatcher; 5-Axles or more combination units; Mechanics & Working Foreman; & Water Pulls

Group IV - Drivers on Oil Distributors; & Drivers on Semi-Lowboys when moving equipment

FOOTNOTE:
a. $51.00 Per Week Per Employee

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

federal register

Friday
July 30, 1982

Part III

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

Pennsylvania; Conditional Approval of the Permanent Program Submission and Approval of the Abandoned Mine Land Reclamation Plan Under the Surface Mining Control and Reclamation Act of 1977; Final Rules

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 938

Conditional Approval of the Permanent Program Submission From the Commonwealth of Pennsylvania Under the Surface Mining Control and REclamation Act of 1977

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

ACTION: Final rule.

SUMMARY: The Commonwealth of Pennsylvania resubmitted to the Department of the Interior its proposed permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA), following an initial disapproval. The notice announcing the initial decision was published in the **Federal Register,** October 22, 1980 (45 FR 69970–69977). The purpose of the resubmission is to demonstrate the Commonwealth's intent and capability to administer and enforce the provisions of SMCRA and the permanent regulatory program regulations, 30 CFR Chapter VII. This rule grants conditional approval of the Pennsylvania regulatory program.

After providing opportunities for public comment and conducting a thorough review of the complete program submission, the Secretary of the Interior has determined that the Pennsylvania program meets the requirements of SMCRA and the Federal permanent program regulations, except for the minor deficiencies discussed below under **"SUPPLEMENTARY INFORMATION."** Accordingly, the Secretary of the Interior has conditionally approved the Pennsylvania program.

A new Part 938 is being added to 30 CFR Chapter VII to implement this decision.

EFFECTIVE DATE: This conditional approval is effective July 31, 1982. This conditional approval will terminate as specified in 30 CFR 938.11, unless the deficiencies identified below have been corrected in accordance with the dates specified in 30 CFR 938.11, adopted below.

FOR FURTHER INFORMATION CONTACT: Mr. Arthur Abbs, Chief, Division of State Program Assistance, Program Operations and Inspection, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, South Building, 1951 Constitution Avenue, NW., Washington, D.C. 20240; Telephone: (202) 343–5361.

ADDRESSES: See **"SUPPLEMENTARY INFORMATION"** for addresses where copies of the Pennsylvania program and administrative record on the Pennsylvania program are available.

SUPPLEMENTARY INFORMATION:

Availability of Copies

Copies of the Pennsylvania program with modifications and the administrative record on the Pennsylvania program, including the letter from the Pennsylvania Department of Environmental Resources agreeing to correct the deficiencies which resulted in the conditional approval, are available for public inspection and copying during regular business hours at:

Pennsylvania Department of Environmental Resources, Fulton Bank Building, Tenth Floor, Third and Locust Streets, Harrisburg, Pennsylvania 17120; Telephone: (717) 787–4686

Office of Surface Mining, 100 Chestnut Street, Suite 300, Harrisburg, Pennsylvania 17101; Telephone: (717) 782–4036

Office of Surface Mining, Room 5315, 1100 "L" St., NW., Washington, D.C. 20240; Telephone: (202) 343–7896

In addition, copies of the full text of the proposed program with modifications are available for inspection and copying during regular business hours at the following locations:

Office of Surface Mining, Wilkes Barre Office, 20 N. Pennsylvania Avenue, Room 3107, Wilkes Barre, PA 18701; Phone: (717) 823–0563

Department of Environmental Resources, Pittsburgh Regional Office, The Kossman Building, 100 Forbes Avenue, Pittsburgh, PA 15222; Phone: (412) 565–5023

Department of Environmental Resources, Williamsport Regional Office, 200 Pine Street, Williamsport, PA 17701; Phone: (717) 327–3636

Department of Environmental Resources, Meadville Regional Office, 1012 Water Street, Meadville, PA 16335; Phone: (814) 724–8557

Department of Environmental Resources, Pottsville District Office, Motor Contracts Building, 108 S. Claude A Lord Blvd., Pottsville, PA 17901; Phone: (717) 622–8181

Department of Environmental Resources, Hawk Run District Office, Hawk Run Water Treatment Plant, Hawk Run, PA 16840; Phone: (814) 342–5399

Department of Environmental Resources, Ebensburg District Office, The Prave Building, 122 S. Center Street, Ebensburg, PA 15931; Phone: (814) 472–6344

Office of Surface Mining, Johnstown Office, Penn Traffic Bldg., 3rd Floor, 319 Washington Street, Johnstown, PA 15901; Phone: (814) 533–4223

Department of Environmental Resources, Wilkes Barre/Kingston Regional Office, 90 East Union St., 2nd Floor, Wilkes Barre, PA 18701; Phone: (717) 826–2511

Department of Environmental Resources, Harrisburg Regional Office, 407 South Cameron Street, Harrisburg, PA 17101; Phone: (717) 783–2818

Department of Environmental Resources, Norristown Regional Office, 1875 New Hope Street, Norristown, PA 19401; Phone: (215) 631–2400

Department of Environmental Resources, Knox District Office, White Memorial Bldg., Knox, PA 16232; Phone: (814) 797–1191

Department of Environmental Resources, Greensburg District Office, Armbrust Professional Bldg., R.D. #2, Greensburg, PA 15601; Phone: (412) 925–8115

A. Background

The general background on the permanent program, the state program approval process, and the Pennsylvania program submission were discussed in the **Federal Register,** October 22, 1980 (45 FR 69971–69974). Readers should refer to the October 22, 1980, notice for details on this background information. Subsequent to that notice, amendments to the Federal regulations were published on January 23, 1981 (46 FR 7894 and 7906); June 30, 1981 (46 FR 33980); July 17, 1981 (46 FR 37232); August 17, 1981, (46 FR 41702–41706); September 29, 1981 (46 FR 47720); October 8, 1981 (46 FR 50018–50019); October 28, 1981 (46 FR 53376); November 2, 1981 (46 FR 54495); and June 17, 1982 (47 FR 26356). An interpretive rule was published November 7, 1980 (45 FR 73945–73946). Additional regulations were suspended pending further rulemaking on August 19, 1981 (46 FR 42063).

Also, in the October 22, 1980 **Federal Register** notice, the Secretary announced his disapproval of the Pennsylvania program. This decision was made primarily because the Pennsylvania program did not have fully enacted laws and regulations before the 104th day after program submission, as required by 30 CFR 732.11(d).

B. Background on the Pennsylvania Resubmission

In accordance with the procedures set forth in 30 CFR 732.13(f), the Commonwealth of Pennsylvania had 60 days from the date of publication of the Secretary's initial decision in which to resubmit a revised program for consideration. Pennsylvania was to resubmit its revised program for consideration on December 22, 1980. On November 26, 1980, Commonwealth Court Judge James C. Crumlish issued a preliminary injunction enjoining the Pennsylvania Department of Environmental Resources (DER) from submitting a program to achieve primacy under SMCRA (In re: *Keystone Bituminous Coal vs DER and Pennsylvania Coal Mining Association vs DER)* (Administrative Record No. PA 257). Judge Crumlish ruled that the Department of Environmental Resources was preliminarily enjoined and restrained from submitting a regulatory program to OSM until such time that judicial challenges to SMCRA and the regulations promulgated thereunder were finally adjudicated, but in no event longer than one year in accordance with Section 503 of SMCRA.

On December 19, 1980, the Department of Environmental Resources notified the Secretary of the Interior of the injunction and that Pennsylvania would not be resubmitting a program on December 22, 1980 because of the injunction. (Administrative Record No. PA 257).

On November 26, 1981, the preliminary injunction prohibiting the Department of Environmental Resources from resubmitting a regulatory program to OSM expired. An announcement was published in the **Federal Register** on November 2, 1981 (46 FR 54495) of the Secretary's policy to allow any state subject to an injunction prohibiting resubmission of a program sixty days following expiration of the injunction in which to resubmit its program. Pennsylvania resubmitted its program to OSM on January 25, 1982 (Administrative Record No. PA 292). Announcement of Pennsylvania's resubmission was made in two newspapers of general circulation within the Commonwealth of Pennsylvania and published in the **Federal Register** on January 29, 1982 (47 FR 4318–4320). That **Federal Register** notice also announced a public comment period extending to March 3, 1982, and a public hearing which was held in Harrisburg, Pennsylvania, on February 25, 1982. On April 9, 1982, and May 5, 1982, Pennsylvania submitted to OSM revisions to its resubmission of January 25, 1982, (Administrative Record Nos. PA 321 and 336). To allow the public sufficient time to review and comment on the revisions to the Pennsylvania program, notices acknowledging receipt of the revisions and reopening the public comment period until May 10, 1982, and later extending the comment period until May 21, 1982, were published in the **Federal Register** on April 9, 1982, (47 FR 15368) and May 7, 1982, respectively (47 FR 19721–19722).

Public disclosure of comments by Federal agencies was made on June 11, 1982, in the **Federal Register** (47 FR 25383–25384).

The Regional Director completed his program review on June 18, 1982, and forwarded the public hearing transcripts, written presentation, and copies of all comments to the Director of OSM together with a recommendation that the program be conditionally approved.

On July 7, 1982, the Environmental Protection Agency transmitted its written concurrence on the Pennsylvania program (Administrative Record No. PA 375).

On June 29, 1982, the Director recommended to the Secretary that the Pennsylvania program be approved conditionally.

The basis and purpose statement for the Secretary's decision to conditionally approve Pennsylvania's program consists of this notice and the October 22, 1980, **Federal Register** notice announcing the Secretary's initial decision. Throughout the remainder of this notice, "Pennsylvania program" or "Pennsylvania submission" means the resubmission (Administrative Record No. PA 292), as amended on April 9, 1982, (Administrative Record No. PA 321) and May 5, 1982, (Administrative Record No. PA 336) together with the initial submission of February 29, 1980, (Administrative Record No. PA 1) as amended on June 9, 1980, (Administrative Record No. PA 97). The terms "Pennsylvania surface mining laws" or "state surface mining laws" refer to the laws submitted by Pennsylvania as part of its resubmission. These laws consist of The Administrative Code of 1929 (Ad. Code), Coal Refuse Disposal Control Act (CRDCA), Surface Mining Conservation and Reclamation Act (PASMCRA), The Bituminous Mine Subsidence and Land Conservation Act (BMSLCA) and The Clean Streams Law (TCSL). The term "Pennsylvania regulations" refers to Title 25 of the Pennsylvania Code, Chapters 86, 87, 88, 89 and 90, submitted by Pennsylvania as part of its program resubmission, and the amendments adopted thereto on April 20, 1982. Citations to specific Pennsylvania regulations are denoted by the preface "PA."

The Secretary's findings below are organized to follow the order set forth in Section 503 of SMCRA and 30 CFR 732.15, respectively. These sections specify the findings which the Secretary must make before he may approve a regulatory program.

C. The Secretary's Findings

Finding 1

The Secretary finds that the Pennsylvania surface mining laws provide, except as noted in subsequent Findings, for the regulation of surface coal mining and reclamation operations on non-Indian and non-Federal lands in Pennsylvania in accordance with the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

This finding is based on the requirements of Section 503(a)(1) of SMCRA (30 U.S.C. 1253(a)(1)). An analysis of the issues underlying this finding is found in Findings 12 through 30, below.

Finding 2

The Secretary finds that the Pennsylvania surface mining laws provide, except as noted in subsequent Findings, sanctions for violations of Pennsylvania laws, regulations, or conditions of permits concerning surface coal mining and reclamation operations and that these sanctions meet, except as noted in subsequent Findings, the requirements of SMCRA, including civil and criminal actions, forfeiture of bonds, suspensions, revocations and withholding of permits, and the issuance of cease-and-desist orders by the Department of Environmental Resources or its inspectors.

This finding is based on the requirements of Section 503(a)(2) of SMCRA (30 U.S.C. 1253(a)(2)). An analysis of the issues underlying this finding is found in Findings 7, 18, 19 and 20, below.

Finding 3

The Secretary finds that the Department of Environmental Resources has demonstrated that it has sufficient administrative and technical personnel and funds to enable Pennsylvania to regulate surface coal mining and reclamation operations in accordance with the requirements of SMCRA.

This finding is based on the requirements of Section 503(a)(3) of SMCRA (30 U.S.C. 1253(a)(3)). An analysis of the issues underlying this finding is found in Finding 30, below.

Finding 4

The Secretary finds that the Pennsylvania surface mining laws provide, except as noted below, for the effective implementation, maintenance, and enforcement of a permit system that meets the requirements of SMCRA for the regulation of surface coal mining and reclamation operations on non-Indian and non-Federal lands within Pennsylvania.

This finding is based on the requirements of Section 503(a)(4) of SMCRA (30 U.S.C. 1253(a)(4)). An analysis of the issues underlying this finding is found in Finding 14, below.

Finding 5

The Secretary finds that Pennsylvania has established a process for the designation of areas as unsuitable for surface coal mining in accordance with Section 522 of SMCRA.

This finding is based on the requirements of Section 503(a)(5) of SMCRA (30 U.S.C. 1253(a)(5)). An analysis of the issues underlying this finding is found in Finding 21, below.

Finding 6

The Secretary finds that Pennsylvania has established, for the purpose of avoiding duplication, a process for coordinating the review and issuance of permits for surface coal mining and reclamation operations with other federal and state permit processes applicable to the proposed operations.

This finding is based on the requirements of Section 503(a)(6) of SMCRA (30 U.S.C. 1253(a)(6)). An analysis of the issues underlying this finding is found in Findings 13 and 14, below.

Finding 7

The Secretary finds that Pennsylvania has enacted regulations, except as noted in subsequent Findings, consistent with regulations issued pursuant to SMCRA.

This finding is based on the requirements of Section 503(a)(7) of SMCRA (30 U.S.C. 1253(a)(7)). An analysis of the issues underlying this finding is found in Findings 12, 13, 14, 17, 19 and 20, below.

Pennsylvania has developed and submitted with its program resubmission of January 25, 1982, and revisions thereto, regulations to implement Pennsylvania's surface mining laws. These regulations, for the most part, are being enacted as temporary rules concurrent with the decision announced in this notice. This action is consistent with the requirements of SMCRA in that Pennsylvania has the necessary authority to enforce a permanent regulatory program at the time approval by the Secretary is effective.

In resubmitting its program, Pennsylvania submitted regulations which were adopted on December 20, 1980, and superseded portions of them in later resubmissions with amendments thereto (See Part B entitled "Background on the Pennsylvania Program" of this **Federal Register** notice). The amended regulations were adopted by the Pennsylvania Environmental Quality Board (EQB) on April 20, 1982, and will take effect upon program approval. In adopting these regulations, the EQB issued an order on April 20, 1982 (Administrative Record No. PA 336 p. 91) stating that any revisions to the Pennsylvania regulations found by the Secretary to be insufficient under Federal law shall be void and superseded by regulations previously adopted by the Environmental Quality Board on December 20, 1980 (10 *Pa. Bull.* 4789). Those issues which were resolved through effectuating the EQB order are found at Findings 13.6, 13.7 and 14.11, below.

The Department of Environmental Resources submitted additional revised regulations to the EQB on June 15, 1982, which, if adopted, should resolve many of the concerns outlined herein regarding Pennsylvania's permanent program regulations. As discussed in Part F of this notice, the revised regulations are expected to be adopted as emergency rules by October 1982. Upon receiving program approval, Pennsylvania plans to initiate formal rulemaking on PA Chapters 86, 87, 88, 89, and 90. For the most part, this process is not expected to be completed before May 1983.

Finding 8

The Secretary has, through OSM, solicited and publicly disclosed the views of the Administrator of the Environmental Protection Agency, the Secretary of Agriculture, and the heads of other Federal agencies concerned with or having special expertise pertinent to the proposed Pennsylvania program.

This finding is based on the requirements of Section 503(b)(1) of SMCRA (30 U.S.C. 1253(b)(1)) and on the information contained in the **Federal Register** notice published June 11, 1982 (47 FR 25383–25384). This notice identified the Federal agencies from which comments were solicited, the agencies which responded and the offices of OSM and the Pennsylvania Department of Environmental Resources at which copies of the comments were made available.

Finding 9

The Secretary has obtained the written concurrence of the Administrator of the Environmental Protection Agency with respect to those aspects of the Pennsylvania program being approved today and which relate to air or water quality standards promulgated under the authority of the Clean Water Act, as amended (33 U.S.C. 1151–1175) and the Clean Air Act, as amended (42 U.S.C. 1857 et seq.).

This finding is based on the requirements of Section 503(b)(2) of SMCRA (30 U.S.C. 1253(b)(2)) and on the letter transmitted by the Administrator of EPA to the Secretary on July 7, 1982. A copy of this letter has been placed in the Pennsylvania Administrative Record (Administrative Record No. PA 375).

Finding 10

The Secretary, through the OSM Regional Director for Region I, held a public meeting in Indiana, Pennsylvania, on April 10, 1980, to discuss the Pennsylvania program submission and its completeness, held public hearings in Indiana and Harrisburg, Pennsylvania, on July 14 and 15, 1980, respectively, on the adequacy of the Pennsylvania program submission, and subsequently held a public hearing on February 25, 1982, in Harrisburg, on the resubmitted program.

This finding is based on the requirements of Section 503(b)(3) of SMCRA (30 U.S.C. 1253(b)(3)).

Finding 11

The Secretary finds that the Commonwealth of Pennsylvania has the legal authority and sufficient qualified personnel necessary for the enforcement of the environmental protection standards of SMCRA and 30 CFR Chapter VII.

This finding is based on the requirements of Section 503(b)(4) of SMCRA (30 U.S.C. 1253(b)(4)). Analysis of the issues underlying this finding is found in Findings 12 through 30, below.

Finding 12

The Secretary finds that the Pennsylvania program provides, except as noted below, for carrying out the provisions and meet the purposes of SMCRA and 30 CFR Chapter VII.

This finding is made under the requirements of 30 CFR 732.15(a). Analysis of the issues underlying this finding is found throughout this **Federal Register** notice.

Finding 13

The Secretary finds that the Pennsylvania Department of

Environmental Resources (DER) has, except as noted below, the authority under Pennsylvania surface mining laws and regulations to implement, administer, and enforce all applicable requirements consistent with 30 CFR Chapter VII, Subchapter K (Performance Standards) and the Pennsylvania program includes provisions adequate to do so, with the exceptions noted below. This finding is made under the requirements of 30 CFR 732.15(b)(1).

Pennsylvania incorporates provisions corresponding to Sections 515 and 516 of SMCRA and provisions of Subchapter K of 30 CFR Chapter VII in several sections of CRDCA, PASMCRA and TCSL and throughout the Pennsylvania regulations, Chapters 87, 88, 89 and 90 of Title 25 Pennsylvania Code.

Discussion of significant issues raised during the review of the Pennsylvania environmental performance standards follows.

13.1 PA 87.112(b) and PA 90.112(b) do not provide that impoundments greater than 20 feet in height or which have a storage capacity of equal to or greater than 20 acre-feet comply with the spillway design and factor of safety criteria contained in 30 CFR 816.46(q) (1) and (2). The requirement that larger dams have the capability to pass larger storms and attain a demonstrated level of stability beyond that of smaller structures is a common engineering and regulatory practice. Pennsylvania has a dam regulatory process that provides design standards for such structures. The Federal regulations contain these standards to establish a greater degree of protection of public health, safety and environment where the release of significant volumes of water could result from catastrophic failure of larger impoundments. Approval of the Pennsylvania program is conditioned upon the addition of language in its regulations or other program amendment to provide special requirements for impoundments which are no less effective than 30 CFR 816.46(q) (1) and (2).

13.2 30 CFR 816.46(t) and 816.49(f) require that all impoundments be examined for structural weakness, erosion, and other hazardous conditions by a qualified person every seven days in accordance with 30 CFR 77.216–3. Inspection of ponds not meeting the size criteria of MSHA regulations (30 CFR 77.216(a)) may be done quarterly with the approval of the regulatory authority. In addition, ponds meeting the MSHA size criteria must be routinely inspected by a qualified registered professional engineer or someone under his supervision. Reports of any inspections, monitoring and modifications must be maintained as specified in 30 CFR 77.216–3. PA 87.112(b)(1) and PA 90.112(b)(1) only require inspection of sedimentation ponds during construction. Also, PA 87.111(a) and PA 90.111(a) incorporate the requirements of PA Chapter 105. PA 105.131 only requires that dams, meeting the classification designation "1" or "2" of PA Chapter 105 (higher risk dams), be inspected and certified annually by a registered engineer. Impoundments that are improperly constructed, poorly maintained or operated can pose potential or actual threats to public safety and the environment. Frequent inspection allows assessment of performance and provides for timely adjustments as necessary. Therefore, the Secretary finds that PA 87.111(a), 87.112(b)(1), 90.111(a) and 90.112(b)(1) are less effective than 30 CFR 816.46(t) and 816.49(f), in that inspections are limited to sedimentation ponds during construction and larger high risk structures after construction and in that the frequency of inspection is inconsistent with that established under 30 CFR 77.216–3. Consequently, approval of the Pennsylvania program is conditioned upon the addition of language in its regulations or other program amendment to provide for standards which are no less effective than the Federal requirements.

13.3 According to 30 CFR 816.49(a)(5), structures that can: (1) impound 20 acre-feet or more of water, sediment or slurry to an elevation of five feet or more above the upstream toe; or, (2) impound to an elevation of 20 feet or more above the upstream toe (MSHA 30 CFR 77.216(a)) must comply with the requirements contained in the U.S. Soil Conservation Service Technical Release 60 (TR–60), *Earth Dams and Reservoirs*, June 1976. Impoundments that do not meet the size criteria above must comply with the requirements contained in the U.S. Soil Conservation Service Practice Standard 378 (PS–378), *Ponds*, October 1978. Pennsylvania regulations, however, utilize a different set of dam size criteria to categorize requirements for large and small structures. For small dams, the Soil Conservation Service's "Pennsylvania PS–378" is referenced in PA 87.112(b) and 90.112(b). For large dams, PA 87.112(a) and 90.112(a) reference PA Chapter 105. PA Chapter 105 requires state-of-the-art design and construction. Pennsylvania stated in its Attorney General's opinion that the state-of-the-art requirement would be satisfied through adherence to a reference list of acceptable guidelines, including TR–60, *Design of Small Dams*, etc. The Secretary finds that this provision is no less effective than the Federal rules in satisfying the requirements for large dams encompassed by PA 87.112(a) and PA 90.112(a). Inasmuch as Pennsylvania's categorization of large and small dams is less effective than the Federal counterparts, the Secretary further finds that the use of PA PS–378, other than as intended, is inappropriate, e.g. other than for *low risk* (SCS "class A") structures with height times storage products less than 3000, or structures 35 feet or less in height. Accordingly, approval of the Pennsylvania program is conditioned upon the inclusion of language in PA 87.112(b) and 90.112(b) of other program amendment to ensure that impoundments which meet MSHA criteria (30 CFR 77.216(a)) comply with the requirements of TR–60 in accordance with 30 CFR 816.49(a)(5).

13.4 30 CFR 816.49(h) requires that annual certification reports for ponds, dams and impoundments contain information on monitoring and instrumentation, design versus actual water levels periodically taken throughout the reporting period, existing storage capacity, the presence of fires, and any other aspects of the dam which might affect stability. Certification reports serve as notification to the regulatory authority that structures are performing as intended; that the permittee is properly maintaining the facility; that any problems which occur, or are likely to occur, are or have been addressed; and that a qualified professional has found conditions conforming with standard engineering practices. The Secretary finds that PA 87.112 and PA 90.112 contain no provisions requiring that the information discussed above be contained in the certification reports. Accordingly, approval of the Pennsylvania program is conditioned upon the adoption of requirements in its regulations or other program amendment which are no less effective than those in 30 CFR 816.49(h).

13.5 PA 87.143 is less effective than 30 CFR 816.102(b) by allowing alternatives to contouring and terracing where the land is proposed to be made suitable after mining and reclamation for industrial, commercial, agricultural, residential, recreational or public use. SMCRA does not specifically allow for alternatives to approximate original contour as proposed by Pennsylvania. Therefore, the Secretary finds that a variance provision to approximate original contour for non-steep slope areas is not inconsistent with the approximate original contour requirements of Section 515 of SMCRA. However, the provisions of Sections 515(e) (1) and (3) require complete

backfilling, elimination of the highwall, improvement of the watershed control of the area, and concurrence of appropriate land use planning agencies and surface owner(s) that the potential use of the affected land will constitute an equal or better economic or public use. PA 87.143 does not contain any similar requirements. Therefore, approval of the Pennsylvania program is conditioned upon the inclusion of language in PA 87.143 to reflect the requirements of Sections 515 (e)(1) and (e)(3) of SMCRA. (For a detailed discussion of the Section 515(e) variance to the approximate original contour requirements, see the preamble discussion of proposed rules for postmining land uses and variances from approximate original contour (47 FR 16153–16156, April 14, 1982)).

13.6 PA 89.51(d) only requires that underground mine operators mark the perimeter of all coal storage and preparation plant areas. 30 CFR 817.11(d) and Section 701(17) of SMCRA require that the person conducting underground mining clearly mark the perimeter of all areas affected by surface operations or facilities before mining initiates. If the perimeters of such areas change, the perimeter markers must be adjusted accordingly. Proper marking of perimeters is necessary in preventing equipment operators from inadvertently entering areas not authorized for disturbance. Therefore, the Secretary disapproves PA 89.51(d) regarding perimeter markers. In accordance with the Environmental Quality Board's order of April 20, 1982 (Administrative Record No. PA 336), any revisions to the Pennsylvania regulations found by the Secretary to be insufficient under Federal law shall be void and superseded by regulations previously adopted by the Environmental Quality Board on December 20, 1980 (10 *Pa. Bull.* 4789). The Secretary finds that the provisions of PA 89.72(d) of Pennsylvania's December 20, 1980 regulations are no less effective than 30 CFR 817.11(d) and thus requires no condition.

13.7 PA 89.65 does not prohibit the use of persistent pesticides on the area during underground mining and reclamation as set forth in 30 CFR 817.97(d)(7). Therefore, the Secretary disapproves PA 89.65 regarding the use of pesticides. In accordance with the Environmental Quality Board's order of April 20, 1982 (Administrative Record No. PA 336) any revisions to the Pennsylvania regulations found by the Secretary to be insufficient under Federal law shall be void and superseded by regulations previously adopted by the Environmental Quality Board on December 20, 1980 (10 *Pa. Bull.* 4789). Since PA 89.105(d)(7) of Pennsylvania's December 20, 1980 regulations contain provisions no less effective than 30 CFR 817.97(d)(7), no condition is necessary.

13.8 PA 89.86(a)(1) only requires that an underground mining operator establish an effective and permanent vegetative cover, while Section 516(b)(6) of SMCRA and 30 CFR 817.111(a) require that an operator must establish a diverse vegetative cover, as well as an effective and permanent vegetative cover. A diverse vegetative cover is necessary to ensure that the failure of one species through drought or disease does not result in an elimination of all vegetation which would result in serious erosion. Approval of the Pennsylvania program is conditioned upon the issuance of regulations or program amendment to require the establishment of a diverse vegetative cover for underground mining operations which is no less effective than 30 CFR 817.111(a) and in accordance with Section 516(b)(6) of SMCRA.

Finding 14

The Secretary finds that the Department of Environmental Resources has the authority under Pennsylvania surface mining laws and regulations and the Pennsylvania program includes, except as noted below, provisions to implement, administer and enforce a permit system consistent with 30 CFR Chapter VII, Subchapter G (Permits). This finding is made under the requirements of 30 CFR 732.15(b)(2).

Pennsylvania incorporates provisions corresponding to Sections 506, 507, 508, 510, 511 and 513 of SMCRA and Subchapter G of 30 CFR Chapter VII in several sections of CRDCA, PASMCRA, BMSLCA and TCSL and throughout the Pennsylvania regulations, Chapters 86, 87, 88, 89 and 90 of Title 25 Pennsylvania Code. Chapters III and IV of the program submission contain a discussion of the Commonwealth's system for permitting.

Discussion of significant issues raised during the review of the Pennsylvania permit provisions follows:

14.1 PA 90.11(a)(3) does not require a description of significant known archeological sites within the adjacent areas of a coal refuse permit area as set forth in 30 CFR 779.12 and in accordance with Section 507(b)(13) of SMCRA. Sections 102 and 522(e) of SMCRA and the National Historic Preservation Act protect cultural, historical and archeological features both on and off the permitted area. A description of the sites is necessary to ensure that the regulatory authority has enough information to determine whether mining activities will comply with 30 CFR 761.11 and 786.19(e). Therefore, approval of Pennsylvania's program is conditioned upon the inclusion of additional language in its regulations or other program amendment which is no less effective than 30 CFR 779.12.

14.2 PA 88.30 does not require the permit application for anthracite mining operations to contain a description of historic land use, if the premining use of the land was changed within five years before the anticipated date of beginning the proposed mining operation as set forth in 30 CFR 779.22(a)(1) and in accordance Section 508(a)(2)(A) of SMCRA. This information is necessary to enable the regulatory authority to evaluate the applicant's plan to restore the affected area to the condition required by PA 88.133. If the premining land use has changed within five years preceding mining, the applicant is to describe the historic land use of the proposed mining area. However, in accordance with Federal law, the regulatory authority is given the opportunity to determine the appropriate period for information on historical use based on the nature of changes that have occurred and local conditions and trends. Therefore, approval of the Pennsylvania program is conditioned upon the addition of language to its regulations or other amendments to its program requiring description of historic land use consistent with the Federal provisions cited above.

14.3 Section 529 of SMCRA applies all provisions of SMCRA to anthracite mining, except Sections 515, 516 and portions of Sections 509 and 519. All provisions of Sections 509 and 519 are applicable but for the specified bond limits and the period of revegetation responsibility. Using this standard of review, the Secretary has determined that anthracite mining is not exempt from all prime farmland provisions of SMCRA. Therefore, Pennsylvania must adopt prime farmland requirements of SMCRA for anthracite mining, except those provisions cited above. Specifically, PA 88.31 and PA 88.491 do not require the applicant to conduct a prime farmland investigation in accordance with 30 CFR 779.27, 783.27 and Section 507(b)(16) of SMCRA. Prime farmland procedures must be followed for all mining activities in order to ensure the protection of prime farmland. For surface mines, the entire permit area must be investigated; whereas for underground mines, only the area proposed to be affected by surface operations or facilities need be investigated. Accordingly, approval of

the Pennsylvania program is conditioned upon the inclusion of provisions in its regulations or other program amendment which are no less effective than the Federal requirements.

14.4 PA 87.73 does not require that the contents of the general plan for ponds, impoundments, banks, dams and embankments associated with surface mining operations be "prepared by, or under the direction of, and certified by a qualified registered professional engineer, or by a professional geologist with assistance from experts in related fields such as land surveying and landscape architecture", as does 30 CFR 780.25(a)(1)(i). This requirement originates from Section 507(b)(14) of SMCRA, which provides that only trained professionals may develop adequate plans for critical structures such as fills and impoundments which are prone to catastrophic failure. The permanent regulatory program envisioned that a general plan, concerning the description and location of such structures, the geologic and hydrologic assessment, and the evaluation of impacts from subsidence, was to be prepared by engineers registered on the basis of their experience in such designs. These portions of the design are important to the assurances of public safety and environmental protection intended by SMCRA. Although PA 87.73(d)(1) provides that a detailed plan be prepared by a registered professional engineer, the Secretary finds that the omission of the requirement for preparation of the general plan by a registered professional engineer or professional geologist is less effective than 30 CFR 780.25(a)(1)(i). Accordingly, approval of the Pennsylvania program is conditioned upon the inclusion of provisions in its regulations or other program amendment which are no less effective than the Federal requirements.

14.5 PA 90.39 does not specify that each detailed design plan must include any geotechnical investigation and design and construction requirements for impoundments associated with coal refuse operations as provided in 30 CFR 780.25(a)(2)(ii) and 780.25(a)(3)(ii). While this requirement exists for coal waste structures in PA 90.39(f), the provisions must also be applicable to any sediment control structure or other impoundments appurtenant to Chapter 90 activities. Therefore, approval of the Pennsylvania program is conditioned upon the inclusion of provisions in its regulations or other program amendment which are no less effective than the Federal requirements in this regard.

14.6 PA 87.73, 87.112(b), 90.39 and 90.112(b) omit the Federal provisions of 30 CFR 780.25 (b) and (c), which through incorporation of MSHA plan requirements, require that plans for all sedimentation ponds and permanent or temporary impoundments contain the geotechnical information specified in 30 CFR 77.216–2(a) (5) and (6). Those structures under the jurisdiction of PA Chapter 105 (based on combinations of size/volume/watershed) are subject to the same plan requirements as MSHA structures; however, non-Chapter 105 sediment or temporary and permanent impoundments are not required by PA 87.73, 87.112(b), 90.39 or 90.112(b) to include geotechnical information on the type, size, range of engineering properties of the embankment and foundation materials. These data are needed by the design and construction engineers and the regulatory authority for predicting stability, developing construction requirements, and anticipating the general performance of the structure. Without this information, the operation and reclamation plan cannot demonstrate achievement of the performance standards of SMCRA. The Secretary finds that the omission of these requirements renders the Pennsylvania regulations less effective than the Federal provisions, and conditions approval of the Pennsylvania program upon the addition of these plan requirements to its regulations or otherwise amend its program to be no less effective than the Federal requirements.

14.70 PA 87.73 and 90.93 do not require a stability analysis, supporting calculations and justification of parameters for structures 20 feet or higher or which impound more than 20 acre-feet as required by 30 CFR 780.25(f) and 77.216–2(a)(13). As discussed in Finding 14.6 above, this type of geotechnical data is necessary to demonstrate that the performance standards of Section 515(b) of SMCRA are attainable, as required by Section 510(b) of SMCRA. Therefore, approval of the Pennsylvania program is conditioned upon the inclusion of language in its regulations or other program amendment which is no less effective than 30 CFR 780.25(f).

14.8 PA 88.491(i) does not require that the permit application for anthracite underground mining operations contain maps delineating all boundaries of lands and names of present owners of record of those lands, both surface and subsurface, included in or contiguous to the proposed permit area as set forth in 30 CFR 783.24(a). Section 507(b)(2) of SMCRA requires that the ownership of both the surface and subsurface estates has to be established prior to mining. Therefore, approval of the Pennsylvania program is conditioned upon the addition of a requirement to its regulations or other program amendment which is no less effective than 30 CFR 783.24(a).

14.9 PA 89.141(d)(8) only requires that maps delineate the location of buildings, roads, surface water bodies, etc. for areas covered by a subsidence control plan. 30 CFR 783.24 and 783.25 require that maps depict the location of such surface features for the entire permit area and be submitted with the permit application. Since a subsidence plan would not necessarily encompass the entire permit area, the Secretary finds PA 89.141(d)(8) less effective than 30 CFR 783.24 and 783.25. Therefore, approval of the Pennsylvania program is conditioned upon the addition of language to its regulations or other program amendment requiring that the permit application contain maps identifying the location of certain surface features for the entire permit area which are no less effective than 30 CFR 783.24 and 783.25 and in accordance with Section 507(b) (13) and (14) of SMCRA.

14.10 PA 88.491(i) and 89.141(d)(8)(ii) do not require maps showing the location of all buildings in and within 1,000 feet of the proposed permit area together with identification of the current use of such buildings as set forth in 30 CFR 783.24(d). Section 507(b)(13) of SMCRA is specific in requiring the mapped location of all buildings within 1,000 feet of the permit area. Moreover, information on building use is necessary to determine whether the building is an occupied dwelling under Section 522(e)(5) of SMCRA. Identification of structures and their use is needed to determine the impact of mining and other functions in the community. Therefore, approval of these portions of the Pennsylvania program is conditioned upon the inclusion of provisions in its regulations or other program amendment which are no less effective than 30 CFR 783.24(d).

14.11 PA 89.141(d)(8)(iv) does not require that the permit application for underground mining operations contain a map showing each public road located in or within 100 feet of the proposed permit area as set forth in 30 CFR 783.24(h) and in accordance with Sections 507(b)(13) and 522(e)(4) of SMCRA. This information is necessary to prevent or minimize disruption to traffic flows, hazards to travelers, and provide restoration of traffic flow and access after mining. Therefore, the

Secretary disapproves PA 89.141(d)(8)(iv) regarding public roads. In accordance with the Environmental Quality Board's order of April 20, 1982 (Administrative Record No. PA 336), any revisions to the Pennsylvania regulations found by the Secretary to be insufficient under Federal law shall be void and superseded by regulations previously adopted by the Environmental Quality Board on December 20, 1980, (10 *Pa. Bull.* 4789). Since the provisions of PA 89.21(6) of Pennsylvania's December 20, 1980 regulations are no less effective than 30 CFR 783.24(h), no condition is necessary.

14.12 PA 86.37(12) does not require the applicant to obtain, with respect to prime farmland, a negative determination when proposing to mine coal in the anthracite region as set forth in 30 CFR 786.19(1) and in accordance with Section 510(d)(1) of SMCRA. This requirement ensures that the regulatory authority makes specific findings before issuing a permit for mining on prime farmland. Therefore, approval of the Pennsylvania program is conditioned upon the addition of language in its regulations or other program amendment which is no less effective than the provisions of 30 CFR 786.19(1). (See Finding 14.3 above.)

14.13 PA 86.38 does not require reconstruction of existing non-conforming structures without causing significant harm to the environment or public health or safety within six months after issuance of a permit as set forth in 30 CFR 786.21. The requirement to allow up to six months for reconstruction of existing non-conforming structures reflects the need to bring structures into compliance with the full complement of performance standards within a reasonably prompt period of time. Therefore, approval of the Pennsylvania program is conditioned upon the inclusion of language in its regulations or other program amendment to provide standards regarding reconstruction of non-conforming structures which are no less effective than 30 CFR 786.21.

Finding 15

The Secretary finds that the Department of Environmental Resources has the authority under Pennsylvania surface mining laws and regulations and the Pennsylvania program contains adequate provisions to regulate coal exploration consistent with 30 CFR Parts 776 and 815 and to prohibit coal exploration that does not comply with 30 CFR Parts 776 and 815. This finding is made under the requirements of 30 CFR 732.15(b)(3).

The Pennsylvania program incorporates provisions corresponding to Section 512 of SMCRA and 30 CFR Parts 776 and 815 (as related to coal exploration) in Section 3 of PASMCRA and throughout the Pennsylvania regulations, Chapters 86 and 89 of Title 25, Pennsylvania Code. Chapter IV–G of the Pennsylvania program includes a discussion of the systems for coal exploration, review and approval.

Finding 16

The Secretary finds that the Department of Environmental Resources has the authority under Pennsylvania surface mining laws and regulations and the Pennsylvania program contains adequate provisions to require that persons extracting coal incidental to government financed construction maintain information on site consistent with 30 CFR Part 707. This finding is made under the requirements of 30 CFR 732.15(b)(4).

Operations extracting coal incidental to government-financed construction are not exempt from the requirements of the Pennsylvania surface mining laws and regulations.

Finding 17

The Secretary finds that the Department of Environmental Resources has the authority under Pennsylvania surface mining laws and regulations and the Pennsylvania program contains adequate provisions to enter, inspect, and monitor all coal exploration and surface coal mining and reclamation operations on non-Indian and non-Federal lands within Pennsylvania consistent with the requirements of Section 517 (Inspection and Monitoring) of SMCRA and 30 CFR Chapter VII, Subchapter L (Inspection and Enforcement). This finding is made under the requirements of 30 CFR 732.15(b)(5).

Provisions corresponding to Section 517 of SMCRA and Subchapter L of 30 CFR Chapter VII for inspection and enforcement are found in several sections of CRDCA, PASMCRA, BMSLCA, and TCSL, the Pennsylvania regulations, Subchapter H of Chapter 86 of Title 25 Pennsylvania Code, and Parts 200 and 300 of the Bureau of Mining and Reclamation's Policy and Procedure Manual. Chapters III and IV of the program submission contain a discussion of Pennsylvania's inspection procedures to be implemented by the Department of Environmental Resources.

Finding 18

The Secretary finds that the Department of Environmental Resources has the authority under Pennsylvania surface mining laws and regulations and the Pennsylvania program contains, except as noted below, adequate provisions to implement, administer, and enforce a system of performance bonds and liability insurance, or other equivalent guarantees consistent with 30 CFR Chapter VII, Subchapter J (Performance Bonds). This finding is made under the requirements of 30 CFR 732.15(b)(6).

Provisions corresponding to Sections 509 and 519 of SMCRA and Subchapter J of 30 CFR Chapter VII for performance bonds are incorporated in several sections of CRDCA, PASMCRA, BMSLCA and TCSL and the Pennsylvania regulations, Subchapter F of Chapter 86 of Title 25, Pennsylvania Code. Chapters III and IV of the program submission contain descriptions of the Commonwealth's process for implementing, administering and enforcing a system of performance bonds and liability insurance or other equivalent guarantees.

Discussion of significant issues raised during the review of the Pennsylvania's bonding and insurance provisions follows:

18.1 PA 86.172(d) does not prohibit bond release for anthracite mining operations until after the soil productivity for prime farmlands has been returned to a level of yield comparable with non-mined prime farmland as set forth in 30 CFR 807.12(e)(2)(iii) and in accordance with Section 519(c)(2) of SMCRA. This requirement ensures that soil productivity of prime farmland is returned to its original condition prior to mining. Since Section 529(a) of SMCRA does not provide an exemption for anthracite operations from these requirements of Section 519, the State program must include them. Therefore, approval of the Pennsylvania program is conditioned upon the inclusion of regulations or other program amendment which are no less effective than 30 CFR 807.12(e)(2)(iii). (See Finding 14.3 above.)

18.2 Although the Pennsylvania program meets the minimum requirements of Sections 509 and 519 of SMCRA and Subchapter J of 30 CFR Chapter VII, the Secretary is concerned about the continuing adequacy of the amount of the bond and permit fee required for permit areas that is applied to bond forfeitures in Pennsylvania. Pennsylvania has the authority and responsibility under PA 86.145 to review at least annually and, if necessary, revise the bonding amount required for permit areas to reflect the current cost of

reclamation to the State. The Secretary is aware of the bonding adequacy review currently being conducted by the State. To facilitate OSM oversight of this matter, the Secretary requires Pennsylvania to submit the study to OSM and to make any adjustments as necessary to cover reclamation costs. OSM in its oversight program will closely monitor the bonding provisions in the Pennsylvania program and all other State programs.

Finding 19

The Secretary finds that the Department of Environmental Resources has the authority under Pennsylvania surface mining laws and regulations and the Pennsylvania program contains adequate provisions to provide for civil and criminal sanctions for violations of Pennsylvania laws, regulations and conditions of permits and exploration approvals, including civil and criminal penalties in accordance with Section 518 of SMCRA and consistent with 30 CFR Part 845, including the same or similar procedural requirements. This finding is made under the requirements of 30 CFR 732.15(b)(7).

Provisions corresponding to Section 518 of SMCRA and to 30 CFR 845 are incorporated in several sections of CRDCA, PASMCRA, BMSLCA and TCSL, the Pennsylvania regulations, Subchapter G of Chapter 86 of Title 25 Pennsylvania Code, and Parts 200 and 300 of the Bureau of Mining and Reclamation's Policy and Procedure Manual. Chapter IV of the program narrative contains descriptions of Pennsylvania's procedures for civil and criminal sanctions.

Finding 20

The Secretary finds that the Department of Environmental Resources has, except as noted below, the authority under Pennsylvania surface mining laws and regulations and the Pennsylvania program contains adequate provisions to issue, modify, terminate and enforce notices of violation, cessation orders and show-cause orders in accordance with Section 521 of SMCRA and consistent with 30 CFR Chapter VII, Subchapter L (Inspection and Enforcement), including the same or similar procedural requirements. This finding is made under the requirements of 30 CFR 732.15(b)(8).

Provisions corresponding to Section 521 of SMCRA and to Subchapter L of 30 CFR Chapter VII are included in several sections of CRDCA, PASMCRA, BMSLCA and TCSL, the Pennsylvania regulations, Subchapter H of Chapter 86 of Title 25 Pennsylvania Code, and Parts 200 and 300 of the Bureau of Mining and Reclamation's Policy and Procedure Manual. Chapter IV of Pennsylvania's program submission contains a discussion of the Commonwealth's procedures for issuing, modifying, terminating or enforcing notices of violation, cessation orders and show-cause orders.

Discussion of significant issues raised in the review of the Commonwealth's inspection and enforcement procedures are as follows:

20.1 Unlike 30 CFR 843.12 and Section 521(a)(3) of SMCRA, PA 86.211 provides additional time beyond the 90 days allowed for abatement if the time is essential for the achievement of the statutory standards of environmental protection. This provision is not consistent with the Federal requirements in that it does not adequately limit the circumstances when additional time beyond the 90-day abatement period should be allowed. Accordingly, approval of the Pennsylvania program is conditioned upon the inclusion of language in its regulations or other program amendment that will limit the circumstances where abatement times in excess of 90 days will be permitted consistent with 30 CFR 843.12 and Section 521(a)(3) of SMCRA.

20.2 Neither PA 86.213 nor Part 300–2.10 of the Bureau of Mining and Reclamation's Policy and Procedure Manual requires the department to review and suspend a permit based on a pattern of violations consistent with 30 CFR 843.13 and no less stringent than Section 521(a)(4) of SMCRA. Accordingly, approval of the Pennsylvania program is conditioned upon the addition of a requirement to its regulations or other program amendment providing for a mandatory review of permits for a pattern of violations and a suspension of a permit based on a pattern of three or more violations within a 12-month period if committed willfully or through unwarranted failure to comply consistent with 30 CFR 843.13 and no less stringent than Section 521(a)(4) of SMCRA.

Finding 21

The Secretary finds that the Department of Environmental Resources has the authority and the Pennsylvania program contains adequate provisions to designate areas as unsuitable for surface coal mining consistent with 30 CFR Chapter VII, Subchapter F (Designation of Lands Unsuitable for Mining). This finding is made under the requirements of 30 CFR 732.15(b)(9).

Provisions corresponding to Section 522 of SMCRA and to Subchapter F of 30 CFR Chapter VII are included in several sections of CRDCA, PASMCRA and TCSL and the Pennsylvania regulations, Subchapter D of Chapter 86 of Title 25 Pennsylvania Code. Chapter IV–E of the Pennsylvania program narrative describes the system by which petitions for designating areas unsuitable for surface coal mining will be received and processed and the establishment of a data base and inventory system.

Finding 22

The Secretary finds that the Department of Environmental Resources has the authority under Pennsylvania surface mining laws and regulations and the Pennsylvania program provides for public participation in the development, revision and enforcement of Pennsylvania laws and regulations and is consistent with the public participation requirements of SMCRA and 30 CFR Chapter VII. This finding is made under the requirements of 30 CFR 732.15(b)(10).

Provisions corresponding to public participation requirements of SMCRA and 30 CFR Chapter VII are included throughout the Pennsylvania surface mining laws and the state regulations submitted as part of the program. Chapter III–D of the program narrative describes the procedures for ensuring that adequate public participation is provided throughout the development and functioning of the state program.

Finding 23

The Secretary finds that the Department of Environmental Resources has the authority under Pennsylvania surface mining laws and regulations and the Pennsylvania program includes adequate provisions to monitor, review and enforce the prohibition against indirect or direct financial interest in coal mining operations by employees of the Department of Environmental Resources consistent with 30 CFR Part 705 (Restrictions on Financial Interests of State Employees). This finding is made under the requirements of 30 CFR 732.15(b)(11).

Provisions corresponding to Section 517(g) of SMCRA and of 30 CFR Chapter VII are incorporated in Section 1928–A of the Administrative Code of 1929 and the Pennsylvania regulations, Subchapter I of Chapter 86 of Title 25 Pennsylvania Code. Chapter III–C of the Pennsylvania program narrative describes the system for monitoring and enforcing prohibitions against indirect or direct financial interests in coal mining operations by State employees.

Finding 24

The Secretary finds that the Department of Environmental Resources has the authority under Pennsylvania surface mining laws and regulations and the program includes adequate provisions to require the training, examination, and certification of persons engaged in or responsible for blasting and the use of explosives in accordance with Section 719 of SMCRA to the extent required for approval of its program. This finding is made under the requirements of 30 CFR 732.15(b)(12).

Provisions corresponding to Section 719 of SMCRA are incorporated in Section 4.2(b) of PASMCRA.

Under 30 CFR 732.15(b)(12), the State is not required to implement regulations governing training, examination, and certification of blasters until six months after Federal regulations for these provisions have been promulgated. Federal regulations have not been promulgated at this time. Whenever OSM issues final rules on this subject, Pennsylvania will be required to have regulations consistent with them and provide a description of the system for implementing these provisions as required by 30 CFR 731.14(g)(13).

Finding 25

The Secretary finds that the Department of Environmental Resources has the authority by law and regulation and the Pennsylvania program contains adequate provisions to provide for small operator assistance consistent with 30 CFR Part 795 (Small Operator Assistance). This finding is made under the requirements of 30 CFR 732.15(b)(13).

Provisions corresponding to Section 507(c) of SMCRA are incorporated in Section 18.7 of PASMCRA and the Pennsylvania regulations, Subchapter C of Chapter 86 of Title 25 Pennsylvania Code. Chapter IV–F of the Pennsylvania program narrative describes the small operator assistance program within the Commonwealth.

Finding 26

The Secretary finds that the Department of Environmental Resources has the authority under Pennsylvania surface mining laws and the Pennsylvania program contains adequate provisions to provide for the protection of employees of the Department of Environmental Resources in accordance with the protection afforded Federal employees under Section 704 of SMCRA. This finding is made under the requirements of 30 CFR 732.15(b)(14).

Section 18.6 of PASMCRA, Section 7 of CRDCA, Section 17.1 of BMSLCA, and Section 611 of TCSL provide for government employee protection in accordance with Section 704 of SMCRA.

Finding 27

The Secretary finds that the Department of Environmental Resources has, except as discussed below, the authority by law and regulation and the Pennsylvania program contains adequate provisions to provide for administrative and judicial review of state program actions in accordance with Sections 525 and 526 of SMCRA and 30 CFR Chapter VII, Subchapter L (Inspection and Enforcement). This finding is made under the requirements of 30 CFR 732.15(b)(15).

Provisions corresponding to Sections 525 and 526 of SMCRA are incorporated in several sections of CRDCA, PASMCRA, BMSLCA, Ad. Code and TCSL and Subchapter H of Chapter 86 of Title 25 Pennsylvania Code. Chapter IV–C of the program submission contains a discussion of Pennsylvania's administrative and judicial review procedures.

Only one significant issue was raised in the review of the Pennsylvania administrative and judicial review procedures as follows:

27.1 Unlike 30 CFR 840.15 and Section 525(e) of SMCRA, Pennsylvania law does not adequately provide for awarding attorney's fees. Although Section 307(b) of TCSL provides that costs and expenses, including attorney's fees, can be awarded by the Environmental Hearing Board for any proceeding brought under the Act, Section 4(b) of PASMCRA, Section 5(i) of CRDCA and Section 5(q) of BMSLCA only authorize attorney's fees for administrative proceedings involving permit approval or bond release. Therefore, approval of the Pennsylvania program is conditioned upon the addition of language to its laws or other program amendment providing that costs and expenses, including attorney's fees, can be awarded for any proceeding brought under the aforementioned laws.

Finding 28

The Secretary finds that the Department of Environmental Resources has the authority under its surface mining laws and regulations and the Pennsylvania program contains adequate provisions to cooperate and coordinate with and provide documents and other information to the Office of Surface Mining under the provisions of 30 CFR Chapter VII. This finding is made under the requirements of 30 CFR 732.15(b)(16).

Several sections of the Pennsylvania surface mining laws and regulations provide for public notice of applications for permits, applications for permit revisions and bond release and actions to revoke permits.

Finding 29

The Secretary finds that the Pennsylvania surface mining laws and regulations and the Pennsylvania program contain no provisions which would interfere with or preclude implementation of the provisions of SMCRA and 30 CFR Chapter VII. This finding is made under the requirements of 30 CFR 732.15(c).

In Pennsylvania's permanent program submission, the following laws other than the Pennsylvania surface mining laws were referenced as legal authority for various sections of the Pennsylvania program:

Administrative Agency Law, PA C.S., Section 501 *et seq.;*
Right to Know Law, 65 P.S., Section 66.1 *et seq.;*
Statutory Construction Act, 1 P.S., Section 1925;
41 P.S., Section 202; and
Administrative Code of 1929, 71 P.S., Section 201 *et seq.*

Other State laws and regulations directly affecting the regulation of surface coal mining and reclamation operations include:

Commonwealth Documents Law, 45 P.S., Section 1101 *et seq.;*
Appellate Court Jurisdiction, 17 P.S., Section 411;
Open Meeting Law, 65 P.S., Section 261 *et seq.;*
42 P.S., Section 763;
Dam Safety Act, No. 1978–325;
Solid Waste Management Act 1980, July 7, 1980, Section 101 *et seq.;*
Use of Explosives Act No. 362, July 10, 1957, P.L. 685, as amended July 12, 1961 and January 26, 1966;
Explosives Act No. 537, July 1, 1936, as amended April 27, 1939 and May 22, 1953;
Air Pollution Control Act, January 8, 1960, P.L. (1959) 2119, Section 1, as amended;
Pennsylvania Gas Operations, Well-Drilling, Petroleum and Coal Mining Act; Includes Act Number 225, Session of 1955; Act Number 722, Session of 1959; Act Number 359, Session of 1961;
Act Number 17, Session 1972—Substrata Evaluation—School Districts;
Act Number 275, Session of 1970—Creation of Department of Environmental Resources;
Title 25, Chapter 21, Environmental Hearing Board Rules and Regulations;
Title 25, Chapter 75, Solid Waste Management Rules and Regulations;
Title 25, Chapter 77, Mining Rules and Regulations;
Title 25, Chapter 79, Oil and Gas Conservation;
Title 25, Chapter 91, General Provisions;
Title 25, Chapter 92, National Pollutant Discharge Elimination System;

Title 25, Chapter 93, Water Quality Standards;
Title 25, Chapter 95, Wastewater Treatment Requirements;
Title 25, Chapter 97, Industrial Wastes;
Title 25, Chapter 101, Special Water Pollution Regulations;
Title 25, Chapter 102, Erosion Control;
Title 25, Chapter 105, Dam Safety and Waterway Management Rules and Regulations;
Title 25, Chapter 209, Coal Mines;
Title 25, Chapter 210, Use of Explosives; and
Title 25, Chapter 211, Storage, Handling and Uses of Explosives.

In the substantive review of the program submission, these laws and regulations were reviewed as part of the adequacy analysis or reviewed for their potential for conflicting with the statutory and regulatory elements of the Pennsylvania program. No conflicts were found which might weaken those Pennsylvania surface mining laws and regulations which form the basis for implementation of a program consistent with the provisions of SMCRA and 30 CFR Chapter VII.

The provisions in these laws and regulations which constitute Pennsylvania's requirements corresponding to minimum standards found in SMCRA and 30 CFR Chapter VII are part of the state regulatory program being approved today.

Finding 30

The Secretary finds that the Pennsylvania Department of Environmental Resources has demonstrated that it will have sufficient legal, technical and administrative personnel and sufficient funding to implement, administer and enforce the provisions of the program, the requirements of 30 CFR 732.15(b) (program requirements) and other applicable State and Federal laws. This finding is made under the requirements of 30 CFR 732.15(d).

D. Disposition of Agency and Public Comments

The comments received on the Pennsylvania program resubmission during the public comment period raised various issues. The Secretary considered these comments in evaluating Pennsylvania's program, as indicated below.

In three instances public comments were submitted by a collection of organizations as a group. In one case, the organizations represented are: the Environmental Policy Institute (EPI), the National Audubon Society, the National Wildlife Federation, the Pennsylvania Environmental Council, Inc., the Pennsylvania Federation of Sportsmen Clubs and the Sierra Club, Pennsylvania Chapter. In addressing the comments made by this group, the Secretary has identified the commenters as "EPI *et al.*" The second group consists of the Western Pennsylvania Surface Mining Operators Association; Sunbeam Coal Corporation of Boyers, Pennsylvania; West Freedom Mining Corporation of Kittanning, Pennsylvania; Kerry Coal Company of Portersville, Pennsylvania; and an individual. As this group of commenters specifically adopted and endorsed the comments made by the Pennsylvania Coal Mining Association (PCMA) and made no further or additional comments, the Secretary has identified the commenter as "PCMA *et al.*" Comments by the third group, the Pennsylvania Chapter of the National Association of Water Companies *et al.*, also includes those made by the American Water Works Service Company, Inc. since both organizations made similar comments. Comments from groups or agencies are identified by name but names of individuals have not been used.

In addition, as comments were received on both the December 20, 1980, Pennsylvania regulations (Administrative Record No. PA 292) and the amended regulations (Administrative Records Nos. PA 321 and 336), the Secretary found it necessary to address all comments on the regulations using the amended version of the Pennsylvania regulations as the basis for his comparative analysis with the Federal requirements. The only exception to this rule is the regulations governing anthricite mining which were contained in the initial resubmission (Administrative Record No. PA 292) and which were not a part of the amendments. When issues or deficiencies may have, in fact, existed in the December 20, 1980 regulations but were corrected in the amendments, the discussion in disposing of the comment will be, in most cases, based on the amended version of the regulations. In addition, in instances when the Pennsylvania regulatory provisions have been renumbered, the new citation has been provided.

The Secretary would like to express his gratitude to all those commenters who took the time and interest to review the Pennsylvania program. The comments received were most useful in assisting the Office of Surface Mining and the Department in their review and in making the Secretary's final decision on the program.

I. Designating Lands Unsuitable

1. PCMA *et al.* stated that PA 86.121(a) is less effective than 30 CFR 762.13(b) because Pennsylvania does not exempt from the designation process areas permitted under mine drainage permits issued pursuant to The Clean Streams Law. The commenters stated that SMCRA intended that a Pennsylvania mine drainage permit be accorded the status of a mine permit or a bonded increment for purposes of establishing valid existing rights as to areas unsuitable for mining. The Secretary disagrees with this comment. Pennsylvania has exempted from the designation process those areas covered by a surface mining permit. The fact that the Commonwealth has elected not to apply a blanket exemption to the designation process for areas covered by a mine drainage permit is no less effective than the Federal provisions. Mine drainage permits issued prior to the effective date of SMCRA typically covered an area much larger than the specific area the operator intended to disturb. The determination of valid existing rights is a case by case determination and will be made by the Commonwealth based on the facts submitted by the operator. Therefore, the Secretary finds that Pennsylvania's approach is no less effective than with 30 CFR 762.13(b).

2. PCMA *et al.* stated that the Pennsylvania program did not provide for judicial review of petitions to designate areas unsuitable as required by 30 CFR 764.19(c). The Secretary disagrees with this comment. Section 1921–A of the Pennsylvania Ad. Code provides in Subsection c that:

> * * * No such action of the department adversely affecting any person shall be final as to such person until such person has had the opportunity to appeal such action to the Environmental Hearing Board * * *

Furthermore, 42 Pennsylvania Statute, Section 763 provides that:

> * * * The Commonwealth Court shall have exclusive jurisdiction of appeals from final orders of government agencies in the following cases:
>
> All appeals from Commonwealth agencies under Subchapter A of Chapter 7 of Title 2 (relating to judicial review of Commonwealth agency action) or otherwise and including appeals from the Environmental Hearing Board, the Pennsylvania Public Utility Commission, the Unemployment Compensation Board of Review and from any other Commonwealth agency having Statewide jurisdiction.

Accordingly, any final action of the Department is subject to judicial review. Therefore, the Secretary finds the Pennsylvania provisions no less effective than 30 CFR 764.19(c).

II. Permitting

1. EPI *et al.* stated that Pennsylvania does not define "affected area" in PA Chapter 89, and thereby fails to insure that it will construe that term so as to include the surface over underground mine workings as provided for in 30 CFR 701.5. PA 86.1 defines the permit area for underground mining activities to include the mine and the surface area within which underground mining activities are conducted. The Secretary finds that Pennsylvania's "permit area" will encompass the "affected area" as defined in 30 CFR 701.5 and is, therefore, no less effective than the Federal requirements.

2. The Soil Conservation Service of the U.S. Department of Agriculture (SCS) suggested that the Pennsylvania regulations provide a definition for "hayland" and that the term "fish and wildlife habitat" is inappropriate as a land use classification in PA 87.1(B)(vii). The Secretary finds that the Pennsylvania definitions and terms and their use contextually are identical to those found in 30 CFR 701.5 and, thus, disagrees with this comment.

3. PCMA *et al.* commented that the definition of coal exploration at PA 86.132 is as effective as 30 CFR 701.5, in accordance with Section 512 of SMCRA and as a result appropriate compliance under the Commonwealth's regulatory program is required for exploration activities. The Secretary agrees with the commenter and has approved the Pennsylvania definition.

4. The U.S. Fish and Wildlife Service (FWS) commented that the Pennsylvania program narrative (Administrative Record PA No. 292, *Pennsylvania's Coal Mining Regulatory Program*, p. 43) fails to demonstrate that the State has a viable system for consulting with State and Federal agencies having responsibility for the protection and management of fish and wildlife and related values as required by 30 CFR 731.14(g)(10). FWS also stated that even though the narrative describes the roles of the Pennsylvania Fish and Game Commissions, the Game Commission is limited to commenting on operations when located within or adjacent to a State Game Land and appears to limit similarly Federal involvement. The FWS recommended that Pennsylvania expand its narrative to describe methods of obtaining information on fish, wildlife and plants, including endangered species, at all proposed permit sites. The Secretary disagrees with this comment. The narrative in the Pennsylvania program states that the DER informs, consults, coordinates, and exchanges data with other government agencies which have responsibilities that may be affected by a proposed coal mining activity and names certain agencies including the Pennsylvania Fish and Game Commissions with which the Pennsylvania DER routinely works. The FWS misread the Pennsylvania provision. OSM has verified with the DER that coordination with both State and Federal fish and wildlife agencies will occur even though FWS is not specifically listed and that input by the Pennsylvania Game Commission is not limited to only those instances in which the operation is located within or adjacent to State game land (Administrative Record No. PA 367). Since the DER Pennsylvania has stated that it will inform, consult, coordinate, etc., with the Pennsylvania Fish and Game Commission and the FWS on all proposed permit sites, no narrative or systemic change is needed.

5. The Pennsylvania Historical and Museum Commission commented that the Pennsylvania regulations do not contain adequate provisions in the permit application and review requirements to insure protection of cultural resources, including both known and unknown archeological sites. Except as discussed in Finding 14.1 the Secretary has found that the Pennsylvania regulations are no less effective than the Federal regulations in providing adequate protection to cultural resources in surface mining activities. Permit application requirements which require identification and location of such resources and the impacts upon them are found throughout PA Chapters 86, 87, 88, 89 and 90. Furthermore, the Pennsylvania DER, in accordance with PA 86.31(c), provides notice of receipt of permit applications to the Pennsylvania Historic and Museum Commission for review to assure maximum protection of the Commonwealth's cultural resources as required by 30 CFR 770.12(c) (Administrative Record No. 292, *Pennsylvania Coal Mining Regulatory Program*, p. 43).

6. The Advisory Council on Historic Preservation commented that Pennsylvania's regulations do not provide for the identification and protection of historic properties within coal exploration areas. The Secretary disagrees with this comment. PA 86.133(e) requires that any person who intends to conduct coal exploration activities involving more than 250 tons of coal obtain a permit in accordance with Chapter 86. Therefore, the Secretary finds that the provisions of PA 86.37(a)(5), 86.102(c) and 86.133(e) are no less effective than 30 CFR 776.12(a)(3) and (i), 776.13(b)(3), and 810.2(h).

7. The Advisory Council on Historic Preservation commented that PA 87.77, 89.38(a), and 90.40 do not provide adequate protection to historic properties consistent with the Federal requirements. The Secretary disagrees with this comment. PA 86.37(a)(5), 86.102(c), 87.77, 89.38(a) and 90.40 are no less effective than 30 CFR 761.12(f), 780.31, and 784.17 in providing adequate protection to historic properties. It should be noted that 30 CFR 761.12(f)(1) has been suspended insofar as it would apply to privately owned sites listed on the National Register of Historic Places, and to publicly-owned places (*In re: Permanent Surface Mining Regulation Litigation*; Civil Action No. 79–1144, May 16, 1979).

8. PCMA *et al.* commented that PA 86.62(d) is as effective as 30 CFR 778.13(d) by requiring the applicant to list all current or previous permits held by the applicant for the five year period immediately preceeding the application and not subsequent to 1970. As Pennsylvania indicated in its program, this information provides the state regulatory authority and the public with an indication of the ability or willingness of operators to comply with their laws. According to Pennsylvania, it is more important to require a statement of all permits held in 1977, just before substantial changes made by SMCRA went into effect. Permits held as of 1970, but for which bonds were released prior to 1977, are not going to provide useful information about the likelihood of compliance under the new program. Also, the more recent permits are likely to tell the public and the regulatory authority more about the proposed operation because the officers, owners, etc., are more likely to be the same. Since compliance with the more recent permits provide an excellent history as to how the operator is likely to comply with the permanent program requirements, the Secretary finds that PA 86.62(d) is no less effective than 30 CFR 778.13(d).

9. PCMA *et al.* stated that the requirement in PA 86.62(a)(4) to identify interests in land contiguous to the area to be covered by a permit as required by 30 CFR 778.13(g) is not relevant to a permit decision and should not be required because it is highly sensitive commercial information. The Secretary disagrees with this comment. Confidentiality of the information is adequately protected by PA 86.35 which is no less effective than 30 CFR 786.15. Since Pennsylvania has amended its regulations, the Secretary finds that PA

86.62(a)(4) is no less effective than 30 CFR 778.13(g) and is consistent with Section 508(a)(11) of SMCRA.

. PCMA *et al.* commented that the omission in PA 86.63(4) of the requirement to list pending notices of violation in the permit application does not render it less effective than 30 CFR 778.14. The Secretary agrees with this comment and has approved the Pennsylvania provision accordingly. The Pennsylvania requirements (Section 3(b) of SMCRA, Section 4(b) of CRDCA, Section 5(f) of BMSLCA, and Section 609 of TCSL) will result in a listing of all violations which would tend to establish the applicant's willingness and ability to comply with environmental performance standards. Since all cease orders must be listed, the regulatory authority will be on notice as to any violation which may be unabated and, therefore, will have information sufficient to determine if the permit should be denied in accordance with Section 510(c) of SMCRA. Furthermore, the Pennsylvania DER will be aware of violations issued by state inspectors and PA 86.63(4) gives Pennsylvania the authority to demand any additional information relating to compliance history which the regulatory authority deems relevant.

11. PCMA *et al.* stated that it is unnecessary to require that the permittee list all other licenses and permits needed to conduct the proposed mining as set forth in 30 CFR 778.19. The Secretary disagrees with this statement. This information is needed to ensure that the proposed operation will not be inconsistent with the requirements of other statutes. Although not required by PA 86.68, Pennsylvania's surface mining laws provide that a permit application must comply with the requirements of the Pennsylvania Air Pollution Control Act, Pennsylvania Solid Waste Management Act, Dam Safety Control Act, etc.; consequently, an application pursuant to PA Chapter 86 will contain the specifics on meeting the requirements of other statutes. Therefore, the Secretary finds that PA Chapter 86, together with other statutory provisions, is no less effective than 30 CFR 778.19.

12. EPI *et al.* commented that PA 86.68 does not provide that operators identify in their permit applications a list of other licenses that they will need to conduct mining activities as required by 30 CFR 778.19. The Secretary agrees with this comment. However, although not required by PA 86.68, Pennsylvania's surface mining laws provide that a permit application must comply with the requirements of the Pennsylvania Air Pollution Control Act, Pennsylvania Solid Waste Management Act, Dam Safety Control Act, etc.; consequently, an application, pursuant to PA Chapter 86, will contain the specifics on meeting the requirements of other statutes. Therefore, the Secretary finds that PA Chapter 86, together with other statutory provisions, is no less effective than 30 CFR 778.19.

13. The Advisory Council on Historic Preservation commented that PA 87.42(2) and PA 89.38(a) limit identification of historic properties to the review of available data. The Secretary finds PA 87.42(2) and 89.38(a) contain identical provisions to 30 CFR 779.12(b) and 783.12(b), respectively, and are therefore no less effective than the Federal requirements.

14. The Pennsylvania Chapter of the National Association of Water Companies *et al.* recommended the inclusion of baseline water quality and quantity information in mining permit applications. The Secretary finds that PA 87.45, 87.46, 88.25, 88.26, 89.34, 90.13 and 90.14 are no less effective than the provisions in 30 CFR 779.13, 779.15 and 779.16 for collection and monitoring of baseline water quality and quantity information and the protection of the hydrologic balance. The Secretary, therefore, cannot require regulations in excess of those contained in Federal rules.

15. EPI *et al.* stated that PA 87.44 deletes the requirement of 30 CFR 779.14(b)(1) (iii) and (v) for physical properties of overburden and analysis of sulfur forms in the coal, and, that Pennsylvania provides for a waiver from the chemical analysis requirements of 30 CFR 779.14(b)(1)(iv). The Secretary finds that PA 87.44(1) requires lithologic and physical characteristics of each stratum and coal seam, that PA 87.44(3) requires chemical analyses of the coal and overburden, and that PA 87.44(5) provides DER the authority to request other analyses relevant to evaluating the impacts of mining. The combination of these permit provisions with PA 86.37 and the performance standards in PA Chapter 87 are no less effective than the Federal program requirements. The Secretary further finds that the waiver of test borings and core sampling contained in 30 CFR 779.14(b)(3) would, in turn, waive chemical analyses since no samples would exist to be tested. The Secretary concludes that the waiver in PA 87.44(3) is specifically allowed by Section 507(b)(15) of SMCRA and is, therefore, no less effective than 30 CFR 779.14(b)(3).

16. The Pennsylvania Chapter of the National Association of Water Companies *et al.* suggested that each application for a mining permit include a specific plan, concurred on by the public water supplier, on how the mining company proposes to replace a water supply if it should be damaged or destroyed; along with posting a bond to assure that the work will be done. An interim emergency plan for assuring continuation of water supplies to be funded by "No Fault" insurance posted by the mine operator was also suggested to cover the full cost of an interior supply and operating costs. The Secretary finds that the provisions of PA 87.47, 87.119, 86.31 and 86.168 are no less effective than 30 CFR 779.17 *et seq.* and in accordance with Section 717 of SMCRA. Therefore, the Secretary has no legal authority to condition the Pennsylvania program to require additional provisions on replacement of water supplies.

17. The SCS agreed that productivity be based on yield data from the United States Department of Agriculture, but suggested that the Soil Conservation Service be specifically consulted and that the Pennsylvania Department of Agriculture be eliminated as a data source. The Secretary finds that the provisions in PA 87.52(a)(2)(ii) are no less effective than 30 CFR 779.22(a)(2)(ii) which allows the state regulatory authority a wide range of acceptable options for identifying the source for comparative data on soil yields, including those required by the Pennsylvania regulation.

18. EPI *et al.* stated that PA 87.52 did not provide requirements as contained in 30 CFR 779.22(b) for a description of previously mined lands which might be impacted by mining and reclamation operations. The Secretary finds that the provisions pertaining to previously mined areas in PA 87.54(a) (17), (18), 87.44(4), and the land use requirements of PA 87.52 are no less effective than 30 CFR 799.22(b) inasmuch as the Federal provision requires such descriptions only if they are available.

19. The SCS recommended that certain contour intervals be used rather than actual slope measurements to provide information on drainage patterns and surface configurations and that certain map information on water control facilities and revegetation should be provided in the Pennsylvania regulations. The information and mapping requirements contained in the Pennsylvania regulations are no less effective than the Federal requirements. PA 87.54(a)(21) requires maps with slope measurements and contours as does 30 CFR 779.25(k). PA 87.68(3) requires a reclamation plan for backfilling and grading including maps and cross-

sections showing the final configuration as does 30 CFR 780.18(b)(3). PA 87.65(a)(7) requires maps and plans for water control facilities as does 30 CFR 780.14(a)(6). PA 87.68(5) requires a revegetation plan as does 30 CFR 780.15(b). Collectively, these requirements result in adequate information for the DER to assess the permit application and to ensure appropriate mining and reclamation practices.

20. EPI *et al.* stated that PA 87.57 omitted the requirement of 30 CFR 779.25(b) that the elevation be given for monitoring stations. The commenter's primary concern was that the deletion of this requirement would hamper the determination of hydraulic head at any given monitoring point. The location and elevation of springs, deep mine discharges, wells and boreholes are required by PA 87.44(1), 87.54(a)(7), 87.54(a)(14) and 87.46(b)(1); the depth to groundwater over the general area and a description of groundwater system are required by PA 87.43 and 87.45; the surface water system must be defined in accordance with PA 87.46; and, PA 87.65(b) requires maps and plans to be of adequate detail and scale. The Secretary finds the combination of these requirements sufficient to allow determination of any other elevations necessary. Subsequently, the Secretary finds PA Chapter 87 no less effective than 30 CFR 779.25(b) in aiding to establish hydraulic head at monitoring stations.

21. SCS commented that a major flaw in Pennsylvania's program results because provisions are not made for adequately planning and implementing surface water control during the reclamation phase of mining. It also stated that water control is a key part of establishing vegetation. According to the findings of the Secretary's review, the Pennsylvania program (PA 87.46, 87.48, 87.49, 87.52, 87.54, 87.68 through 87.73, 87.101 through 87.121, and the comparable sections of PA Chapters 88, 89, and 90) require maps, plans and execution specifics for water control before and during reclamation which are no less effective than those provided in the Federal regulations under SMCRA. Also, revegetation planning, accomplishment and evaluation standards under the Pennsylvania program (PA 87.49, 87.68, 87.96 through 87.100, and PA 87.146 through 87.156), except as discussed in Finding 13.8, have been found to be no less effective than those provided in 30 CFR 780 *et seq.* The Secretary cannot require provisions beyond those of the Federal rules.

22. PCMA *et al.* contened that PA 87.64 contains sufficiently detailed blasting plan requirements for permit applications to assure compliance with the performance standards; and, that it is as effective as 30 CFR 780.13. The Secretary agrees with this contention and has approved the Commonwealth's blasting plan requirements.

23. EPI *et al.* pointed out that the omission of certain requirements from PA 87.64 renders it less effective than 30 CFR 780.13 for the purpose of assessing the potential defects in proposed blasting operations. The specific requirements cited by the commenter as being omitted are information on types and amounts of explosives, blasting procedures, blast monitoring equipment, and plans for recording and reporting results of preblast surveys. The essential data for determining blasting procedures and types and amounts of explosives have been retained in PA 87.124 through 87.129. The Secretary, therefore, finds that PA 87.64, and PA 87.124 through 87.129 makes the Pennsylvania program no less effective than 30 CFR 780.13.

24. EPI *et al.* commented that Pennsylvania fails to incorporate in PA 87.67 and 89.31 those portions of 30 CFR 780.16 and 784.21 still in effect for fish and wildlife plans. The Secretary disagrees with this comment. The Federal regulations regarding the fish and wildlife plan requirements were remanded by the District Court in *In re: Permanent Surface Mining Regulation Litigation* (Civil Action 79–1144, May 16, 1979) and the Secretary published a notice in the *Federal Register* on August 4, 1980, (45 FR 51547–51550) suspending the fish and wildlife plan requirements of 30 CFR 780.16 and 784.21. Therefore, the Secretary can not require that these provisions be included in the program. Once new regulations are promulgated, the Secretary will afford the Commonwealth an opportunity to amend its program should it be necessary pursuant to 30 CFR 732.17.

25. EPI *et al.* stated that PA 87.68 fails to require a description of the measures to be taken during mining and reclamation operations which will maximize the use and conservation of the coal resource as provided in 30 CFR 780.18(b)(6). While the specific language does not exist in PA 87.68, it does exist in Section 4(a)(2)(K) of PASMCRA. The Secretary finds that this statutory requirement, along with PA 86.37(a)(2), which requires accomplishment of mining according to the Act (PASMCRA) as a permit approval criteria, and PA 87.123, which requires maximization of the use and conservation of the coal being recovered, are no less effective than 30 CFR 780.18(b)(6) and in accordance with Section 515(b)(1) of SMCRA.

26. EPI *et al.* stated that in PA 87.68 and PA 90.33, Pennsylvania fails to require that the permit application include a description of the steps to be taken to comply with the Federal Clean Air and Clean Water Acts as provided by 30 CFR 780.18(b)(9). Although PA 87.68 and PA 90.33 do not require the application to contain the steps to be taken to comply with the Clean Air and Clean Water Acts, other permit application requirements and performance standards within Pennsylvania's regulations, specifically PA 87.66, PA 87.137, PA 87.101–.121, PA 90.44, PA 90.149 and PA 90.101–.121, and Pennsylvania's Clean Streams Law and Air Pollution Control Act ensure compliance with the Federal acts. The Secretary finds that inasmuch as Pennsylvania's permitting requirements and performance standards ensure compliance with the Clean Air and Clean Water Acts, it is unnecessary for the applicant to describe the steps to be taken to comply with the Federal laws.

27. EPI *et al.* stated that "PA 87.69 (e) and (f) and PA 90.3" (sic) "fail to require operators to meet the requirements for detailed design plans for ponds and other impoundments contained at 30 CFR 780.25." The commenter's lack of specificity does not allow the Secretary to discern or address the precise issue raised. The Secretary has, however, identified several issues regarding PA Chapters 87 and 90 relative to their effectiveness comparable to 30 CFR 780.25. (See Findings 14.4, 14.6, and 14.7, above.)

28. EPI *et al.* commented that PA 87.73(c)(i) fails to require plans for embankments, ponds, etc. to be prepared by or under the direction of, and certified by a qualified professional, as required by 30 CFR 780.25(a)(1)(i). The Secretary agrees with this comment, in part. PA 87.73 (c) and (d)(1) require preparation of detailed plans for these structures by a registered professional engineer which the Secretary has deemed no less effective than the permit standards of 30 CFR 780.25(b); however, PA 87.73(b) does not require that the general plan be prepared by a registered professional engineer or other qualified professional. The Secretary has, thus, conditioned the approval of the program accordingly. (See Finding 14.4, above.)

29. EPI *et al.* stated that Pennsylvania fails to specify that plans for sediment ponds, permanent and temporary impoundments, and coal processing waste banks, dams and embankments must insure compliance with the

pertinent performance standards for these structures as required in 30 CFR 780.25 (b), (c), (d) and (e). The requirements of 30 CFR 780.25 (d) and (e) for coal waste structures are repeated in PA 90.39 (d) and (e) and are cross-referenced in PA 87.74 and 89.39. Although the cross-references of 30 CFR 780.25 (d) and (c) for sediment ponds and permanent and temporary impoundments are not specifically stated in PA 87.73, or elsewhere, the Secretary finds the lack of these cross-references renders the Pennsylvania provisions no less effective than the Federal regulations. Furthermore, the demonstration that a surface coal mining operation can be undertaken in compliance with the applicable performance standards is expressly required prior to permit issuance by PA 86.37.

30. The Advisory Council on Historic Preservation commented that PA 90.11(a)(3) is less effective than 30 CFR 780.31 by limiting the identification of historic properties to the review of available data. The Secretary disagrees with this comment. However, the Secretary finds that PA 90.11(a)(3) is less effective than 30 CFR 779.12(b) by not requiring the identification of archealogical sites adjacent to proposed coal refuse permit areas. (See Finding 14.1, above.)

31. EPI *et al.* commented that the Pennsylvania program omitted the requirements of 30 CFR 784.19 and 784.25 in PA Chapter 90. The standards for returning coal waste to underground workings found in 30 CFR 784.25 appear at PA 89.40 rather than in PA Chapter 90. MSHA approval for return of coal waste to mine workings is retained in PA 89.40 and since underground development waste is considered coal waste, the disposal is governed by the provisions in PA Chapter 90. Since the Pennsylvania program defines coal waste to include underground mine development waste, the Secretary finds that the relevant portions of the Pennsylvania program are no less effective than the Federal rules.

32. EPI *et al.* stated that PA 89.48, now PA 89.39, fails to require compliance with excess spoil standards found in 30 CFR 784.19. PA 89.39 requires that excess spoil from underground operations be disposed of in accordance with the requirements of PA Chapter 90, Coal Refuse Disposal, which define coal refuse to include excess spoil as provided in PA 90.1. Cross-referencing to PA Chapter 90 makes the Pennsylvania program no less effective than 30 CFR 784.19.

33. EPI *et al.* contended that PA 89.54, now PA 89.40, fails to require compliance with 30 CFR 784.19 and 784.25 regarding disposal of waste into underground mines as required by 30 CFR 817.88. The Secretary finds that collectively the standards of PA 89.48, PA 89.40, 89.34, 89.59 and 90.127 are identical to the requirements of 30 CFR 784.25. Comparable cross-referencing of 30 CFR 817.88 is unnecessary in light of the requirements of PA Chapter 90 which apply to underground development waste disposal through the cross-referencing of PA 89.39.

34. EPI *et al.* contended that Pennsylvania fails to require a survey to ascertain whether structures or renewable resource lands will be affected by subsidence as required by 30 CFR 784.20. The Secretary disagrees with this comment because the extensive data requirements in PA Chapter 89, Subchapter F, in particular, the subsidence control plan required by PA 89.143 will provide the same information and therefore, is no less effective than 30 CFR 784.20.

35. EPI *et al.* commented that PA 87.83 fails to meet the requirements for prime farmland contained in 30 CFR 785.17 (b), (c) and (d). The Secretary disagrees with this comment. PA 86.37(12), PA 87.53, PA 87.83, and PA 87.177 through PA 87.181 provide prime farmland requirements regarding restoration of soil productivity and permit issuance that are no less effective than 30 CFR 779.27, 785.17 and 823.

36. The SCS recommended that PA 87.83(6) be amended to require demonstration that achievement of acceptable yields for reconstructed prime farmlands can be attained within a two year period. The Secretary disagrees because 30 CFR 785.17(b)(7) only requires achievement of acceptable yields "within a reasonable time", as does the Pennsylvania provision.

37. PCMA *et al.* supported the incremental phase approval of permits allowed by PA 86.37(b). As designed by the DER, the incremental phase approval of permits does not involve a permit or permit revision, rather it represents the approval of bonding increments. The mechanics of the system will require that the full permit be approved but authorization to conduct mining activities on any given area within the permit will be given on an incremental phased basis after the area has been bonded (Administrative Record No. PA 336; *Pennsylvania Coal Mining Regulatory Program*, p. 19). The Secretary has approved this provision as being no less effective than 30 CFR Part 786 and 806.

38. The FWS commented that the notices sent to Federal and State fish and wildlife agencies of permit applications as required by PA 86.31(c)(4) and (d) should contain additional information so that they may adequately evaluate the impacts on fish and wildlife. The Secretary finds that the Pennsylvania permitting regulations require information no less effective than 30 CFR 786.11 and cannot require the Commonwealth to provide additional information. In addition, copies of the entire application are made available by the Pennsylvania DER which may include the information desired by the commenter.

39. PCMA *et al.* stated that Pennsylvania's regulations adequately provide for informal conferences on permit actions. The Secretary concurs with this statement and finds that PA 86.31 and 86.34 are no less effective than 30 CFR 786.14.

40. The FWS stated that PA 86.31(c) provides some basis for contacting Federal and State agencies, but limits it to where those agencies have some specific "jurisdiction over or an interest in the area of the proposed activities." FWS recommended that PA 86.31(c) be amended to make clear that State and Federal fish and wildlife agencies will be given the opportunity to comment on all permit sites, not only those where they have specific "jurisdiction over or an interest in the area." The Secretary disagrees with this comment and finds that PA 86.31(c) is no less effective than 30 CFR 786.17(a)(2). Pennsylvania's term "jurisdiction over or an interest in the area" provides for a larger scope of consultation than the Federal term "responsibility for the management and protection." Since the Pennsylvania Game and Fish Commissions will have "an interest" in those resources that are proposed to be affected, those State and Federal agencies, as well as the FWS are given the right and responsibility for commenting on permit sites. Therefore, no change to the regulations is necessary.

41. The FWS commented that a number of Pennsylvania regulations relating to protection of water quality should contain the phrase "comply with local, State and Federal statutes and regulations" or that a general requirement to this effect concerning protection of fish and wildlife be contained in the Pennsylvania regulations. The Secretary disagrees with this comment and finds that the criteria for permit approval or denial found in PA 86.37 result in a determination that all applicable statutes and regulations have been complied with. The Secretary further finds this to be no less effective than 30 CFR 786.19. Moreover, the permit review

process utilized by the Pennsylvania DER incorporates additional safeguards which assure compliance by specifically soliciting comments, as required by PA 86.31(c), from government agencies with jurisdiction over or an interest in the area of proposed mining.

42. PCMA *et al.* commented that PA 86.37 is as effective as 30 CFR 786.19(j), in that it provides for the operation of mines in a manner consistent with anticipated operations in the area and not at cross purposes with adjacent operations or not to the detriment of these operations, the environment or the public. The Secretary agrees with this comment and finds the Pennsylvania rule to be no less effective than 30 CFR 786.19(j).

43. The FWS stated that PA 86.37(a)(15) contains the word "If" at the beginning of the section which renders it meaningless. FWS recommended that the word "If" be deleted. While the Secretary agrees that the language in PA 86.37(a)(15) could be improved grammatically, the Secretary finds that PA 86.37(a)(15) is no less effective than 30 CFR 786.19(o). The Secretary has determined that the Pennsylvania provision clearly provides that no permits or revisions will be issued which will affect the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitats as determined under the Endangered Species Act of 1973.

44. PCMA *et al.* commented that PA 86.38 fails to provide a six month exemption for pre-existing facilities which meet interim performance standards. Also, Pennsylvania substitutes the phrase "presumptive evidence of pollution" for "significant harm to the environment." The Secretary disagrees with this comment in part. PA 86.12 provides that an operator with an approved initial regulatory program permit may continue mining on or after eight months from the date of program approval, provided a timely and complete application has been submitted, the department has not rendered a decision with respect to the application and the operation is conducted in accordance with the initial regulatory program standards. However, operators are required to modify or reconstruct structures not in compliance with initial program performance standards to meet the more stringent permanent program design and performance standards before a permanent program permit can be issued. As discussed in Finding 14.13, the Secretary finds that PA 86.38 does not require the reconstruction of nonconforming structures within six months after issuance of a permanent program permit as set forth in 30 CFR 786.21. As indicated in its program, Pennsylvania has proposed language to amend PA 86.38 which, once adopted, will require reconstruction of nonconforming structures within six months after issuance of the permit and ensure that the risk of harm to the environment or to public health or safety is not significant during the period of reconstruction. Until such language is adopted, the Secretary has conditioned this portion of the Pennsylvania program.

45. PCMA *et al.* commented that the Pennsylvania program does not contain timetables for decisions on permit applications as provided by the Federal regulations. PA 86.39(b)(1) and (2)(i) are no less effective than 30 CFR 786.23(b)(1)(i), which establishes decision-making time frames for permit issuance in initiating the regulatory program, and 30 CFR 786.23(b)(1)(ii) and (2)(i), which require a decision within 60 days after an informal conference has been held on the application. In addition, PA 86.39(b)(2)(ii) establishes criteria no less effective than 30 CFR 786.23(b)(ii) for the time frame for decisions on permit applications for which no informal conference has been held during subsequent operation of the program.

46. EPI *et al.* commented that PA 86.47 does not contain requirements regarding the obligations of the permittee to prevent or correct actions not in compliance with the permit that are damaging to the environment or public health, including the use of alternative methods for compliance. The Secretary disagrees with this comment. The provisions of PA 86.36, 86.37, and 86.41 are no less effective than the requirements of 30 CFR 786.29 (a) and (c) regarding permit conditions.

47. PCMA *et al.* pointed out that deletion of PA 86.42(2), which required disposal of solids, sludge, filter backwash, or pollutants as specified in PA Chapters 87, 89 and 90 and other applicable State or Federal laws, removes a redundant requirement and does not make the Pennsylvania regulations less effective than the Federal requirements. The Secretary agrees and finds that the pertinent provisions of PA Chapters 75, 87, 88, 89, and 90 are no less effective than 30 CFR 786.29(b).

48. EPI *et al.* commented that unlike 30 CFR 788.11(a), PA 86.51 does not require the regulatory authority to review permits before the middle of their permit term. In this instance, the Secretary finds that the timing of the mid-term review should be left to the discretion of the regulatory authority. The reasons for this are (1) a permit will have to be reviewed every year or two for the most part due to Pennsylvania's incremental bonding provisions, and (2) some part of the mid-term review of permits will be an ongoing process through inspections and other monitoring and compliance activities. Furthermore, PA 86.51(a) provides that the regulatory authority is to review each outstanding permit at least once during its term in accordance with Section 511(c) of SMCRA.

49. PCMA *et al.* commented that PA 86.51(a), which requires the regulatory authority to review each outstanding permit at least once during its term is in accordance with Section 511(c) of SMCRA. The Secretary agrees with this comment and finds that PA 86.51(a) is no less effective than 30 CFR 788.11(a).

50. PCMA *et al.* commented that PA 86.51(b) does not require a the regulatory authority to send the permittee a copy of decisions to require modification or revision to permits resulting from periodic reviews conducted by the Pennsylvania DER. The Secretary finds that the omission of this directive language would not make the Pennsylvania regulations less effective than 30 CFR 788.11(c). Since actions of the Pennsylvania DER, including orders to modify or revise a permit, are subject to appeal through the Pennsylvania Environmental Quality Board, such actions must be based on written findings and must be served to the party or parties involved (Administrative Record No. PA 292, *Pennsylvania Coal Mining Regulatory Program;* p. 300–315). In addition, PA 86.39, particularly PA 86.39(b), requires that the DER issue notices to the applicant of all decisions relating to permits.

51. PCMA *et al.* commented that PA 86.54(a) adequately provides for public notice of permit revision requests in a manner no less effective than 30 CFR 788.14(b). The Secretary agrees with this comment and has approved this provision in the Pennsylvania regulations.

52. The FWS commented that the Pennsylvania DER lacks adequate expertise for reviewing the fish and wildlife aspects of permit applications. The commenter expressed specific concern about the proposed arrangement with the Pennsylvania Game Commission in that it limits its review responsibility to resources on State game lands. The Secretary cannot impose requirements on agencies external to the regulatory authority and,

thus, cannot require the Game Commission to increase the scope of its review functions. The Pennsylvania Fish Commission and the FWS commented that the proposed Memorandum of Understanding between the Fish Commission and Pennsylvania DER must be formalized prior to the Secretary's approval of the Commonwealth's program. The Secretary cannot require Pennsylvania to enter into formal agreements, but applauds the Commonwealth's intention to do so. Furthermore, concern that adverse impacts upon aquatic resources may result should be alleviated by the fact that the permitting requirements in PA Chapter 86, Subchapter B prohibit approvals of permit applications by the Pennsylvania DER which will result in such impacts.

53. EPI *et al.* commented that the introductory bracket in PA 86.56(d) regarding transfer of permits has been omitted. The Secretary agrees the introductory bracket deleting 86.65(d) had been omitted; however, the Secretary finds that Pennsylvania has corrected this omission.

III. Performance Standards

1. EPI *et al.* commented that the Pennsylvania program omits the specific standards of 30 CFR 816.14 and 816.15 for temporary and permanent seals on drilled holes. In pointing out the deletion of PA 87.94 and 87.95, the commenter failed to consider the provisions of PA 87.93, 87.158, 87.173, 89.54, 89.68, 89.83, 90.93 and 90.168, which contain provisions that duplicate those of the deleted passages. The Secretary finds the provisions retained in the Commonwealth's proposed program adequate, since they form a significant body of direction for operators of mines in the Commonwealth for the management and the ultimate closure of openings to mines, including drilled holes and are therefore no less effective than 30 CFR 816.14 and 816.15.

2. EPI *et al.* stated that PA 87.96 fails to satisfy the requirement contained in 30 CFR 816.21(b) that all topsoil be immediately redistributed or stockpiled. 30 CFR 816.21(b) cross-references specific requirements for redistribution and stockpiling of topsoil, 30 CFR 816.24 and 816.23, respectively. As PA 87.99 and 87.98 contain requirements no less effective than those in 30 CFR 816.24 and 816.23, the Secretary does not find the lack of a cross-reference in PA 87.96 to be of concern.

3. The SCS suggested several editorial amendments to clarify the requirements in PA 87.97 (b), (e) and (f) regarding topsoil removal. The Secretary believes that while these amendments may serve to clarify the provisions, thay cannot be required since PA 87.97 is no less effective than 30 CFR 816.22.

4. EPI *et al.* contended that PA 87.97 fails to provide for limitations on removal of topsoil or vegetative material where air or water pollution may be attendant, and that this is inconsistent with 30 CFR 816.22(f) The Secretary disagrees with this contention. PA 87.97(b) and Chapter 102 establishes limits on the size of disturbances and the area from which topsoil will be removed and allows the DER to require other measures in an effort to prevent erosion which may cause air or water pollution in a manner no less effective than the provisions of 30 CFR 816.22(f).

5. The SCS recommended adding specifications to PA 87.98 regarding cover for and mulching of topsoil storage areas. Also, they recommended amending PA 87.99 to require an erosion control plan for topsoil redistribution. The Secretary finds that PA 87.98 and 87.99, in conjunction with the mulching and erosion control provisions contained in PA 87.146 and 87.153, are no less effective than 30 CFR 816.23 and 816.24.

6. The SCS recommended topsoil disking or harrowing to a depth of four inches prior to seeding as opposed to the three inch depth required in PA 87.152. The SCS provided no justification for increasing the depth, and no equivalent requirement exists in the Federal rules. The Secretary finds the Pennsylvania requirement no less effective than 30 CFR 816.24(a), and can therefore not require modification of the provision.

7. EPI *et al.* expressed concern that the omission in PA 87.100 of the requirement to have qualified laboratories perform soil tests as set out at 30 CFR 816.25 may result in having unqualified persons conducting the tests. PCMA *et al.* commented that the omission did not lessen the effectiveness of PA 87.100 in providing for adequate soils information. As allowed and required by 30 CFR 816.25, DER is stipulating the use of standard methods such as those established by SCS and EPA in performing all soil tests. Since soil testing is likely to be a major activity of most of the labs which would be used to perform the tests, qualified personnel such as agronomists and soil scientists would be employed. As a result, the Secretary finds that the established control of a required standard testing methodology alone is no less effective than the Federal requirement and the qualification process would provide little additional protection to ensure the validity or accuracy of the test results.

8. The SCS suggested modifications and the addition of specifications to PA 87.100 (c) and (d) regarding topsoil amendments and nutrients. As 30 CFR 816.25 contains no comparable provisions, the Secretary cannot require the Commonwealth to adopt these suggestions.

9. The Pennsylvania Chapter of the National Association of Water Companies *et al.* commented that "high quality" stream protection should be improved and that additional protection should be provided those areas of lesser quality. Also, it suggested limiting cumulative mining disturbance on high quality watersheds and application of cumulative discharge criterion to all acreage, as opposed to just the disturbed acreage. Review of PA 86.102, 87.101, and Chapter 93 reveal that PA 86.102 and 87.101 are no less effective than the Federal counterpart, 30 CFR 816.41, *et seq.* Also, if the operator is unable to separate disturbed and undisturbed watershed runoff, he will be responsible for assuring the discharge meets applicable standards. Since Pennsylvania statutes and regulations provide for protection of the hydrologic balance and cumulative assessment in the same manner as required by OSM and EPA, the Secretary is not empowered to condition program approval upon inclusion of additional restrictions for quality streams.

10. The Pennsylvania Chapter of the National Association of Water Companies *et al.* recommended that sedimentation control restrictions limit additional loading of a receiving water resource to no more than 5 NTUs (nephelometric turbidity units) above baseline loadings and that a maximum discharge standard of 50 NTUs be applied where downstream public water systems were involved. PA Chapter 93 provides for limitations of turbidity for discharge to streams with protected uses such as domestic, industrial or other water supplies, although not necessarily to the levels suggested by the commenter. The Secretary finds that the Pennsylvania program parallels 30 CFR 816.42, *et seq.* in applying effluent limits and drainage controls, and therefore cannot require addition of this parameter.

11. The SCS recommended changes to the listing of average rainfall levels for the 10-year, 24-hour precipitation event performance standard for one county in western Pennsylvania as set forth in PA 87.103(b) and for several counties in the anthracite region as set forth in PA 88.293(b). These rainfall values are set forth by Pennsylvania as required by 30 CFR 816.42 and 817.42 for the OSM

rainfall exemption. The Secretary finds that there is no legal basis under SMCRA to require the adoption of higher rainfall amounts for the anthracite mining counties listed by the commenter. Section 529 of SMCRA provides that only certain requirements of the Act be adopted relative to surface and underground coal mining and reclamation operations extracting anthracite coal. Specifically, anthracite mining operations are exempted from the performance standards of Sections 515 and 516 of SMCRA. The rainfall value for the remaining county in western Pennsylvania (Blair) was suggested to be revised downward by two-tenths of an inch. The Secretary finds that the higher value provided by PA 87.103(b) is no less effective than that required under Federal requirements and in accordance with Section 505(b) of SMCRA.

12. PCMA *et al.* noted that the "Catastrophic Storm Exemption" in PA 87.103, 89.83 (now 89.53), and 90.103 was premised upon the construction and maintenance of "a basin to treat a 10-year, 24-hour storm flow." The commenter further noted that the Pennsylvania requirement to provide 7,000 cubic feet of basin capacity for each acre of watershed is "close to a basin that can contain all the flow off the area from a 10-year, 24-hour storm." The commenter appears to be drawing a parallel between the sediment storage requirement in PA 102.13(d) plus the Catastrophic Storm Exemptions of Chapters 87, 89, and 90, and the rainfall exemption of EPA—e.g., comparing the requirement of the EPA/OSM rainfall exemption that the pond must be designed, constructed, maintained and operated to contain or treat the 10-year, 24-hour rainfall to Pennsylvania's required 7,000 cubic foot per acre storage requirement. The Secretary finds that an average value for a 10-year, 24-hour storm in Pennsylvania would be approximately 4.0 inches of rainfall, and utilizing an SCS rainfall/runoff conversion method assuming a Runoff Curve Number of 70, the runoff attributable to this storm would be 1.33 inches, or 4,828 cubic feet per acre. The Secretary agrees that this value appears "close" to the 7,000 cubic foot per acre standard of PA Chapter 102, although the results could vary with site specific conditions such as large percentages of a watershed being disturbed or higher rainfall values. The Pennsylvania standard would also allow 2,172 cubic feet/acre of sediment storage (0.050 acre-feet/acre) beyond the 10-year stormwater storage for the example stated above. The Secretary finds further, that adhering to the requirements of PA 102.13(d) should always provide 5,000 cubic feet/acre of stormwater storage, since cleanout of ponds is required when available storage in sediment basins reaches 2,000 cubic feet/acre. Therefore, the Secretary agrees with the commenter's statement that Pennsylvania requirements are similar to some of the design requirements of the EPA/OSM rainfall exemption (30 CFR 816.42), provided the invert of the outlet(s) is at or above the maximum storage level required. The operator would still be required to demonstrate that the basin was constructed and maintained in accord with the permit in order to qualify for the EPA/OSM exemption; however, as discussed below, qualification for the EPA exemption becomes a moot point since the Pennsylvania requirements would supercede those of EPA/OSM.

The commenters further stated that the Pennsylvania "Catastrophic Storm Exemption" is an "unrealistic, extremely expensive burden" which has not been required by either EPA or OSM. The commenter pointed out that the exemption required actual occurrence of the 10-year, 24-hour precipitation event before an operator might be granted relief from meeting effluent standards; whereas, the OSM/EPA rainfall exemption was intended for any precipitation event—subject to demonstration that the pond or treatment facility had been designed, constructed and maintained to contain or treat the 10-year, 24-hour rainfall. The commenter's statements do not, however, accurately reflect the precise language of the "Catastrophic Storm Exemption" in PA 87.103, 88.93, 89.53, and 90.103. The Pennsylvania rules state that the 10-year, 24-hour storm event must have been exceeded to allow consideration of qualification for the exemption. Nonetheless, the commenter's contention that Pennsylvania requirements exceed those promulgated by OSM and EPA is correct. This does not, however, constitute an inconsistency with OSM permanent program rules at 30 CFR 816.42, 816.46, 817.42 and 817.46 or EPA regulations (40 CFR 434) as provided by Section 505(b) of SMCRA.

13. The SCS stated that PA 87.108(d)(1) should specify the method for determining that a drainage area is "small." Pennsylvania deleted this provision in the amended version of the Pennsylvania rules (Administrative Record No. PA 336). In PA 87.108(a), Pennsylvania only requires the permittee to demonstrate that ponds are not necessary to achieve the effluent standards of PA 87.102. EPI *et al.* found the omission of the "small" drainage area provision for exemptions from sediment pond requirements objectionable. The Secretary finds the demonstration that sediment ponds are not necessary to meet effluent standards is the critical test for approving sediment pond exemptions. The use of the term "small" without qualification is subjective and secondary to this demonstration. In some instances, due to site-specific factors, it is possible that no surface runoff will leave the permitted area or enter a receiving stream. Inasmuch as the ultimate goal of SMCRA is to meet performance standards and the Pennsylvania regulations require achievement or effluent limits, the Secretary finds the Pennsylvania requirement no less effective than 30 CFR 816.42(a)(3)(A).

14. EPI *et al.* stated that PA 87.108 and 90.108 provide a waiver from the requirements for sediment ponds in violation of 30 CFR 816.42. The commenters also charged that the waiver is "inconsistent with Federal law" since OSM has determined sediment ponds to be the best technology currently available (BTCA) and section 515(b)(10) of SMCRA requires use of BTCA. The Secretary disagrees that this waiver is less effective than that provided by 30 CFR 816.42(a)(3). PA 87.108(a) and 90.108(a) grant waivers only if the permittee can successfully demonstrate that a sedimentation pond is not required to meet effluent standards of PA 87.102, which incorporates receiving stream standards of PA Chapter 93. The only divergence of Pennsylvania requirements in PA 87.108 and 90.108 from 30 CFR 816.42(a)(3) is the absence of the qualifier that the drainage area of the permit portion to be exempted from the sediment pond requirement be "small". As discussed in response to comment III.14 above, the Secretary finds this deletion no less effective than the Federal counterparts.

15. The SCS commented that the 70 milligrams per liter standard for total suspended solids of PA 87.102(a)(4) was not practicable. The Secretary finds this requirement is the same as 30 CFR 816.42(a)(7), which establishes the same standard.

16. EPI *et al.* commented that PA 87.102 fails to provide for effluent limitations as effective as the limits imposed by 30 CFR 816.42(a)(7). While PA 87.102(a) does not contain the "average of daily values for 30 consecutive discharge days" effluent parameters, the Secretary finds that PA 87.102(b), with the incorporation of the

NPDES standards and other provisions governing the effluent parameters contained in PA Chapters 91, 92, 93, 95, 97, 101 and 102, is not less effective than 30 CFR 816.42(a)(7).

17. The SCS recommended that PA 87.105(b)(1) through (3) should include the SCS Standard and Specifications: *Diversions* (PA–SCS Number 362), *Grassed Waterways* (PA–SCS Number 412), and *Lined Waterways* (PA–SCS Number 468). The Secretary finds PA 87.105(b) (1) through (3) no less effective than 30 CFR 816.43 (a), (b) and (d) as guides for the construction of diversions. Therefore, while the use of these guidelines may extend the intergrity of the Pennsylvania requirements, the Secretary cannot require the Commonwealth to use them.

18. EPI *et al.* commented that PA 87.105 and PA 90.104 fail to contain the channel protection, freeboard, energy dissipator and excess excavation material disposal standards for overland diversions as required by 30 CFR 816.43(f). The Secretary finds that the energy dissipation and excess excavation disposal requirements are contained in PA 87.109 and 87.105(f), respectively. PA 87.105(b) and 90.104(b) state that "Diversions shall be designed, constructed and maintained using current engineering practices * * * " The use of the phrase 'current engineering practices' dictates that adequate freeboard and proper channel linings along with numerous additional safeguards be utilized by the permittee in design, construction and maintenance. Consequently, the Secretary finds that the diversion design requirements of PA 87.105(b) and 90.104(b) are no less effective than the Federal standards.

19. EPI *et al.* contended that while PA 87.104(b)(2) and 90.105(b)(2) required that the combination of channel, bank and flood plain configuration of stream diversions be adequate to prevent flooding potential greater than that of the natural existing channel, it was less effective than 30 CFR 816.44(b)(2) which specified design storm capacities. The commenters felt that it would be difficult for the regulatory authority to enforce this provision because of the necessity of comparing diversion channels to natural channels. The commenters suggest requiring the operator to demonstrate the capacity of the natural channel so that it could be compared to the proposed diversion. The Secretary disagrees with the commenter's interpretation of the Pennsylvania rule. The Secretary finds that the language of PA 87.104(b)(2) and 90.105(b)(2) intends that the responsibility for demonstrating that the diversion channel prevents flooding to the same degree as the natural channel lies with the operator, not the regulatory authority. This is further clarified when the requirements of PA Chapter 105 are considered. PA 105.231(a), which must be adhered to by the permittee in the diversion of any stream, contains specific requirements for descriptions of existing and proposed channel configurations, flood flows, etc. Therefore, the Secretary finds PA 87.104(b)(2) and 90.105(b)(2) no less affective than 30 CFR 816.44(b)(2).

20. EPI *et al.* commented that PA 87.104(d)(2) and 90.105(d)(2) omitted the requirements that the stream channel be restored to its naturally meandering shape as required by 30 CFR 816.44(d)(2); but instead, required that the horizontal alignment of the stream be restored to a condition compatible with the protected water use of PA Chapter 93. The commenter contended that this is less effective than Federal provisions. The Secretary disagrees that this provision is less effective. Restoration to a natural meandering shape is not the most environmentally satisfactory solution. For example, management of trout or other fish species may be more effectively accomplished with planned stream modification (gabions, deflectors, splashdams, streamside vegetation, etc.) than with the original meandering stream configuration. Consequently, the Secretary finds that tying stream restoration to the various water uses of PA Chapter 93 is no less effective than the Federal requirement, particularly when viewed in tandem with PA Chapter 105, stream modification and environmental protection requirements.

21. The SCS suggested modifying PA 87.106(a)(3) to establish a minimum erosion control standard of 5 tons per acre per year. The Secretary disagrees inasmuch as the Pennsylvania provision contains the same standards to measure the appropriateness of sediment control measures, i.e. to minimize erosion to the maximum extent possible, as required by 30 CFR 816.45(a)(3).

22. POMA *et al.* stated that the lack of design criteria comparable to 30 CFR 816/817.46 in PA 87.111, 87.112, PA 89.111, 89.112, 89.113 (now deleted), PA 90.111, and 90.112 does not render the Pennsylvania program less effective than the OSM regulations. The commenter contended further that PA 87.111 (2) and (5) provide for stability of impoundments, protection of the hydrologic balance and prevention of spontaneous combustion no less effectively than the top width, slope, foundation preparation, and unsuitable fill requirements of 30 CFR 816/817.46 (l), (m), (n) and (o), respectively. Inasmuch as PA 87.112(b), 89.112 and 90.112(b) adopt SCS standards as guidelines or criteria, (except as discussed in Finding 13.3, above), and since SCS PA *Pond Standard 378* contains top width criteria, slope requirements, foundation preparation standards, and unsuitable fill provisions, the Secretary agrees that these provisions are no less effective than federal counterparts in providing for the omissions referenced by the commenters. "The imposition of design criteria", they further commented, "in this instance would destroy OSM's newly promulgated 'state window' " 47 FR 53376. The Secretary finds, however, that section 515(b)(8)(B) of SMCRA requires any permanent impoundment to achieve stability consistent with structures constructed by the SCS. The standards of the SCS in impoundment design and construction are contained in the publications *TR 60* and *Pond Standard 378* (See discussion in Finding 13.3 above.)

23. The SCS recommended that the following language be added to PA 87.109 include the sentence: "Peak discharge at any one outlet during and after mining will not exceed the peak discharge at that point prior to mining." The Secretary disagrees with this recommendation. Since the requirements of PA 87.109 are no less effective than 30 CFR 816.47, no additional changes are required of the Commonwealth. If the concern of the commenter is discharge quantity, it is adequately addressed in PA 87.101(a) and (b).

24. PCMA *et al.* commented that PA 87.110 regarding the handling of acid-forming and toxic-forming spoil is as effective as 30 CFR 816.48(c). The Secretary agrees with the commenter and has approved the Pennsylvania provision.

25. EPI *et al.* responded that PA 87.111 and 90.111 fail to require adherence to design standards for permanent and temporary impoundments as contained in 30 CFR 816.49(a). The Secretary agrees with this comment in part. The Secretary finds that the requirements of PA 87.111, 87.112, 90.111 and 90.112 are no less effective than 30 CFR 816.49(a)(1)–(7) with the exception of 30 CFR 816.49(a)(5) which incorporates SCS design standards by reference. The Secretary has required modification of the program to contain such standards and has conditioned the program accordingly. (See Finding 13.3 above.)

26. EPI *et al.* cited the omission of permanent and temporary impoundment requirements similar to 30 CFR 817.49(e)–(i) in PA 89.91. Pennsylvania's amended rules (Administrative Record No. 336) now contain provisions correcting the earlier omissions as follows:

a. The revegetation and erosion control requirements of PA Chapter 102, PA Chapter 105, PA Pond Standard 378, TR 60 and PA 89.112(a)(1) are no less effective than 30 CFR 817.49(e).

b. Analogues to the Federal routine inspection standards of 30 CFR 817.49(f) can be found in PA 89.101(c) and in PA 89.112(a)(3).

c. A description of maintenance provisions no less effective than 30 CFR 817.49(g) are required in PA 89.102(a)(5) in addition to the requirements contained in PA Chapter 105, PA Pond Standard 378 and TR–60 which have been adopted by reference.

d. Standards equivalent to 30 CFR 817.49(h) for certification and reporting requirements are found in PA Chapter 105 and PA 89.101(b).

e. PA 89.112(a)(4) and PA Chapter 105 are no less effective than 30 CFR 817.49(i) in requiring regulatory authority approval of plans for any reconstruction, modification, enlargement or reduction in size prior to actual construction.

27. EPI *et al.* commented that the deletion of PA 87.114 resulted in the omission of specific standards for protecting groundwater which appear at 30 CFR 816.50. The Secretary has concluded that the deletion of PA 87.114 does not detract from the groundwater protection provisions of the Pennsylvania program. The omitted provisions are redundant with requirements set forth in PA 87.110 for handling and disposing of acid-forming and toxic-forming spoil; in PA 87.131 for handling and disposing of excess spoil; in PA 87.136 for disposal of non-coal wastes; and in PA 87.141 through PA 87.145 for backfilling and grading. The Secretary finds the deletions have not made the Pennsylvania regulations any less effective than the Federal provisions.

28. The FWS commented that the requirements may be too narrow in both PA 87.115 for recharge capacity and in PA 88.330 and 90.158 for revegetation of areas having a postmining land use of pasture or land occasionally cut for hay to consist of herbaceous plants having a minimum of 70% areal coverage. In particular, the FWS was concerned that the watershed may be adversely affected by this type of cover in areas which were formerly forested and the post-mining pastures and hayfields are extensive. The Secretary disagrees with this comment as PA 87.115 is no less effective than the requirements for maintaining recharge capacity found in 30 CFR 816.51. The Secretary further finds the Pennsylvania program as effective as Federal requirements for maintaining the hydrologic balance with respect to quantity of flows in watersheds. PA 90.158 also provides standards for successful revegetation which are no less effective than 30 CFR 816.116 and 816.117. Furthermore, since postmining land uses must be approved by the Pennsylvania DER, it may require a more diverse mixture of plants, such as woody species, to assure maximum protection of the watershed. The provisions of PA 88.330 are acceptable in that Section 529 of SMCRA provides that state performance standards for anthracite mining in effect on August 3, 1977, can be adopted in lieu of the SMCRA provisions of Sections 515, 516 and portions of Sections 509 and 519 relating to specified bond limits and period of revegetation responsibility.

29. EPI *et al.* stated that PA 87.117 fails to require notice of non-compliance and quarterly reports pertaining to water quality as set forth in 30 CFR 816.52(b). The Secretary agrees that the specific language of 30 CFR 816.52(b)(ii–iii) is not contained within PA 87.117, but finds that these provisions are established through PA Chapter 92, Pennsylvania's NPDES permitting and monitoring requirements.

30. PCMA *et al.* commented that PA 87.118 regarding transfer of wells provides for liability for damage as effectively as 30 CFR 816.53(c). The Secretary does not believe that the language in PA 87.118 alone is sufficient, but when read in conjunction with PA 86.57 which assures that the transferor is secondarily liable for damages, the Pennsylvania sections are no less effective than 30 CFR 816.53(c).

31. The FWS commented that PA 86.102(1) should require consideration of comments by other agencies, over and above the Pennsylvania Fish Commission, in acting on variance requests for mining within 100 feet horizontally measured from a perennial or intermittent stream. A more careful reading of PA 86.102(1) shows that it provides for consideration of all comments received from other agencies or interested persons during the public comment period or the public hearing, if one is requested, by the Pennsylvania DER before issuing such a variance. The Secretary, therefore, finds that PA 86.102(1) is no less effective than 30 CFR 816/817. 57 *et seq.* and does not require any correction.

32. EPI *et al.* stated that Pennsylvania omitted the buffer zone requirements of 30 CFR 816.57 in its program submission. The Pennsylvania requirements analogous to the Federal requirements for stream buffer zones are found at PA 86.102(1) which prohibits or limits mining within 100 feet measured horizontally of the bank of a perennial or intermittent stream, and PA 87.104 which establishes stream protection standards. The Pennsylvania requirements are no less effective than 30 CFR 816.57.

33. EPI *et al.* commented that PA 87.123 fails to require utilization of the best appropriate technology to maintain environmental integrity in its requirement that surface mining activities be conducted to maximize coal recovery as required by 30 CFR 816.59. The Secretary does not consider the omission of the phrase "utilizing the best technology currently available" a deficiency in PA 87.123. The intent, as set forth in PA 87.1, Section 4(a)(2)(k) of PASMCRA, Section 315(e) of TCSL and Section 5(d) of CRDCA, is still maintained in accordance with Section 515(b)(1) of SMCRA.

34. PCMA *et al.* commented that PA 87.125(a) is as effective as 30 CFR 816.62(a) by limiting the preblast survey to a one-half mile radius of the blasting area. The Secretary agrees, and finds that PA 87.125(a), as amended, is no less effective than 30 CFR 816.62(a).

35. PCMA *et al.* stated that PA 87.126, with respect to aggregate blasting periods, is consistent with 30 CFR 816.64(b)(2)(ii) and therefore, must be approved. The commenter pointed to OSM proposed rulemaking (47 FR 12764) which indicates that the 4-hour aggregate restriction is "not necessarily applicable in all areas." The Secretary agrees, and finds that PA 87.126 is no less effective than 30 CFR 816.64.

36. EPI *et al.* commented on two provisions relating to blasting. First, the commenter contended that PA 87.127(g), now PA 87.127(f), failed to prohibit blasting within 500 feet of certain facilities as required by 30 CFR 816.65(f)(2); and, secondly, that PA 87.127(i), now PA 87.127(h), uses a peak particle velocity of two (2) inches per second rather than one (1) inch per second as prescribed by 30 CFR 816.65(i). On the first point, the Secretary finds that the provisions of 30 CFR 816.65(f) were remanded on May 16, 1980, by the District of Columbia District Court in *In Re: Permanent Surface Mining Regulation Litigation* Civil Action No. 79–1144). Also, the notice of suspension for this provision by the Secretary appeared in the Federal

Register on August 4, 1980 (45 FR 51547–51550). Therefore, the Secretary can not require that these provisions be included. In regard to the second point, the Secretary finds that Pennsylvania has corrected the maximum peak particle velocity requirement in PA 87.127(h) to be no less effective than 30 CFR 816.65(i) (Administrative Record No. PA 321). In addition, the provisions of PA 87.127(j) for scale distance formula has been revised from $W=(D/50)^2$ to conform with the lowered peak particle velocity requirement.

37. EPI *et al.* stated that PA 87.133 did not contain the head-of-hollow fill provisions of 30 CFR 816.73; and, inferred that Pennsylvania had not provided standards as effective as the Federal rules. Pennsylvania regulations omitted the rock-core drainage control alternative for head-of-hollow excess spoil disposal sites, although the remainder of PA 87.131 through 87.134 was no less effective than 30 CFR 816.71 through 816.74. The amended version of the Pennsylvania regulations (Administrative Record No. 336) contain excess spoil standards which deleted specific fill types, consolidating the general requirements with certain portions of durable rock, valley fill and head-of-hollow fill rules. Thus, as provided for in Section 505(b) of SMCRA, the omission of specific standards for head-of-hollow or durable rock fills is no less effective than the Federal provisions.

38. PCMA *et al.* stated that the provisions of PA 87.142(4) adequately address the diminution of water quantity resulting from the construction of other transportation facilities such as railroad spurs, sidings, and coal chutes. Also, the commenter believed that the general requirements of PA 87.114 and 87.115 provide adequate protection against water diminution. The Secretary agrees with this comment and finds the Pennsylvania provisions no less effective than 30 CFR 816.80.

39. EPI *et al.* stated that the Pennsylvania regulations do not contain the requirements of 30 CFR 816.81, including the placement of waste in approved disposal areas within the permit area. The Secretary disagrees with this comment. PA 90.122(a) specifically limits disposal areas to the permit area. Furthermore, it contains provisions regarding environmental protection, stability, prevention of combustion, and protection of public health, which are no less effective than 30 CFR 816.81.

40. EPI *et al.* commented that Pennsylvania coal waste disposal regulations do not contain requirements for subdrainage systems with the alternative of demonstrating them to be unnecessary as provided by 30 CFR 816.83. The Secretary finds that underdrains are provided for in PA 90.122 (h) and (i) in a manner no less effective than 30 CFR 816.83.

41. EPI *et al.* commented that Pennsylvania omitted the standard contained in 30 CFR 816.87 for obtaining approval to remove burned coal waste (red dog) from disposal areas pursuant to a certified plan. Pennsylvania contends that removal of red dog for commercial use from a disposal site would constitute a surface mine operation and, therefore, would be controlled under the provisions of PA Chapters 86 and 87. If removed for non-commercial use, the regulations of PA Chapter 77 require conformance with SMCRA and the requirements of the regulations promulgated therefrom. If it is removed for disposal at another site, the provisions of PA Chapter 90 would apply. If the removal constituted a change in the terms of a permit, permit revision procedures in PA 86.52 would be involved in addition to PA Chapter 90 requirements which would remain in force. Therefore, the Secretary finds the Pennsylvania provisions for controlling burned coal waste utilization no less effective than 30 CFR 816.87.

42. EPI *et al.* stated that PA 87.113, 90.112 and 90.113 omit the site preparation criteria for coal processing waste dams and embankments required by 30 CFR 816.92. The Secretary agrees that a portion of these provisions are omitted from the cited sections, but disagrees that the requirements do not exist in the Pennsylvania program. As the commenter pointed out, part of the requirements are contained in PA 90.113(h). The commenters failed to consider the additional requirements of PA 90.122(r) which, when combined with the aforementioned section, are no less effective then 30 CFR 816.92 particularly since the Pennsylvania program jurisdiction for coal waste structures is universally applied through PA Chapter 90.

43. The FWS commented that the Pennsylvania regulations should define the term "enhancement of such (fish and wildlife) resources where practicable," as found in PA 87.138, 89.65, 89.82 and 90.150 and include an explanation of the hierarchy of land uses acceptable as postmining land uses to achieve a higher and better use, as allowed in PA 87.159(a). The Secretary finds the Pennsylvania regulations to be no less effective than 30 CFR 816.97 and 817.97 and not in need of further clarification or definition. The terminology used by Pennsylvania and OSM is state-of-the-art and should be recognized and understood by professionals operating in the mining field.

44. The SCS recommended that "wildlife land" be used in place of "fish and wildlife habitat" wherever it occurs in PA 87.137 and 87.138 and that "fish and" be deleted wherever it procedes "wildlife." The Secretary finds that PA 87.137 is an inappropriate cite as it does not relate to fish and wildlife but the commenter accurately cited PA 87.138 in making this comment. Furthermore, the Secretary finds that such a change would be less effective than the provisions of 30 CFR 816.97 and not in accordance with Section 515 of SMCRA, wherein emphasis is placed on the protection of aquatic life as well as terrestrial animals.

45. PCMA *et al.* stated that PA 87.138(5) provides for the selection of plant species to be based on their uses as cover for fish. The Secretary finds that PA 87.138(6), as amended, is no less effective than 30 CFR 816.97(a)(9).

46. The Pennsylvania Fish Commission recommended that the term "critical habitat" be defined in Pennsylvania's regulations and be included in the provisions of PA 87.138(b), PA 89.65(b), PA 89.82(b) and PA 90.150(b). The Secretary disagrees with this comment and finds that the aforementioned provisions are no less effective than those contained in 30 CFR 701.5, 816.97(b) and 817.97(b). The U.S. Fish and Wildlife Service recommended that the term critical habitat be deleted from Pennsylvania's regulations because the identification of critical habitat is unworkable or counterproductive for certain species and has not been used (Administrative Record No. PA 320). According to the FWS, no critical habitats in Pennsylvania have been formally designated by the Federal government and none are likely to be. Also, it appears that 30 CFR 816.97(b) is improperly worded, since it is intended to require the reporting of the presence of threatened or endangered species, and not necessarily critical habitats. Furthermore, the Secretary finds that the concerns of the Pennsylvania Fish Commission, regarding the protection of critical habitats, are adequately provided for by PA 86.37(a)(15). This section of the Pennsylvania regulations prohibits the issuance of a permit if the mining activities would result in the destruction or adverse modification of critical habitats as determined under the Endangered Species Act of 1973 as set forth at 30 CFR 786.19. Therefore, no amendments to Pennsylvania's regulations are needed.

47. EPI *et al.* stated that PA 87.138(b) fails to require reporting of endangered

and threatened species as required by 30 CFR 816.97(b). The Secretary disagrees with this comment. PA 87.138(b) requires reporting of any plant or animal listed as threatened or endangered under State or Federal law to the Department when it is discovered during the course of the mining operation and has not been previously reported. The Secretary, therefore, finds the Pennsylvania provision no less effective than 30 CFR 816.97(b).

48. The FWS commented that PA 87.138(b), PA 89.65(b), PA 89.82(b) and PA 90.150(b) do not provide for reporting the presence of any threatened or endangered species in Pennsylvania in accordance with 30 CFR 816.97(b) and 817.97(b). The Secretary disagrees and finds that Pennsylvania amended its regulations (Administrative Record No. PA 336) to provide for reporting the presence of any threatened or endangered species which is no less effective than 30 CFR 816.97(b) and 817.97(b).

49. EPI *et al.* pointed out that PA 87.138(a) fails to provide protection for raptors in the construction of power lines and transmission facilities as afforded by 30 CFR 816.97(c). The Secretary agrees that this provision has been omitted from the Pennsylvania program, but points out that this provision would be meaningless because of the prevailing use of internal combustion powered units in surface mines in the Commonwealth. Furthermore, PA 87.138(a)(1) provides that persons conducting surface mining activities must minimize disturbances and adverse impacts of activities on fish, wildlife and related environmental values. For long-term underground mines where electric power transmission lines and transformer or rectifier installations are common, PA 89.65(c) provides protection similar to 30 CFR 817.97(c). Therefore, PA 87.138(a) is no less effective than 30 CFR 816.97(c).

50. PCMA *et al.* concluded that PA 87.138(a)(7) prohibits the use of restricted or persistent pesticides on areas during surface mining and reclamation activities. The Secretary agrees with this comment and finds that PA 87.138(a)(5), as amended, is no less effective than 30 CFR 816.97(d)(1).

51. EPI *et al.* alleged that Pennsylvania does not provide for operator prevention, control and suppression of unapproved range, forest and coal fires to the extent required by 30 CFR 816.97(d)(8). The Secretary finds that collectively the Pennsylvania regulations pertaining to waste disposal plans, disposal of non-coal wastes, and fire control in PA 87.136, 87.145(a), 88.119(a)(2), 88.314(a), 88.321, 88.492(a)(4), 89.63, 89.39, 90.31(3), 90.126(a) and 90.133 are no less effective than the Federal requirement.

52. One commenter requested that the Secretary require amendment of PA 87.141(c)(2) to allow for pit lengths in excess of 3500 feet. The commenter presented arguments specifying why additional disturbance may be necessary to accommodate larger mining excavation equipment in situations similar to area type mining. The commenter outlined logistical problems which could prohibit cost-efficient mining operations, citing mandatory shorter pit lengths as the cause. The Secretary found, in reviewing the previous regulatory requirement submitted by DER to OSM for approval, that the commenters concern stemmed from the February 1981 version of PA 87.141 (13 *Pa. Bull.* 589) which provided a 3500-foot cap for open pits upon demonstration of appropriateness to the regulatory authority. Subsequent revision to the Pennsylvania requirements (Administrative Record No. PA 321) allows the regulatory authority to consider specific site conditions where pit lengths greater than 1500 feet may be needed. Thus, the commenter's concerns have been addressed, and inasmuch as PA 87.141 is found by the Secretary to be no less effective than 30 CFR 816.101, amendments of these provisions are not necessary.

53. PCMA *et al.* Asserted that PA 87.141(c)(2) is a 'state window' provision "critical to Pennsylvania's operators." They further commented that the purpose of Federal requirements (30 CFR 816.101(a)(1)) is concurrent reclamation which they argued is adequately covered by the Pennsylvania provisions. The Secretary agrees with the commenter, and further finds that the consolidation of 30 CFR 816.101 requirements into the singular requirements of PA 87.141(c)(2) renders the Pennsylvania provision no less effective than 30 CFR Subchapter K.

54. PCMA *et al.* commented that PA 87.142, which permits alternatives to contouring on areas previously affected by mining, is consistent with 30 CFR 816.102(a). The Secretary agrees with this comment. PA 87.142 enumerates six conditions which must be met prior to approval of the contouring requirement alternatives. These conditions are no less effective than 30 CFR 816.102(a) in providing for alternatives to the contouring requirements where surface mining activities reaffect previously mined lands.

55. PCMA *et al.* commented that while PA 87.144 does not contain specific terrace widths, it is no less effective than 30 CFR 816.102(b). The commenter cited OSM proposals to modify 30 CFR 816.102(b) in the same manner (46 FR 39854) to insure greater safety, stability, and erosion control necessary to achieve postmining land use plans. The Secretary agrees with this comment and points out that 30 CFR 816.102(b) has been repromulgated to allow unspecified terrace widths where approved by the regulatory authority (47 FR 18553, April 29, 1982) for those reasons presented by the commenter.

56. EPI *et al.* commented that PA 87.143 impermissably provides for variances to the approximate original contour (AOC) requirements for non-steep slopes in violation of Judge Flannery's decision (*In re: Permanent Surface Mining Regulation Litigation*, CA No. 79–1144, D.D.C. Feb. 16, 1978, slip op., p. 69–70). In this decision, Judge Flannery stated that Section 515(e) of SMCRA did not contain a general variance provision to the AOC requirements, but that the variance was limited to Section 515(d) steep slope mining operations. The Secretary agrees that Section 515(e) provides for only one variance, but believes that the entire section allows for general AOC variances. For a more complete discussion of the Section 515(e) of SMCRA variance to AOC requirements, see the preamble to the proposed rules for postmining land uses and variances from approximate original contour (47 FR 16153–16156, April 14, 1982). The Secretary, therefore, finds that PA 87.143 is consistent with Section 515(e) of SMCRA by allowing variance to AOC in non-steep slope mining operations. However, the Secretary finds that PA 87.143 does not contain any requirements for granting such variance; and, as a result, is not consistent with Sections 515(e) (1) and (3) of SMCRA which enumerate the requirements which must be fulfilled prior to granting of a variance by the regulatory authority. [See Finding 13.5, above.]

57. PCMA *et al.* commented that PA 87.143 adequately addressed the AOC variance requirements of 30 CFR 816.102(b). The Secretary agrees with this comment and finds PA 87.143 no less effective than 30 CFR 816.102(b). (See comment response III–55.)

58. The SCS contended that the small depressions addressed in PA 87.144(d) actually refer to diversions and waterways on backfilled areas and that such features should adhere to the design criteria of the SCS Standard and Specification, *Diversions* (Number 362). The Secretary finds that PA 87.144(d) provides for small depressions to be approved by the regulatory authority

with the same restrictions and considerations of 30 CFR 816.102(c), and thus cannot require the additional criteria proposed.

59. PCMA *et al.* commented that the specific prohibitions of 30 CFR 816.103(a)(4) are sufficiently incorporated in the general requirements of PA 87.101 and 87.145(1)–(3) regarding protection of streams and covering of acid and toxic forming materials. The Secretary agrees that the cited Pennsylvania provisions are no less effective than the Federal regulations when considered in conjunction with the provisions of PA 87.110, 87.131, 87.136 and 87.141 through 87.145.

60. EPI *et al.* objected to the omission in PA 87.145 of certain requirements of 30 CFR 816.103(a)(4) and (b) for handling and storage of acid and toxic forming materials. The Secretary's review of this provision, in conjunction with other similar provisions in the Pennyslvania program at PA 87.101, 87.102, 87.110, 87.116, and 87.117 reveals that the deleted portions merely eliminate redundant requirements and do not result in any less environmental protection. Therefore, considering the range of coverage of the Pennsylvania rules, the Secretary finds the Pennsylvania provisions to be no less effective than the Federal requirements in providing protection of surface and ground water.

61. PCMA *et al.* commented that it is unnecessary, costly and inefficient for the DER to approve the method and design specifications for compaction of materials when treating acid or toxic forming spoils. The commenters further asserted that PA 87.145(1), 87.110 and 86.37(2–3) and the general performance standards impose far more stringent handling and covering requirements than the portion of 30 CFR 816.103(a)(1) not suspended. The Secretary agrees with this comment and has approved these provisions.

62. The SCS stated that the depth of rills and gullies in PA 87.146 is a very approximate measure of effectiveness of stabilization and recommended that depth requirements be based upon the Universal Soil Loss Equation for sheet and rill erosion, or other equations for gully erosion. The SCS further recommended that if the soil loss of an area is found to exceed five tons per acre per year, the area should be reseeded. The Secretary finds that the Commonwealth provisions are no less effective than 30 CFR 816.106 and, therefore, requires no change or additional specifications.

63. In regard to PA 87.148, the SCS recommended mulching to provide a temporary cover if seeding is not possible. Further, they stated that seeding dates for herbaceous species can be extended where mulch is used. The provisions of PA 87.153 requiring mulching to control erosion, promote germination of seeds and retain moisture are no less effective than 30 CFR 816.114. In regard to seeding dates, PA 87.148 specifies more precise time limitations for favorable planting of herbaceous and woody species than that in 30 CFR 816.113. The Secretary, therefore, finds that Pennsylvania has provided guidance which is no less effective than the Federal provisions.

64. The SCS recommended five changes to PA 87.153. These changes are: the inclusion of the Standard and Specification, *Mulching* (Number 484 PA–SCS) as guidance for mulching; a minimum mulch rate of two tons per acre without specifying the type of mulch as well as recommending that mulching be required; seeding within 10 days of topsoiling in PA 87.153(a)(1); a period for seeding to achieve quick vegetative cover within 30 days was recommended instead of "immediately" following final grading in PA 87.153(a)(3); and, anchoring of mulch was to be in all cases in PA 87.153(4)(b) except when approved by the Department. 30 CFR 816.114 was designed to be flexible and to provide the regulatory authority with latitude in applying innovative techniques to solve site specific problems (March 13, 1979, 44 FR 15234). The suggestions made by the commenter may result in too rigorous constraints and could limit the flexibility and discretion envisioned. The Secretary, therefore, finds the provisions of PA 87.153 to be no less effective than those of 30 CFR 816.114.

65. The SCS commented that the species rates and method of planting in PA 87.151(a) should be included in the revegetation plan. It further recommended including the SCS Standard and Specification, Critical Area Planting, Number 342PA–SCS in the Pennsylvania regulation to provide guidance for revegetation. The Secretary finds that PA 87.68(5) requires a plan for revegetation including species, rates and methods. In addition, PA 87.151(a) is no less effective than the Federal revegetation requirements as it merely requires that any seeding and planting be adequate to achieve the standards for successful revegetation established in PA 87.155 which are no less effective than 30 CFR 816.116.

66. The SCS recommended that the term "wildlife habitat" be changed to "wildlife land" in PA 87.155(b)(2)(iii). While "wildlife land" may be consistent with SCS land use classification terminology, the Secretary finds the term "wildlife habitat" to be no less effective than 30 CFR 701.5 and 816.116.

67. EPI *et al.* contended that the Pennsylvania program omits certain specific requirements for periods of responsibility for revegetation success by mine operators and is inconsistent with SMCRA. The commenters cite the requirements of 30 CFR 816.116(b) and Section 515(b)(20) of SMCRA as being omitted. The Secretary notes that the deleted provisions duplicated those of PA 86.151, which set forth the periods of mine operator liability following establishment of successful revegetation and, therefore, finds the Pennsylvania provisions no less effective than 30 CFR 816.116(b).

68. EPI *et al.* commented that PA 87.155 allowed ground cover to be considerably less complete than is required by 30 CFR 816.116 and 816.117. Generally, the revegetation standards for ground cover contained in PA 87.155 are no less effective than those in 30 CFR 816.116. However, no reliable sampling technique is specified in PA 87.155. This is also true with PA 89.86(e) and PA 90.159. 30 CFR 816.116 requires that statistically valid sampling techniques be used which demonstrate a 90 percent statistical confidence level. However, since Pennsylvania has stated in its program (Administrative Record No. PA 336, page 40) that measurement techniques will be used to ensure a 90 percent statistical confidence, the Secretary finds that PA 87.155 is no less effective than 30 CFR 816.116.

69. PCMA *et al.* commented that Pennsylvania's haulroad regulations, PA 87.160 and 87.166, are as effective as the Federal regulations even though they do not contain design criteria. The Federal regulations on haulroads, 30 CFR 816.150–176 and 817.150–176, were remanded by the District Court in its May 16, 1980, opinion in *In re: Permanent Surface Mining Regulation Litigation* (Civil Action No. 79–1144) and the Secretary published a notice in the **Federal Register** on August 4, 1980, (45 FR 51547–51550) suspending the Federal haulroad regulations. Therefore, the Secretary cannot require that counterparts to the remanded Federal haulroad provisions be included in the Pennsylvania program. The commenter further stated that OSM should be encouraging DER to eliminate design standards wherever possible and substitute the basic performance standards of SMCRA throughout Pennsylvania's entire regulatory program. The Secretary cannot require a state to eliminate design criteria from its program unless they are less effective than the Federal requirements. As new

regulations are promulgated which substitute performance standards for design criteria, the States will be afforded an opportunity to amend their programs.

70. EPI *et al.* asserted that Pennsylvania totally revised PA Chapter 89, Underground Mining, and that this revision resulted in a wholesale departure from many of the specific standards in 30 CFR Parts 782 through 784 and 817. As a result, the commenter contended that more time was needed to review that Chapter and requested the Secretary to disapprove it in its entirety. The Secretary finds that PA Chapter 89, as amended on April 20, 1982 (Administrative Record No. PA 321) maintains the standards and requirements of the initial resubmission (Administrative Record No. PA 292). The content of this Chapter has merely been reorganized and consolidated in an effort to present a straightforward, logical approach and to reduce duplicative requirements within the Commonwealth's regulations. The Secretary believes that adequate time has been provided to review the amendments to PA Chapter 89, particularly in light of the fact that amendments to other PA Chapters were limited, and concludes that additional time is not necessary. Although the Secretary has determined that some minor deficiencies exist and has conditioned the program accordingly, the Chapter is otherwise no less effective than the Federal requirements (See Findings 13.6, 13.7, 14.9, 14.10, and 14.11, above).

71. EPI *et al.* commented that PA 89.73, now PA 89.83, failed to incorporate standards for casing and sealing underground openings as required by 30 CFR 817.13 through 817.15 and, that standards for the transfer of wells has been omitted. Taken together, PA 89.83, which establishes standards to prevent environmental damage, PA 89.54(c) which establishes safeguards to prevent discharge from underground mines, PA 89.81 and 89.68 which set forth requirements regarding the permanent and temporary cessation of operations, respectively, are no less effective than 30 CFR 817.13–15. The transfer of wells provisions of PA 86.57 are no less effective than 30 CFR 817.53.

72. EPI *et al.* commented that Pennsylvania omits standards for rehabilitation of sedimentation ponds, diversions, other impoundments and treatment facilities before abandonment as required by 30 CFR 817.56. Pennsylvania rules provide that permanent diversions for coal waste, excess spoil and for other areas will fulfill these requirements in accordance with PA 90.120 and PA 105; that permanent impoundments must constantly be maintained to the design standards as required by PA 89.89(5); and, if treatment facilities are to be retained abandonment will not have occurred since bonding will be in force or operation of the facility will be the responsibility of the regulatory authority. The Secretary therefore finds these provisions no less effective than 30 CFR 817.56.

73. EPI *et al.* indicated an absence in the Pennsylvania regulations of standards for disposal of undergound development waste as required in 30 CFR 817.71 through 817.74. A cross-reference to PA Chapter 90 is contained in PA 89.39. Underground development wastes are, by definition in PA 90.1, considered coal refuse. The handling of such materials and the related environmental protection standards are covered in PA 90.122 and PA 90.123 which specifically addresses the use of such waste in fills no less effectively than the Federal requirements.

74. EPI *et al.*, stated that the Pennsylvania regulations omit the requirement for contemporaneous reclamation as required by 30 CFR 817.100. The Secretary disagrees with this comment and finds that PA 89.84(b) and 89.86(c) are no less effective than 30 CFR 817.100 in that reclamation and revegetation are required in accordance with the timing of the reclamation plan approved by the regulatory authority.

75. EPI *et al.* commented that in PA 89.109, now PA 89.84, Pennsylvania omits many of the standards for backfilling and grading found in 30 CFR 817.101 through 817.103; particularly the requirement of 30 CFR 817.101(b) that areas affected by surface operations be returned to approximate original contour and the requirements of 30 CFR 817.103 for covering toxic materials. 30 CFR 817.101(b)(1), all of 30 CFR 817.102 and 30 CFR 817.103(a)(1) were remanded on May 16, 1980, by the District Court for the District of Columbia, in *In re: Permanent Surface Mining Regulation Litigation*, (Civil Action No. 79–1144) and were suspended on August 4, 1980 (45 FR 51547–51550). The Secretary finds that PA 89.109 and PA 89.90 contain provisions no less effective than the remaining Federal requirements.

76. The FWS commented that PA 89.111(a)(1), now PA 89.86, does not require a diverse vegetative cover on areas disturbed by underground mining, as does 30 CFR 817.111. The Secretary has identified this deficiency in PA 89.86 and has conditioned the approval of the program on correction of this issue [See Finding 13.8, above.]

77. EPI *et al.* commented that in PA 89.122(a), now PA 89.145(a)(1), Pennsylvania fails to require a regulatory authority determination based on detailed subsurface information of possible damage by subsidence before allowing mining near streams, impoundments or public buildings as required in 30 CFR 817.126 (a) and (c). The data requirements of PA 89.141, 89.142, and 89.143 provide the necessary subsurface information required by the Federal regulations to allow a determination by the regulatory authority. Furthermore, PA 89.145(g) specifically prohibits underground mining beneath areas not included in an approved subsidence control plan and PA 89.145(b) prohibits damage to structures unless consented to by both the owner and the DER. The Secretary finds these Pennsylvania regulations are no less effective than 30 CFR 817.126.

78. PCMA *et al.* commented that PA 87.176(d) requirements for plugging auger holes within 30 days is no less effective than 30 CFR 819.11(c) which requires plugging of an auger hole that discharges acid water within 72 hours. The Secretary agrees with the commenters. PA 87.176, in fact, prohibits auger mining if acid mine drainage is anticipated or actually occurs. Also, plugging is required regardless of water quality and variances from plugging are not allowed as in 30 CFR 819.11(d). Therefore, the Secretary finds the Pennsylvania requirement no less effective than the Federal provision.

79. The SCS recommended that surface water control structures be required on the backfilled area during the reclamation phase of mining to assure adequate erosion control, sedimentation control, and vegetation establishment. The SCS stated that it will require them in soil restoration plans for prime farmland under the provisions of PA 87.177(b). Adoption of SCS criteria for reclamation as contained in the SCS Standards and Specifications was also recommended for non-prime farmland as well as prime farmland. The Secretary finds that the Commonwealth's provisions under PA 87.177 and 87.178 are no less effective than those of 30 CFR 823.11, particularly since 30 CFR 823.11(c) has been suspended to the extent it required actual crop production to measure re-vegetation success on prime farmlands.

80. The Pennsylvania State University soil test recommendations were cited by the SCS as the recommended standard in applying soil amendments under provisions of PA 87.180(f). The Secretary

finds the Commonwealth's provision to be no less effective than 30 CFR 823.14(f), and has no authority to require this standard as a condition of program approval.

81. SCS recommended that prime farmland should not be required to be reclaimed to cropland in PA 87.181. SCS questioned the efficacy of cropland solely as a measure of proof of restoration. 30 CFR 823.15 (b) and (c) of the Federal program rules which address measures for determining the return of prime farmland to former cropland production were suspended. The amended version of PA 87.181 (Administrative Record No. PA 336) takes into account the alternative of not returning prime farmland solely to cropland while retaining measures to assure that the equivalent pre-mining cropland yield capability is achieved should such future use be selected. Therefore, the Secretary finds this provision to be no less effective than 30 CFR 823.15.

82. One commenter objected to Pennsylvania's submission of its anthracite regulatory program for approval, and stated that OSM does not require any changes in the anthracite program in order for Pennsylvania to be granted primacy. The Secretary disagrees with this comment. Congress did not exempt anthracite mining from all of the requirements of SMCRA. Section 529 of SMCRA specifically requires Pennsylvania to adopt all of the provisions of the SMCRA with respect to anthracite mining, except for Sections 515 and 516 and portions of Section 509 and 519. The provisions of Sections 509 and 519 of SMCRA are applicable except for the specified bond limits and period of revegetation responsibility. The Secretary has determined that, except as stated above, Pennsylvania must submit laws and regulations pertaining to anthracite coal mining operations which demonstrate that all of the applicable provisions of SMCRA will be enforced under the Commonwealth's permanent regulatory program.

83. The SCS inquired if it was the intent in PA 87.11(ii) to exempt the extraction of minerals other than coal from borrow pits for highway construction from the requirements of the Pennsylvania program. The Secretary finds that these activities are exempted under SMCRA; however, Pennsylvania will regulate them under its non-coal program. In relation to coal mining incidental to highway construction, see Finding 16, above.

84. The SCS suggested deletion or revision of several references in PA 87.111(a)(5) and 87.112(b). Pennsylvania deleted these references in the amended version of the Pennsylvania rules. (Administrative Record No. 336). With this deletion, the Secretary believes that the commenter's concerns have been addressed.

85. PCMA *et al.* contended that PA 87.175 provides for variances from approximate original contour for steep slope operations in conformity with 30 CFR 826.15 and that the Commonwealth's rules, in fact, are more stringent than the Federal standards. The Secretary agrees with this contention and has approved the Pennsylvania rule.

IV. Inspection and Enforcement

1. The Pennsylvania Chapter of the Sierra Club commented that PA Chapter 86, Subchapter H does not include specific provisions for mandating a minimum frequency of inspection in accordance with Section 517(c) of SMCRA. As explained in the Pennsylvania program, Pennsylvania DER's Policy and Procedural Manual for the Bureau of Mining and Reclamation provides for both complete and partial inspections in accordance with Section 517(c) of SMCRA and consistent with 30 CFR 840.11 (Administrative Record Nos. PA 292 and 336). The Secretary finds that this provision is consistent with 30 CFR 840.11, and can be addressed by policy. Pennsylvania has been informed that since the Secretary's decision with regard to this portion of the Pennsylvania program is based on policy, any future changes to the policy will have to be formally processed as a program amendment in accordance with 30 CFR 732.17 (Administrative Record No. PA 308).

2. EPI *et al.* and the Pennsylvania Chapter of the Sierra Club stated that PA 86.213 fails to provide for suspension or revocation of permits consistent with 30 CFR 843.13. The Secretary agrees with this statement. As discussed in Finding 20.2, the Secretary has found that neither PA 86.213 nor Part 300–2.10 of the Bureau of Mining and Reclamation's Policy and Procedure Manual provides for the suspension or revocation of permits based on a pattern of violations consistent with 30 CFR 843.13 and has conditioned approval of the program accordingly.

3. The Pennsylvania Chapter of the Sierra Club stated that PA Chapter 86, Subchapter H does not require that all inspection records and reports be available to the public and fails to provide citizens the right to informal review of enforcement actions. The Secretary disagrees with this comment. Consistent with 30 CFR 840.14 and Section 517(f) of SMCRA, PA 86.214 provides that all inspection records and reports are available for public inspection at appropriate DER district offices. The Secretary agrees that PA 86.215(d)(2) does not provide for a citizens right to informal review of enforcement actions as required by 30 CFR 842.15 and 840.15 and Section 517 (1) and (2) of SMCRA in its statutes or regulations. However, these provisions are provided by Pennsylvania DER in the Bureau of Mining and Reclamation's Policy and Procedure Manual, which is not in conflict with the Commonwealth's legal authority (Administrative Record No. PA 336, Page 1). Moreover, since the Secretary's decision in this regard is based on policy, any modification of this provision will require processing as a program amendment in accordance with 30 CFR 723.17 (Administrative Record No. PA 308).

4. PCMA *et al.* stated that PA 86.215(d)(2) provides for the informal review of enforcement actions as required by 30 CFR 840.15, 842.15 and Section 517(h) (1) and (2) of SMCRA. The Secretary disagrees with this statement. However, since the Bureau of Mining and Reclamation's Policy and Procedure manual has been modified to provide for informal review of enforcement actions, the Secretary finds that PA 86.215(d)(2), together with the policy provision, is consistent with 30 CFR 840.15 and 842.15.

5. The Pennsylvania Chapter of the Sierra Club concluded that PA Chapter 86, Subchapter H does not mandate cessation of operations when significant violations are detected. The Secretary disagrees with this comment and finds that PA 86.212, consistent with 30 CFR 843.11 and Section 521(a)(3) of SMCRA, requires DER to issue a cessation order whenever a violation exists which creates an imminent danger to the health of the public; is causing significant imminent harm to land, air or water resources; or will not be abated within an abatement period specified in a departmental order.

6. The Pennsylvania Chapter of the Sierra Club commented that PA Chapter 86, Subchapter H does not require inspectors to write every violation detected. The Secretary disagrees with this comment. PA 86.214 does require inspectors to write every violation detected and is consistent with 30 CFR 843.12.

7. EPI *et al.* commented that the Pennsylvania regulations do not require enforcement actions against operators for all violations of the program observed in accordance with 30 CFR 843.12 and Section 521(a)(3) of SMCRA. The Secretary disagrees with this

comment. Except as discussed in Findings 20.1 and 20.2, the Secretary finds that Section 4.3 of PASMCRA, Section 9 of CRDCA, Section 9 of BMSLCA and Section 610 of TCSL, in addition to PA 86.211, PA 86.214 and Part 300 of the Bureau of Mining and Reclamation's Policy and Procedure Manual provide for the issuance of a notice of violation or cessation order upon observance of a violation. This interpretation of Pennsylvania law is further confirmed in the Attorney General's Opinion (Administrative Record No. PA 292, p. 9). Also, PA 86.212(a)(3) requires the issuance of a cessation order whenever a violation is not abated within the abatement period specified in a departmental order.

8. EPI *et al.* stated that the Pennsylvania regulations do not contain provisions regarding the inability to comply in accordance with 30 CFR 843.18. The Secretary disagrees with this comment. The Department of Environmental Resources' Policy and Procedure Manual prohibits the vacating of cessation orders or notices of violation because of the inability to comply (Administrative Record No. PA 336, p. 113). Since the Secretary's decision with regard to this portion of the Pennsylvania program is based on policy, any future changes to that policy will have to be formally processed as program amendments in accordance with 30 CFR 732.17 (Administrative Record No. PA 308).

9. PCMA *et al.* commented that PA 86.201(a) does not require the regulatory authority to serve a copy of the civil penalty assessment on the person responsible for the violation within 30 days of the issuance of the notice or order in accordance with 30 CFR 845.17(b) and Section 518(c) of SMCRA. The Secretary concurs with this comment. Although PA 86.201(a) does not specify the time limit in which the regulatory authority has to issue a civil penalty assessment notice, Part 300 of the Bureau of Mining and Reclamation's Policy and Procedure Manual provides for the issuance of a civil penalty assessment notice within thirty days of the violation leading to the assessment in most cases. In some cases it may take longer than 30 days for the regulatory authority to evaluate the seriousness of the violation, and the good faith efforts of the operator to correct it and, accordingly, to determine the appropriate penalty. Therefore, the Secretary finds that PA 86.201(a), together with Part 300–2.8 of the Bureau of Mining and Reclamation's Policy and Procedure Manual, is consistent with 30 CFR 845.17(b).

10. EPI *et al.* commented that Subchapter G of Chapter 86 of the Pennsylvania regulations does not provide a rational scheme for the assessment of civil penalties. The Secretary disagrees with this comment. Section 11 of CRDCA, Section 18.4 of PASMCRA, Section 17(f) of BMSLCA, Section 605 of TCSL and PA 86.191 through PA 86.203 provide the legal authority for the assessment of civil penalties under the Pennsylvania program. Furthermore, a discussion of the proposed procedures for assessing and collecting civil penalties in Pennsylvania is provided in the Pennsylvania program (Administrative Record No. PA 292, *Pennsylvania Coal Mining Regulatory Program*, p. 46). Therefore, the Secretary finds that Pennsylvania's proposed system for the assessment of civil penalties is no less stringent than the requirements of SMCRA.

11. EPI *et al.* commented that the Pennsylvania laws do not provide for the assessment of civil penalties against corporate permittees as required by Sections 518 (f) and (i) of SMCRA. The Secretary disagrees with this comment. Section 3(n) of PASMCRA, Section 3(9) of CRDCA, Section 17(g) of BMSLCA and Section 1(g) of TCSL define the term "person" to include any natural person, partnership, association or corporation * * *. Furthermore, these sections provide that whenever used in any clause prescribing and imposing a penalty, or imposing a fine or imprisonment, or both, the term "person" does not exclude the members of an association and the directors, officers or agents of a corporation. Therefore, the Secretary finds that Section 18.4 of PASMCRA, Section 605 of TCSL, Section 11 of CRDCA and Section 17(f) of BMSCLA provide for the assessment of civil penalties against corporate permittees in accordance with Section 518 (f) and (i) of SMCRA.

12. EPI *et al.* commented that the Pennsylvania laws do not provide criminal sanctions against persons who knowingly make false statements or representations on records as required by Section 518 (g) and (i) of SMCRA. The Secretary finds that Section 18.6 of PASMCRA, Section 611 of TCSL, Section 17.1 of BMSLCA and Section 7 of CRDCA provide criminal sanctions against any person who knowingly makes false statements or representations in any application, record, etc. in accordance with Section 518 (g) and (i) of SMCRA.

13. The Pennsylvania Chapter of the National Association of Water Companies *et al.* recommended the establishment of an independent commission, funded through permit, royalty and civil penalty fee collection, to enforce the Pennsylvania program in lieu of the existing organization. The commenters further suggested that standard inspection checklist be modified to contain a detailed checklist of relevant performance standards—not just room for notations of compliance or non-compliance; and, that the inspection force be based upon one inspector per 1000 acres of permitted area. 30 CFR 732.15(b)(5)(b), (8) and (d) *et seq.* require the Secretary to evaluate any state regulatory program in light of the capabilities of the regulatory authority to carry out the provisions of the program consistent with the Federal counterparts, particularly Sections 517 and 521 of SMCRA. In addition, this evaluation is conducted by the Secretary through review of materials and information provided by the regulatory authority as specified in 30 CFR 731.14(j) and (g)(4). Section C of this notice illustrates that the Secretary has found the Commonwealth capable of enacting a system which fulfills the intent of SMCRA and the regulations promulgated thereunder. Implementation of the commenters' suggestions cannot, therefore, be required by the Secretary since the program approval process does not provide legal authority for circumvention of, or addition of provisions beyond those mandated by SMCRA and 30 CFR Chapter VII.

14. EPI *et al.* commented that Pennsylvania's inspection and enforcement policy statements, Appendix B of the program resubmission (Administrative record No. PA 336), were totally unacceptable because a policy statement is not binding on a state, and a state can not be compelled by a court order to follow it. The Secretary disagrees with this comment. Where the Secretary relies on a formal policy statement of a state as grounds for granting program approval that commitment is binding on the state and is an integral part of the state's program. Furthermore, in the event Pennsylvania does not comply with its inspection policy and the Secretary of Interior fails to act under Section 504(a) of SMCRA, any person can file suit under Section 520(a)(2) of SMCRA. Pennsylvania has been informed that any changes to policies upon which the Secretary relied in granting program approval will have to be formally processed as program amendments in accordance with 30 CFR 732.17 before they can become effective (Administrative Record No. PA 308).

V. Public Participation

1. EPI *et al.* commented that PA 86.215 fails to establish a time limit for responding to citizen complaints consistent with 30 CFR 842.12(d), and fails to provide for informal review consistent with 30 CFR 842.15. The Secretary disagrees with this comment. PA 86.215 is consistent with 30 CFR 842.12(d) by requiring that as soon as practicable after an inspection, the citizen will be notified of the department's enforcement action. Also, PA 86.215, together with the Bureau of Mining and Reclamation's Policy and Procedural Manual (Pennsylvania program, page 50), provide for a citizen's right to informal review of enforcement actions as required by 30 CFR 840.15, 842.15 and Section 517(h) (1) and (2) of SMCRA.

2. EPI *et al.* stated that Pennsylvania's regulations do not provide for public participation in enforcement of the state program in accordance with 30 CFR 840.15. The Secretary disagrees with this comment. Except as discussed in Finding 27.1, the Secretary finds that Pennsylvania's public participation provisions contained throughout the Pennsylvania surface mining laws, the regulations promulgated thereunder, Parts 200 and 300 of the Bureau of Mining and Reclamation's Policy and Procedure Manual and Chapter III D of the Pennsylvania program narrative are consistent with those set forth in 30 CFR 840.15.

3. The Pennsylvania Chapter of the National Association of Water Companies *et al.* recommended that the proposed regulations should allow for on-site inspections by water company officials based on "good faith circumstantial evidence or prima facie evidence". PA Chapter 86 provides for individual notice of mining permit applications to, and for review by, appropriate sewage or water treatment authorities and by government planning agencies with jurisdiction for land use, air and water quality planning in the area of the proposed operations. Submission of comments or objections received from these entities would be resolved prior to permit approval by the regulatory authority. Provisions are also included for informal conferences to hear comments or objections from parties whose interests may be affected, including water companies. The Secretary finds that sufficient allowances are provided in the Pennsylvania program for input from water companies in the permit review and approval process and, furthermore, citizen inspection procedures under PA 86.215 would be available to water companies throughout the mining operation. Therefore, the Secretary finds that specific inspection provisions for water companies would be redundant.

4. The Pennsylvania Chapter of the Sierra Club and EPI *et al.* stated that PA Chapter 86, Subchapter H does not provide a citizen the right to accompany an inspector following a citizen's complaint. The Secretary disagrees with this comment. Section 18.3(b) of PASMCRA, Section 13(b) of CRDCA, Section 13(c) of BMSLCA, Section 601(d) of TCSL and PA 86.215(c) provide persons who present information to the department relating to a possible violation the opportunity to accompany an inspector during an inspection in accordance with Section 521(a) of SMCRA and consistent with 30 CFR 786.27 and 842.12.

5. EPI *et al.* stated that the Pennsylvania program fails to provide for the award of costs and expenses including attorney fees for participation in administrative proceedings as required by Section 525(e) of SMCRA and 43 CFR 4.1290. The Secretary agrees with this comment. Section 307(b) of TCSL provides that costs and expenses including attorney fees can be awarded by the Environmental Hearing Board for any proceeding brought under the Act. However, Section 4(b) of PASMCRA, Section 5(i) of CRDCA, and Section 5(g) of BMSLCA authorize attorney's fees only for administrative proceedings involving permit approval or bond release. However, this would not appear to cover proceedings involving enforcement actions written for failure to comply with the requirements of the Pennsylvania laws. Accordingly, the Secretary has conditioned the approval of Pennsylvania's program on the Commonwealth clarifying its program to ensure that costs and expenses, including attorney fees, can be awarded by the Environmental Hearing Board for any proceeding brought under the aforementioned laws (See Finding 27.1, above.)

6. EPI *et al.* stated that Pennsylvania law does not clearly provide that any interested person may file an appeal from any action of the Department with the Environmental Hearing Board. SMCRA provides that any action, or failure to act, is subject to administrative review. The Secretary disagrees with this comment. Section 1921–A(c) of the Pennsylvania Ad. Code provides in pertinent part that:

> * * * no such action of the Department adversely affecting any person shall be final as to such person until such person has had the opportunity to appeal such action to the Environmental Hearing Board * * *.

In addition, Section 7 of TCSL, Section 3.3 of the CRDCA, and Section 16 of the BMSLCA all provide for appeal from Departmental actions to the Environmental Hearing Board. The effect of the Pennsylvania program is further confirmed by the Attorney General opinion, wherein it is stated that:

> The applicant, operator, or any person having an interest who is or may be adversely affected by an action of the Department may lodge an appeal within the Environmental Hearing Board by the Act of June 4, 1945 (Pub. L. 1388), known as the 'Administrative Agency Law'. (Administrative Record Nos. PA 321, *Pennsylvania Coal Mining Regulatory Program*, p. 34 and PA 336).

7. EPI *et al.* commented that PA 21.62 fails to provide for the right of intervention by interested parties who had a right to initiate the proceeding or have an interest which may be adversely affected as required by 43 CFR 4.1110. The Secretary disagrees with this comment. The Pennsylvania rule cited by the commenter does clearly provide for intervention by interested persons. Apparently, the commenter objects to the fact that the Pennsylvania rule does not state specifically, as does the Federal rule, that a person who had the right to initiate the proceeding in the first instance has an absolute right to intervene. The Pennsylvania rule clearly provides for the Environmental Hearing Board to review and act on requests for intervention and, therefore, the State program does ensure that interests of third parties will be represented in the litigation.

8. EIP *et al.* commented that Pennsylvania's regulations do not provide for the availability of public records, inspection reports, enforcement actions and other materials pertinent to the administration of the Act at an office near the mine site as set forth in 30 CFR 700.14, 786.15, 840.14 and 842.16. The Secretary disagrees with this comment. PA 86.35 ensures the public availability of information in permit applications which is no less effective than 30 CFR 700.14 and 786.15. Also, PA 86.214 makes inspection reports and enforcement actions available for public inspection at appropriate DER district offices consistent with 30 CFR 840.14 and 842.16 Moreover, Pennsylvania's Right-to-Know Law, 65 P.S. Section 66.1 *et seq.*, requires that inspection reports be made available to the public.

9. EPI *et al.* commented that Pennsylvania's regulations do not provide procedures for the review of the adequacy and completeness of the inspections in accordance with 30 CFR

842.14. The Secretary finds that the Bureau of Mining and Reclamation's Policy and Procedure Manual provides a procedure for the review of complaints regarding the adequacy and completeness of inspections consistent with 30 CFR 842.14 (Administrative Record No. PA 336, p. 98). Since the Secretary's decision with regard to this portion of the Pennsylvania program is based on policy, any future changes to that policy will have to be formally processed as program amendments in accordance with 30 CFR 732.17 (Administrative Record No. PA 308).

10. EPI *et al.* commented that the Pennsylvania regulations do not provide for formal review of citations by interested persons in accordance with 30 CFR 843.16. The Secretary disagrees with this comment. Section 101 of Pennsylvania's Administrative Agency Law, Section 1921–A of the Ad. Code, Section 7 of TCSL, Section 3.3 of CRDCA, Section 16 of BMSLCA, PA 86.202, PA 86.214 and PA 21.1 *et seq.* provide for formal review of notices of violations and cessation orders consistent with 30 CFR 843.16.

VI. Bonding

1. PCMA *et al.* commented that PA 86.171(f)(2) provides no timetable for a bond release if an informal conference is not held as established in 30 CFR 807.11(f)(2). While the sixty-day decision deadline is not provided for in the Pennsylvania regulatory program, the Secretary finds that the lack of a deadline is no less effective than the Federal requirement in that it provides flexibility to the regulatory authority in evaluating comments making its decision and notifying all interested parties.

2. PCMA *et al.* commented that the Pennsylvania regulations do not reflect bonding regulations currently being proposed by the Secretary. The Secretary has found that the Pennsylvania bonding regulations in Chapter 86, Subchapter F to be acceptable. The Secretary must base his decision to approve or disapprove the program on existing Federal standards. If the standards upon which the secretarial decision is made are changed, the Secretary can require the Commonwealth to amend its program pursuant to 30 CFR 732.17.

E. Background on Conditional Approval

The Secretary is fully committed to two key aims which underlie SMCRA. SMCRA calls for comprehensive regulation of the effects of surface coal mining on the environment and public health and for the Secretary to assist the States in becoming the primary regulators under SMCRA. To enable the States to achieve that primacy, the Secretary has undertaken many activities of which several are particularly noteworthy.

The Secretary has worked closely with several state organizations, such as the Interstate Mining Compact Commission, the Council of State Governments, the National Governors Association and the Western Interstate Energy Board. Through these groups OSM has frequently met with state regulatory authority personnel to discuss informally how SMCRA should be administered, with particular reference to unique circumstances in individual States. Often these meetings have been a way for OSM and the States to test new ideas and for OSM to explain portions of the Federal requirements and how the States might meet them.

As of June 1982, the Secretary has dispensed over $8.5 million in program development grants and over $79.2 million in initial and permanent program grants to help the States to develop their programs, to administer their initial and permanent regulatory programs, to train their personnel in the new requirements, and to purchase new equipment. In several instances, OSM detailed its personnel to States to assist in the preparation of their permanent program submissions. OSM has also met with individual States to determine how best to meet SMCRA's environmental protection standards.

Equally important, the Secretary structured the state program approval process to assist the States in achieving primacy. He voluntarily provided his preliminary views on the adequacy of each state program to identify needed changes and to allow them to be made without penalty to the State. The Secretary adopted a special policy to ensure that communication with the states remained open and uninhibited at all times (44 FR 54444, September 19, 1979). This policy was critical in avoiding a period of enforced silence with a State after the close of the public comment period on its program and has been a vital part of the program review process.

The Secretary has also developed in his regulations the critical ability to approve conditionally a State program. Under 30 CFR 732.13, conditional approval gives full primacy to a State even though there are minor deficiencies in a program. This power is not expressly authorized by SMCRA; it was adopted through the Secretary's rulemaking authority under Sections 201(c), 502(b), and 503(a)(7) of SMCRA.

SMCRA expressly gives the Secretary only two options—to approve or disapprove a State program. Read literally, the Secretary would have no flexibility; he would have to approve those programs that are letter perfect and disapprove all others. To avoid that result and in recognition of the difficulty of developing an acceptable program, the Secretary adopted the regulation providing the authority to approve conditionally a program.

Conditional approval has a vital effect for programs approved in the Secretary's final decision. It results in the implementation of the permanent program in a State months earlier than might otherwise be anticipated. While this may not be significant in States that already have comprehensive surface mining regulatory programs, in many States that earlier implementation will initiate a much higher degree of environmental protection. It avoids the costly and cumbersome problem of implementing a Federal program where the State submittal was deficient in only minor respects. It also implements the rights SMCRA provides to citizens to participate in the regulation of surface coal mining through soliciting their views at hearings and meetings and enabling them to file requests to designate lands unsuitable for mining if they are fragile, historic, critical to agriculture, or simply cannot be reclaimed to their prior productive capability.

The Secretary considers three factors in deciding whether a program qualifies for conditional approval. First is the State's willingness to make good faith efforts to effect the necessary changes. Without the State's commitment, the option of conditional approval may not be used. Second, no part of the program can be incomplete. As the preamble to the regulations States, the program, even with deficiencies, must "provide for implementation and administration for all processes, procedures, and systems required by the Act and these regulations" (44 FR 14961, March 13, 1979). That is, a State must be able to operate the basic components of the permanent program: The designation process; the permit and coal exploration system; the bond and insurance requirements; the performance standards; and the inspection and enforcement systems. In addition, there must be a functional regulatory authority to implement the other parts of the program. If some fundamental component is missing, conditional approval may not be granted.

Third, the deficiencies must be minor. For each deficiency or group of

deficiencies, the Secretary considers the signficance of the deficiency in light of the particular State in question. Examples of deficiencies that would be minor in virtually all circumstances are correction of clerical errors and resolution of ambiguities through attorney general's opinions, revised regulations, policy statements, changes in the narrative or the side-by-side.

Other deficiencies require individual consideration. An example of a deficiency that would most likely be major would be a failure to allow meaningful public participation in the permitting process. Although this would not render the permit system incomplete because permits could still be issued, the lack of any public participation could be such a departure from a fundamental purpose of SMCRA that the deficiency would probably be major.

The granting of a conditional approval is not and cannot be a substitute for the adoption of an adequate program. 30 CFR 732.13(i) gives the Secretary little discretion in terminating programs where the State, in the Secretary's view, fails to fulfill the conditions. The purpose of the conditional approval authority is to assist States in achieving compliance with SMCRA, not to excuse them from compliance.

F. The Secretary's Decision

As indicated above under "Secretary's Findings," there are minor deficiencies in the Pennsylvania program which the Secretary requires be corrected. In all other respects, the Pennsylvania program meets the criteria for approval. The deficiencies identified in prior findings are summarized below and an explanation is given to show why the deficiency is minor, as required by 30 CFR 732.13(i).

(1) As discussed in Finding 13.1, impoundments greater than 20 feet in height, or having storage capacity equal to or greater than 20 acre-feet are not required by PA Chapters 87 and 90 to adhere to spillway design and factor of safety criteria imposed in the Federal regulations. This deficiency is minor due to overlapping coverage of these impoundments by the Mine Safety and Health Administration (MSHA) criteria in 30 CFR 77.216–3, which is identical to that in 30 CFR 816. In addition, existing Pennsylvania design standards applicable to such structures are sufficient to provide for adequate environmental and public health and safety protection. The term of the deficiency further minimizes the impact, since emergency rulemaking revising the Pennsylvania regulations to include this requirement has been initiated and should be final by October 1982.

(2) PA Chapters 87 and 90 omit the frequency of inspection requirements for impoundments, as previously discussed in Finding 13.2. Inasmuch as inspection and certification of structures are contained in the Pennsylvania rules, and only the frequency of inspection is lacking, this deficiency is considered minor. MSHA and OSM regulations require identical inspection frequency requirements when larger dams are involved (those meeting the size criteria of 30 CFR 77.216(a)); and, since smaller dams (not meeting the size criteria of 30 CFR 77.216(a)) may be exempted by the regulatory authority when infrequent inspection is allowed, the impact of this omission is minimal. Furthermore, rulemaking, which provides for correction of the omission, has been initiated and should be completed by October 1982.

(3) Finding 13.3 outlines the incongruity of the impoundment requirements of PA Chapters 87 and 90 with respect to various design criteria utilized on the basis of dam size classification. This deficiency is minor when viewed. While the definition of large and small impoundments is inconsistent, regulatory review of these structures is still performed for adequate design and construction. The condition is considered minor as a result of MSHA jurisdiction which remains in effect until the deficiency is corrected. Furthermore, prompt resolution of this deficiency is anticipated when emergency regulations containing these provisions are promulgated in October 1982.

(4) As discussed in Finding 13.4, PA Chapters 87 and 90 omit inclusion of specific monitoring and information requirements for the annual certification report required by Federal rules for permanent dams and impoundments. The absence of these provisions is considered minor, inasmuch as certification of large impoundments is collectively required by Pennsylvania and MSHA regulations and, smaller ponds such as sediment ponds must also be certified. Absent the certification requirements, the operator must still comply with all permit conditions, environmental protection and performance standards. Furthermore, this deficiency will be addressed by the promulgation of the revised rules in October 1982.

(5) As discussed in Finding 13.5, Pennsylvania's regulations provide for variances to approximate original contour for non-steep slope areas. This deficiency is minor because Section 4(a)(2)(E)(i) of PASMCRA provides that such variances may include conditions which require complete backfilling, highwall elimination, watershed protection, etc., which could satisfy Sections 515(e) (1) and (3) of SMCRA. Also, such variances will not be approved if they pose an actual or potential threat to public health and safety, or of water pollution. Furthermore, few, if any, variances are expected to be approved before Pennsylvania's regulations are amended to conform with Sections 515(e) (1) and (3) of SMCRA.

(6) Pennsylvania's regulations, as discussed in Finding 13.8, do not require the establishment of diverse vegetative cover for underground mining operations. This deficiency is minor because the surface area affected by underground operations is usually minimal, and Pennsylvania will require the establishment of a permanent and effective vegetative cover for such operations. Due to the duration of mining of such operations, few, if any, operations will complete this phase of reclamation before the deficiency is corrected.

(7) As discussed in Finding 14.1, Pennsylvania regulations regarding coal refuse disposal do not require the operator to submit in the permit application a description of archeological sites within adjacent areas. This deficiency is minor because archeological sites within the permit area will be described and protected, and it is unlikely that any archeological sites adjacent to coal refuse areas will be impacted prior to Pennsylvania's amending its regulations.

(8) As discussed in Finding 14.2, Pennsylvania's anthracite mining regulations do no require that the operator submit with the permit application a description of historic land use if the premining use of the land has changed within five years prior to beginning mining. This deficiency is minor because Pennsylvania has indicated in its program that it will request this information in the permit application.

(9) As discussed in Finding 14.3, Pennsylvania's anthracite mining regulations do not require that the applicant conduct a prime farmland investigation. This deficiency is minor because Pennsylvania's surface mining laws provide the legal authority to require such investigations. Pennsylvania officials have indicated that they will utilize this authority, if need be, to ensure that prime farmland investigations will be conducted until (1) an investigation of the anthracite region is completed to determine if prime farmland exists in the region and, if so, whether it has been historically used as cropland or (2) pending further

rulemaking. The USDA, SCS, has provided prime farmland soil maps and studies (Administrative Record No. PA 331) where available and has indicated an interest in participating in prime farm land soil identification (Administrative Record No. PA 377) as required by section 507(b)(16) of SMCRA.

(10) As discussed in Finding 14.4, Pennsylvania's regulations regarding permitting of impoundments lack the required continuity of the Federal provisions regarding registered professional engineer involvement throughout general and detailed plan preparation. This deficiency is minor in that the plan requirements are still in force and the regulatory authority will require correction if the review process identifies that the general plan is unacceptable. In addition, Pennsylvania has proposed amendments to its regulations which should be effective by October 1982, and will eliminate this deficiency.

(11) As discussed in Finding 14.5, PA 90.39 does not require geotechnical, design and construction information in the detailed design plan for non-coal waste impoundments. This is considered minor in that the totality of plan requirements and performance standards still apply and will provide for an adequate margin of safety until regulations are promulgated. Also, for any structure which meets or exceeds MSHA size criteria, the applicant will be required to prepare this data in accordance with 30 CFR 77.216–2, leaving only smaller structures to be governed by the situtation described above.

(12) PA Chapters 87 and 90 do not require geotechnical information on embankment and foundation materials for all size dams, as indicated in Finding 14.6 This issue is considered minor because of the coverage of these requirements in MSHA regulations for larger dams and because of the collective applicability of all permitting and performance requirements until regulatory revisions recently proposed by Pennsylvania become effective in October 1982.

(13) As stated in Finding 14.7, PA Chapters 87 and 90 fail to require stability analyses for impoundments which are under the jurisdiction of MSHA (30 CFR 77.216(a)). This deletion is considered minor since MSHA regulations require the submission of a stability analysis through 30 CFR 77.216–2(a)(13) until the Pennsylvania proposed rules containing this requirement become effective in October 1982.

(14) As discussed in Finding 14.8, Pennsylvania's anthracite regulations do not require that the permit application contain maps delineating all boundaries of lands and names of present owners of record of those lands, both surface and subsurface, included in or contiguous to the proposed permit area. This deficiency is minor because Pennsylvania has indicated in its program that it will require this information as part of the permit application for underground mining operations.

(15) As discussed in Finding 14.9, Pennsylvania's underground mining regulations do not require the permit application to contain maps which delineate the location of certain surface features for the entire permit area. This deficiency is minor because Pennsylvania will require the identification of surface features for the subsidence plan area, which in most instances, will require the illustration of all surface features for underground mining operations until the deficiency is corrected.

(16) As discussed in Finding 14.10, Pennsylvania's underground mining regulations do not require that permit applications contain maps showing the location of all buildings within 1,000 feet of the proposed permit area together with identification of the current use of such buildings. This deficiency is minor because Pennsylvania's existing regulations require that the location and use of all buildings be dentified. By lacking the specific distance requirements, it is not anticipated that any adverse impact will occur since few, if any, underground mining operations will be permitted before the deficiency is corrected.

(17) As discussed in Finding 14.12, Pennsylvania's anthracite mining regulations do not require that an application obtain a negative determination with respect to prime farmland when proposing to mine coal in the anthracite region. This deficiency is minor because Pennsylvania's surface mining laws provide the legal authority to require an applicant to obtain a negative determination prior to mining. Furthermore, Pennsylvania has indicated that this requirement will be enforced for anthracite permits pending completion of a prime farmland investigation of the anthracite area or pending further rulemaking.

(18) As discussed in Finding 14.13, Pennsylvania's program does not require the reconstruction of nonconforming structures within six months after issuance of a permit. This deficiency is minor because emergency rulemaking providing for this requirement is expected to be completed by October 1982. Therefore, all nonconforming structures in Pennsylvania will have to be reconstructed within six months after permit issuance.

(19) As discussed in Finding 18.1, Pennsylvania's anthracite regulations do not prohibit bond release for anthracite mining operations until after the soil productivity for prime farmland has been returned to a level of yield comparable with non-mined prime farmland. This deficiency is minor because Pennsylvania's surface mining laws provide the legal authority to prohibit bond release until after soil productivity for prime farmland has been restored. Pennsylvania has indicated that it will utilize its authority to enforce this requirement for anthracite permits until after completion of a prime farmland investigation in the anthracite region or pending further rulemaking.

(20) As discussed in Finding 20.1, Pennsylvania's regulations do not adequately limit the circumstances when additional time beyond the 90-day abatement period may be allowed. This deficiency is minor because Pennsylvania only provides for additional time if it is essential for the achievement of statutory standards of environmental protection. Also, emergency rulemaking to provide for the correction of this deficiency should be concluded by October 1982.

(21) As discussed in Finding 20.2, Pennsylvania's regulations do not provide for mandatory review and suspension or revocation of a permit based on a pattern of violations. This deficiency is minor because Pennsylvania has the legal authority to require the suspension or revocation of a permit based on a pattern of violations, even though the provisions set forth in the Bureau of Mining and Reclamation's Policy and Procedure Manual do not mandate the DER to do so. Further, it is unlikely that any operator will develop a pattern of violations before this policy is corrected.

(22) As discussed in Finding 27.1, the Pennsylvania program does not provide that costs and expenses, including attorney fees, can be awarded for any administrative proceeding. This deficiency is minor because the Commonwealth has agreed to submit a memorandum of law providing for the award of such costs and expenses by law until regulations can be promulgated clarifying existing statutory provisions.

Given the nature of the deficiencies set forth in the Secretary's findings and their magnitude in relation to all the other provisions of the Pennsylvania program, the Secretary of the Interior has concluded that they are minor

deficiencies. Accordingly, the program is eligible for conditional approval under 30 CFR 732.13(i) because:

1. The deficiencies are of such a size and nature as to render no part of the Pennsylvania program incomplete;

2. All other aspects of the program meet the requirements of SMCRA and 30 CFR Chapter VII;

3. These deficiencies, which will be promptly corrected, will not directly affect environmental performance at coal mines;

4. Pennsylvania has initiated and is actively proceeding with steps to correct the deficiencies; and

5. Pennsylvania has agreed, by letter dated June 16, 1982, to correct the regulatory and statutory deficiencies by the dates specified in 30 CFR Part 938.

Accordingly, the Secretary is conditionally approving the Pennsylvania program. The Secretary will take appropriate steps under 30 CFR Part 733 to terminate the State program if provisions correcting the deficiencies are not made by the dates specified in 30 CFR Part 938.

This conditional approval is effective July 31, 1982. Beginning on that date, the Pennsylvania Department of Environmental Resources shall be deemed the regulatory authority in Pennsylvania and all Pennsylvania surface coal mining and reclamation operations on non-Federal and non-Indian lands and all coal exploration on non-Federal and non-Indian lands in Pennsylvania shall be subject to the permanent regulatory program.

On non-Federal and non-Indian lands in Pennsylvania, the permanent regulatory program consists of the state program approved by the Secretary.

The Secretary's approval of the Pennsylvania program relates at this time only to the permanent regulatory program under Title V of SMCRA. The approval does not constitute approval of any provisions related to implementation of Title IV under SMCRA, the abandoned mined land reclamation program. In accordance with 30 CFR Part 884, Pennsylvania may submit a state reclamation plan now that its permanent program has been approved. At the time of submission, all provisions relating to abandoned mined land reclamation will be reviewed by officials of the Department of Interior.

G. Additional Findings

The Secretary has determined that, pursuant to Section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this action.

On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from Sections 3, 4, 6, and 8 of Executive Order 12291 for all actions taken to approve or conditionally approve State regulatory programs, actions or amendments. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

Pursuant to the Regulatory Flexibility Act, Pub. L. 96-354, I have certified that this rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 30 CFR Part 938

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Therefore, 30 CFR Chapter VII is amended by adding a new Part 938 as set forth herein.

Dated: July 12, 1982.

James G. Watt,

Secretary of the Interior.

PART 938—PENNSYLVANIA

Sec.

938.1 Scope.
938.10 State regulatory program approval.
938.11 Conditions of state regulatory program approval.

Authority: Pub. L. 95-87, Surface Mining Control and Reclamation Act of 1977, (30 U.S.C. 1201 et seq.)

§ 938.1 Scope.

This Part contains all rules applicable only within Pennsylvania that have been adopted under the Surface Mining Control and Reclamation Act of 1977.

§ 938.10 State regulatory program approval.

The Pennsylvania state program as submitted on February 29, 1980, as amended on June 9, 1980, as resubmitted on January 25, 1982, and amended on April 9, 1982, and May 5, 1982, is conditionally approved, effective July 31, 1982. Beginning on that date, the Department of Environmental Resources shall be deemed the regulatory authority in Pennsylvania for all surface coal mining and reclamation operations and for all exploration operations on non-Federal and non-Indian lands. Only surface coal mining and reclamation operations on non-Federal and non-Indian lands shall be subject to the provisions of the Pennsylvania permanent regulatory program. Copies of the approved program, together with copies of the letter of the Department of Environmental Resources agreeing to the conditions in 30 CFR 938.11, are available at:

Pennsylvania Department of Environmental Resources, Fulton Bank Building, Tenth Floor, Third and Locust Streets, Harrisburg, Pennsylvania 17120; Telephone: (717) 787-4686

Office of Surface Mining, 100 Chestnut Street, Suite 300, Harrisburg, Pennsylvania 17101; Telephone: (717) 782-4036

Office of Surface Mining, Room 5315, 1100 "L" Street, NW., Washington, D.C. 20240; Telephone: (202) 343-7896

§ 938.11 Conditions of state regulatory program approval.

The approval of the Pennsylvania state program is subject to the Commonwealth revising its program to correct the deficiences listed in this section. The program revisions may be made, as appropriate, to the statutes, the regulations, the program narrative, or the Attorney General's opinion. This section indicates, for the general guidance of the Commonwealth, the component of the program to which the Secretary recommends the change be made.

(a) Termination of the approval found in Section 938.10 will be initiated on May 1, 1983, unless Pennsylvania submits to the Secretary by that date, copies of promulgated regulations, or otherwise amends its program to require (1) that a permit application for coal refuse operations contain a description of archeological sites within adjacent areas of a permit area which is no less effective than 30 CFR 779.12 and in accordance with Section 507(b)(13) of SMCRA; and (2) that a permit application for anthracite mining operations contain a description of the historic land use if the premining use of the land has changed within five years preceding mining which is no less effective than 30 CFR 779.22(a)(1) and in accordance with Section 508(a)(2)(A) of SMCRA.

(b) Termination of the approval found in Section 938.10 will be initiated on May 1, 1983, unless Pennsylvania submits to the Secretary by that date, copies of promulgated regulations, or otherwise amends its program to require (1) that the contents of the "general plan for impoundments associated with surface mining operations be prepared by or under the direction of and certified by a qualified registered professional engineer, or by a professional geologist with assistance from experts in related fields which are no less effective than 30 CFR 870.25(a)(1)(i) and in accordance with Section 507(b)(14) of SMCRA; (2) that the detailed design plan must include any geotechnical investigation,

design and construction requirements impoundments associated with coal refuse operations which are no less effective than 30 CFR 780.25(a)(2)(ii), 780.25(a)(3)(ii) and in accordance with Sections 507(b), 508(a) and 510(b) of SMCRA; (3) that plans for impoundments associated with surface mining and coal refuse operations contain geotechnical information on the type, size, range of engineering properties of the embankment and foundation materials which are no less effective than 30 CFR 780.25 (b) and (c) and in accordance with Sections (507(b), 508(a) and 510(b) of SMCRA; and (4) that a stability analysis, supporting calculations and justification of parameters be prepared for impoundments associated with surface mining and coal refuse operations which meet MSHA criteria (30 CFR 77.216(a)) which are no less effective than 30 CFR 780.25(f) and in accordance with Sections 507(b), 508(a) and 510(b) of SMCRA.

(c) Termination of the approval found in Section 938.10 will be initiated on May 1, 1983, unless Pennsylvania submits to the Secretary by that date, copies of promulgated regulations, or otherwise amends its program to require (1) that the permit application for anthracite underground mining operations contain maps delineating all boundaries of lands and names of present owners of record of those lands, both surface and subsurface, included in or contiguous to the proposed permit area which are no less effective than 30 CFR 783.24(a) and in accordance with Section 507(b)(2) of SMCRA; (2) that the permit application for bituminous underground mining operations contain maps identifying the location of certain surface features for the entire permit area which are no less effective than 30 CFR 783.24, 783.25 and in accordance with Sections 507(b) (13) and (14) of SMCRA; and (3) that the permit application for both anthracite and bituminous underground mining operations contain maps showing the location of all buildings in and within 1,000 feet of the proposed permit area together with identification of the current use of such buildings which are no less effective than 30 CFR 783.24(d) and in accordance with Sections 507(b)(13) and 522(e)(5) of SMCRA.

(d) Termination of the approval found in Section 938.10 will be initiated on August 1, 1983, unless Pennsylvania submits to the Secretary by that date, copies of promulgated regulations, or otherwise amends its program to require (1) that the applicant conduct a prime farmland investigation prior to mining in the anthracite region which is no less effective than 30 CFR 779.27, 783.27 and in accordance with Section 507(b)(16) of SMCRA; (2) that the applicant obtain, with respect to prime farmland, a negative determination when proposing to mine coal in the anthracite region which is no less effective than 30 CFR 786.19(1) and Section 510(d)(1) of SMCRA; and (3) the prohibition of bond release for anthracite mining operations until after the soil productivity for prime farmland has been returned to a level of yield comparable with non-mined prime farmland which is no less effective than 30 CFR 807.12(e)(2)(iii) in accordance with Section 519(c)(2) of SMCRA.

(e) Termination of the approval found in Section 938.10 will be initiated on May 1, 1983, unless Pennsylvania submits to the Secretary by that date, copies of promulgated regulations, or otherwise amends its program to require that the reconstruction of existing non-conforming structures occurs within six months after issuance of a permit without causing significant harm to the environment or public health or safety as provided by 30 CFR 786.21.

(f) Termination of the approval found in Section 938.10 will be initiated on May 1, 1983, unless Pennsylvania submits to the Secretary by that date, copies of promulgated regulations, or otherwise amends its program to require (1) that impoundments associated with surface mining and coal refuse operations comply with the spillway design and factor of safety criteria which is no less effective than 30 CFR 816.46(q) (1) and (2); (2) that impoundments associated with surface mining and coal refuse operations be routinely inspected as provided by 30 CFR 816.46(t) and 816.49(f); (3) that impoundments associated with surface mining and coal refuse operations which met MSHA criteria (30 CFR 77.216(a)) comply with the requirements of U.S. Soil Conservation Technical Release 60, *Earth Dams and Reservoirs*, June 1976, which are no less effective than 30 CFR 816.49(A)(5); and (4) that annual certification reports for ponds, dams and impoundments associated with surface mining and coal refuse operations contain information on monitoring and instrumentation, design versus actual water levels periodically taken throughout the reporting period, existing storage capacity, the presence of fires, and any other aspects of the dam which might affect stability which is no less effective than 30 CFR 816.49(h) and in accordance with Sections 515(b) (4), (8) and (10) of SMCRA.

(g) Termination of the approval found in Section 938.10 will be initiated on May 1, 1983, unless Pennsylvania submits to the Secretary by that date, copies of promulgated regulations, or otherwise amends its program to provide that variances to approximate original contour for surface mining in non-steep slope areas will require complete backfilling, removal of the highwall, improvement of the watershed control of the area, and concurrence of appropriate land use planning agencies and surface owner(s) that the potential use of the affected land will constitute an equal or better economic or public use in accordance with Sections 515(e) (1) and (3) of SMCRA.

(h) Termination of the approval found in Section 938.10 will be initiated on May 1, 1983, unless Pennsylvania submits to the Secretary by that date, copies of promulgated regulations, or otherwise amends its program to require the establishment of a diverse vegetative cover for underground mining operations which is no less effective than 30 CFR 817.111(a) and in accordance with Section 516(b)(6) of SMCRA.

(i) Termination of the approval found in § 938.10 will be initiated on October 1, 1982, unless Pennsylvania submits to the Secretary by that date, a memorandum of law statement providing that costs and expenses, including attorney fees, can be awarded for any administrative proceeding which is no less effective than 30 CFR 840.15. Furthermore, the Commonwealth must submit by August 1, 1983, copies of enacted laws, or other program amendments providing for the award of costs and expenses which is no less effective than 30 CFR 840.15 and in accordance with Section 525(e) of SMCRA.

(j) Termination of the approval found in § 938.10 will be initiated on May 1, 1983, unless Pennsylvania submits to the Secretary by that date, copies of promulated regulations, or otherwise amends its program to (1) limit the circumstances when abatement times in excess of ninety days will be permitted to be the same or similar as 30 CFR 843.12 and no less stringent than Section 521(a)(3) of SMCRA; and (2) provide for mandatory review of permits for a pattern of violations and suspension or revocation of a permit based on a pattern of three or more violations within a 12-month period if committed willfully or through unwarranted failure to comply to be the same or similar as 30 CFR 843.13 and no less stringent than Section 521(a)(4) of SMCRA.

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30 CFR Part 938

Approval of the Abandoned Mine Land Reclamation Plan for the Commonwealth of Pennsylvania Under the Surface Mining Control and Reclamation Act of 1977

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

ACTION: Final rule.

SUMMARY: On November 3, 1980, the Commonwealth of Pennsylvania submitted to OSM its proposed Abandoned Mine Land Reclamation Plan (Plan) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The purpose of this submission is to demonstrate the Commonwealth's intent and capability to assume responsibility for administering and conducting the Abandoned Mine Land Reclamation Program established by Title IV of SMCRA and regulations adopted by OSM (30 CFR Chapter VII, Subchapter R, 43 FR 49932–49952, October 25, 1978). After opportunity for public comment and review of the Plan submission, the Assistant Secretary for Energy and Minerals of the Department of the Interior has determined that the Pennsylvania Abandoned Mine Land Reclamation Plan meets the requirements of SMCRA and the Secretary's regulations. Accordingly, the Assistant Secretary has approved the Pennsylvania Plan.

Final promulgation of this rule has been delayed because Pennsylvania did not have an approved State regulatory program under Title V of SMCRA and was enjoined from submitting its program. Under Section 405(c) of the SMCRA, the Department cannot approve a State abandoned mine land reclamation program unless that State has an approved State regulatory program pursuant to Section 503 of the SMCRA. The Commonwealth of Pennsylvania received such approval on July 12, 1982.

EFFECTIVE DATE: July 31, 1982.

ADDRESSES: Copies of the full text of Pennsylvania Reclamation Plan are available for review during regular business hours at the following locations:

Department of Environmental Resources, Office of Resources Management, Third and Reilly Street, Evangelical Press Building, 2nd Floor, Harrisburg, Pennsylvania 17120

Office of Surface Mining Reclamation and Enforcement, 603 Morris Street, Charleston, West Virginia 25311

Office of Surface Mining Reclamation and Enforcement, Administrative Record Room 5315, 1100 "L" Street, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Don Willen, Chief, Division of Abandoned Mine Land Reclamation, Office of Surface Mining, U.S. Department of the Interior, 1951 Constitution Ave., NW., Washington, D.C. 20240; Telephone (202)343–7951.

SUPPLEMENTARY INFORMATION:

General Background of the Abandoned Mine Land Reclamation Program

Title IV of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), Pub. L. 95–87, 30 U.S.C. 1201 *et seq.*, establishes an abandoned mine land reclamation program for the purpose of reclaiming and restoring land and water resources adversely affected by past mining. This program is funded by a reclamation fee imposed upon the production of coal. Lands and water eligible for reclamation under the program are those that were mined or affected by mining and abandoned or left in an inadequate reclamation status prior to August 3, 1977, and for which there is no continuing reclamation responsibility under State or Federal law.

Each State, having within its borders coal mined lands eligible for reclamation under Title IV of SMCRA, may submit to the Secretary a State reclamation plan demonstrating its capability for administering an abandoned mine land reclamation program. Title IV provides that the Secretary may approve the plan once the State has an approved regulatory program under Title V of SMCRA. If the Secretary determines that a State has developed and submitted a program for reclamation and has the necessary State legislation to implement the provisions of Title IV, the Secretary shall grant the State exclusive responsibility and authority to implement the provisions of the approved plan. Section 405 of SMCRA (30 U.S.C. 1235) contains the requirements for State reclamation plans.

The Secretary has adopted regulations that specify the content requirements of a State reclamation plan and the criteria for plan approval (30 CFR Part 884, 43 FR 49947–49949, October 25, 1978). Under these regulations the Director of the Office of the Surface Mining is required to review the plan, and solicit and consider comments of other Federal agencies and the public. If the State plan is disapproved, the State may resubmit a revised reclamation plan at any time.

Upon approval of the State reclamation plan, the State may submit to OSM, on an annual basis, a grant application for funds to be expended in that State on specific reclamation projects. These funds are necessary to implement the State reclamation plan as approved. The annual grant request is reviewed and approved by OSM in compliance with the requirements of 30 CFR Part 886.

To codify information applicable to individual States under SMCRA, including decisions on State reclamation plans, OSM has established a new Subchapter T to 30 CFR Chapter VII. Subchapter T consists of parts 900 through 950. Provisions relating to Pennsylvania are found in 30 CFR Part 938.

Background on the Pennsylvania Abandoned Mine Land Reclamation Plan Submission

On October 14, 1980, a cooperative agreement between the Pennsylvania Department of Environmental Resources and the Office of Surface Mining was approved. The purpose of this agreement was to assure that information required for the preparation of the Pennsylvania Abandoned Mine Land Reclamation Plan would be assembled.

On October 14 through 17, 1980, the Pennsylvania Department of Environmental Resources held public meetings in Greensburg, Brookville, Lewisburg, and Avoca, Pennsylvania, for comments on the proposed Plan.

On November 3, 1980, the Commonwealth of Pennsylvania submitted its proposed Abandoned Mine Land Reclamation Plan to OSM.

On December 2 and 17, 1980, representatives of the Pennsylvania Department of Environmental Resources met with OSM to discuss amendments and modifications to the proposed Plan.

On October 9, 1981, the Pennsylvania Department of Environmental Resources submitted revised pages to the Pennsylvania Reclamation Plan. These revised pages contain several amendments and modifications to the original Plan resulting from public comments and the discussions between representatives of the Pennsylvania Department of Environmental Resources and OSM. These amendments and modifications are specifically discussed in meeting records of December 2, 1980 and December 17, 1980 and letters of December 14, 1980 from Patrick Boggs, Regional Director to Peter S. Duncan, Deputy Secretary, Resources Management; September 1, 1981, from Robert J. Biggi, Assistant Regional Director, Abandoned Mine Lands Division to Donald E. Fowler, Special Assistant for Land and Water

Resources; and September 24, 1981, from Donald R. Beightol, Chief, State and Indian Reclamation Programs Branch, to David Hogeman, Chief, Office of Surface Mining Management Section. The necessary changes have been incorporated into the Pennsylvania Reclamation Plan and therefore comply with the requirements that the policies and procedures to be followed by the agency be incorporated into the State Reclamation Plan.

Notice of receipt of the submission initiating the Plan review was published November 3, 1980 (45 FR 74943–74944). The announcement requested public comments. A public hearing was held on December 17, 1980, in the 2nd Floor Conference Room of the Fulton Bank Building on Third and Locust Streets in Harrisburg, Pennsylvania. There were no comments presented.

On October 28, 1981, the OSM Regional Director and on December 22, 1981, the Assistant Director for Program Operations and Inspection recommended to the Director that the Assistant Secretary approve the Pennsylvania Reclamation Plan.

The administrative record on the Pennsylvania Plan is available for review during regular business hours at the Office of Surface Mining Reclamation and Enforcement and the Pennsylvania Department of Environmental Resources at the addresses listed above under **"ADDRESSES."**

Assistant Secretary's Findings

1. In accordance with Section 405 of SMCRA the Assistant Secretary finds that Pennsylvania has submitted a Plan for reclamation of abandoned mine lands and has the ability and necessary State legislation to implement the provisions of Title IV of SMCRA.

2. The Assistant Secretary has determined, pursuant to 30 CFR 884.14 that:

(a) The Department of Environmental Resources has the legal authority, policies and administrative structure necessary to carry out the Plan;

(b) The Plan meets all the requirements of 30 CFR Chapter VII, Subchapter R;

(c) The State has an approved regulatory program; and

(d) The Plan is in compliance with all applicable State and Federal laws and regulations.

3. The Assistant Secretary has solicited and considered the views of other Federal agencies having an interest in the Plan, as required by 30 CFR 884.14(a)(2).

These agencies include the U.S. Bureau of Mines (BOM), the U.S. Forest Service (USFS), and the U.S. Fish and Wildlife Service (FWS).

Disposition of Comments

The following comments received on the Pennsylvania Reclamation Plan during the public comment period were considered in the Assistant Secretary's evaluation of the Pennsylvania Plan as indicated.

1. The FWS and the BOM commented that their review could not detect any specific provisions to protect fish and wildlife resources and endangered or threatened species. OSM's response is that the Pennsylvania Plan does consider fish and wildlife values in its project ranking and selection matrix (p. 22). In addition, endangered and threatened species must be considered in meeting the requirements of the National Environmental Protection Act (NEPA). The State indicates (p. 23) that it will utilize the NEPA compliance procedures proposed by the U.S. Office of Surface Mining. For these reasons, the OSM determines that there are sufficient provisions to protect fish and wildlife and endangered and threatened species in the Pennsylvania Plan.

2. The BOM commented that the various references to reclamation priorities with regard to program objectives do not always seem to carry the same interpretation. This issue was raised with the Pennsylvania Department of Environmental Resources (DER). The DER stated that it is their intent to fund highest priority projects first. The discussions on pages 9 and 19 are designed to show that after a few years the known priority one projects may be reduced to a level that some funds can be applied to lower priorities. Moreover, in funding a priority one project, related lesser priority problems may also be treated. For example, material to fill an open pit presenting an extreme danger to the public may be taken from a refuse pile which may be a priority three type problem by itself. The discussions are also intended to show that a lower priority can be raised through deterioration of the situation, and also that priority one projects will keep cropping up even after the funding has extended to the lower priorities. The DER has in its October 9, 1981 submission clarified its discussions of priority reclamation projects to demonstrate that projects will be funded in order of the priorities listed on pages 7 and 8. Discussions of lower priority and acid mine drainage projects on pages 9 and 19 have also been revised to show that this commitment will prevail in funding decisions.

3. The BOM commented that statement No. 3 (p. 20) is taken from 30 CFR 874.13(a)(1) and should include "as stated in 874.13." The DER has clarified the statement in its submission of October 9, 1981.

4. The BOM commented that statement No. 5 (p. 20) seems to indicate that research and development projects do not have to be technically feasible. The DER's response, with which the Office agrees, is that research and development projects may not be proven technically feasible before implementation. The purpose of the research and development project could be to demonstrate the technical feasibility of the project approach.

5. The BOM raised the question of how statement No. 7 (p. 20): "Normally, post construction evaluation will be conducted to measure the success of the project" is to be interpreted. The DER indicates that there is a final inspection on every project at completion and a warranty inspection one year after completion. The statement on evaluation refers to evaluation beyond these basic requirements. On some projects, there is no need for a continuing evaluation effort.

6. The BOM commented that Exhibit II–C–3 (pp. 26–29) erroneously lists November 7 as the date of publication of the official notice to the public of the Pennsylvania Plan. The DER has revised the Exhibit to show October 7 as the correct date.

7. The BOM commented that in Exhibit II (p. 11–1), p. 23 is erroneously listed as a reference for public participation. The DER has changed the page number to 34. Similarly, on p. 16 there is an erroneous reference to 30 CFR 885. The DER has changed the reference to 30 CFR 886.

8. The BOM commented that in Exhibit II some counties having noncoal related abandoned mine land problems were not notified through a countywide newspaper of the hearings on the Plan. The Office rejects this comment since sufficient major statewide and regionwide papers were contacted to insure legally adequate statewide coverage.

9. The BOM commented that not enough description is given on p. 31 regarding techniques to be used to solve abandoned mine land problems. The Office has determined that further description is not necessary because each abandoned mine land project will contain a detailed description of the procedures to be used in relieving the problems before the project is funded.

10. The BOM commented that "daylighting" and "ponding" should be added to the techniques listed on p. 31. The DER has indicated that the list on p.

31 was not intended to be all inclusive and that the introductory sentence has been changed to so indicate.

11. The BOM commented that the abbreviation "PH&S" should be written out to distinguish it from a chemical interpretation. The DER has changed "PH&S" to "Public Health and Safety" where there is a likelihood of confusion in the wording.

12. The BOM commented that the Plan does not totally address the problems of past mining as required by 30 CFR 884.13(f)(iv). Specifically, problems of iron ore, quarries, slate, and gravel mining are not discussed. The Office does not consider it necessary for Pennsylvania to address noncoal abandoned mine land problems at this time since noncoal problems will not be considered for the first three years, which is the time period the Plan covers.

13. The USFS commented that the Pennsylvania Bureau of Forestry should be placed on the State Reclamation Committee. The DER has included the Bureau of Forestry as a coordinating agency on the State Reclamation Committee.

Additional Findings

The Office of Surface Mining has examined this rulemaking under Section 1(b) of Executive Order No. 12291 (February 17, 1981), and has determined that, based on available quantitative data, it does not constitute a major rule. The reasons underlying this determination are as follows:

1. Approval will not have an effect on costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; and

2. Approval will not have 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 rulemaking has been examined pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, and the Office of Surface Mining has determined that the rule will not have a significant economic effect on a substantial number of small entities. The reason for this determination is that approval will not have demographic effects, direct costs, information collection and recordkeeping requirements, indirect costs, nonquantifiable costs, competitive effects, enforcement costs or aggregate effects on small entities.

The Assistant Secretary has determined that the Pennsylvania Abandoned Mine Land Reclamation Plan will not have a significant effect on the quality of the human environment because the decision relates only to policies, procedures, and organizations of the Commonwealth's Abandoned Mine Land Reclamation Program. Therefore, under the Department of Interior Manual DM 516.2.3(A)(1), the Assistant Secretary's decision on the Pennsylvania Plan is categorically excluded from the National Environmental Policy Act's requirements. As a result, no environmental assessment or environmental impact statement (EIS) has been prepared on this action. It should be noted that a programmatic EIS was prepared by OSM in conjunction with the implementation of Title IV. Also an environmental analysis or an EIS will be prepared for the approval of grants for abandoned mine land reclamation projects under 30 CFR Part 886.

The good cause for making this rule effective upon date of publication is: (1) The Office of Surface Mining wants to minimize the time between the approval of Title V regulatory programs and Title IV State reclamation programs; and (2) grants are pending approval of the Title IV plan and OSM wishes to expedite grant assistance to States to initiate needed reclamation work as required by the Act.

List of Subjects in 30 CFR Part 938

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

J. Steven Griles,

Acting Director, Office of Surface Mining.

Daniel N. Miller, Jr.,

Assistant Secretary—Energy & Minerals.

PART 938—PENNSYLVANIA

Therefore, Part 938 is amended by adding § 938.20 to read as follows:

§ 938.20 Approval of the Pennsylvania Abandoned Mine Land Reclamation Plan.

The Pennsylvania Abandoned Mine Land Reclamation Plan as submitted on November 3, 1980, is approved. Copies of the approved Plan are available at the following locations:

Department of Environmental Resources, Office of Resources Management, Third and Reilly Street, Evangelical Press Building, 2nd Floor, Harrisburg, Pennsylvania 17120

Office of Surface Mining Reclamation and Enforcement, 603 Morris Street, Charleston, West Virginia 25311

Office of Surface Mining Reclamation and Enforcement, Administrative Record Room 5315, 1100 "L" Street, N.W., Washington, D.C. 20240.

(Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977, (30 U.S.C. 1201 et seq.))

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July 30, 1982

Part IV

Department of Commerce

Patent and Trademark Office

Revision of Patent and Trademark Fees

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Parts 1 and 2

[Docket No. 2714-129]

Revision of Patent and Trademark Fees

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Final rule.

SUMMARY: The Patent and Trademark Office is amending the rules of practice in patent and trademark cases to establish fee-related procedures and fees in amounts which would comply with the requirements of either Public Law 96-517 or H.R. 6260, dependent upon which is effective on October 1, 1982. This action is necessary at this time in view of the requirements to establish fees and procedures contained in Public Law 96-517 and the requirements which would also be present under H.R. 6260 enacted as a Public Law. This final rule is being issued in two sections with the first section relating to patent fees and the second section relating to trademark fees. This final rule is also being issued in alternative form so that the proper fees and procedures will become effective on October 1, 1982, under either Public Law 96-517 or the Public Law which results from enactment of H.R. 6260. Thus, if Public Law 96-517 remains fully effective on October 1, 1982, the rule changes contained herein which are common to Public Law 96-517 and H.R. 6260, as well as those specific to Public Law 96-517, contained in Alternative A of each section, will become effective. Upon enactment of H.R. 6260 as a Public Law prior to October 1, 1982, the rule changes contained herein which are common to Public Law 96-517 and H.R. 6260, as well as those specific to H.R. 6260, contained in Alternative B of each section, will become effective. Thus, the intended effect of this action is to adopt rules which will be effective on October 1, 1982, establishing patent and trademark fees and procedures regardless of whether Public Law 96-517 remains fully effective or whether H.R. 6260 has been enacted.

EFFECTIVE DATE: October 1, 1982. However, prior to October 1, 1982, the Department of Commerce will publish a document confirming the amendments under either Alternative A or Alternative B set forth herein depending upon enactment of H.R. 6260 as a Public Law.

FOR FURTHER INFORMATION CONTACT:

As to the patent rules contact: R. Franklin Burnett by telephone at (703) 557-3054 or by mail addressed to the Commissioner of Patents and Trademarks, Attention: R. Franklin Burnett, Room 3-11A13, Washington, D.C. 20231.

As to the trademark rules contact: Miss Maude Williams by telephone at (703) 557-2222 or by mail addressed to the Commissioner of Patents and Trademarks, Attention: Miss Maude Williams, Room 3-11C17, Washington, D.C. 20231.

SUPPLEMENTARY INFORMATION:

Section I—Revision of Patent Fees

Background: A notice of proposed rulemaking was published in the **Federal Register** on June 28, 1982, at 47 FR 28042-28063 and in the *Official Gazette* on June 29, 1982, at 1019 O.G. 57-120. An oral hearing was held on July 9, 1982. Fourteen written letters and statements were submitted. Five persons testified at the oral hearing. Full consideration has been given to all of the letters, statements, and testimony.

Objectives of Rule Changes: These rule changes are designed primarily to implement the Patent and Trademark Office fees which are provided for by Public Law 96-517, or which would be set in, or provided for by, the Public Law resulting from H.R. 6260.

Public Law 96-517

Public Law 96-517 presently requires that fees be established by the Commissioner for the processing of patent applications from filing through issuance or abandonment, for maintaining a patent in force, and for providing all other services and materials related to patents. Public Law 96-517 requires that by October 1, 1982, fees for the processing of patent applications, other than design patents, be set by the Commissioner to recover in aggregate 25 per centum of the estimated average cost to the Office of such processing. Similarly, fees for processing design patents are to be set to recover in aggregate 50 per centum of the estimated average cost to the Office of such processing. By October 1, 1982, fees for all other services or materials related to patents are to be set to recover the estimated average cost to the Office of performing the service or furnishing the material.

Public Law 96-517 also requires that fees be set for maintaining all patents filed on or after December 12, 1980, other than design patents, in force. It also requires that maintenance fees must recover 25 per centum of the estimated cost to the Office of processing patent applications, other than design patent applications, by the fifteenth fiscal year following December 12, 1980. Under Public Law 96-517, the maintenance fees are due 3½, 7½, and 11½ years after grant of the patent.

Public Law 96-517 is presently effective and this rule change is designed to implement the fee provisions of that law if it remains fully effective on October 1, 1982. The changes which will become effective on October 1, 1982, under Public Law 96-517 (without enactment of H.R. 6260) are (1) the rule changes common to Public Law 96-517 and H.R. 6260, and (2) the rule changes under only Public Law 96-517, which appear in Alternative A.

H.R. 6260

On June 8, 1982, the House of Representatives passed H.R. 6260. H.R. 6260 would establish a number of statutory fees which the Commissioner is required to charge. Among the more significant of these are fees for filing a patent application, issuing, and maintaining a patent in force. The fees for filing a patent application and issuing a patent would be set forth in section 41(a) of Title 35, United States Code, as proposed to be amended by H.R. 6260. Certain other fees, such as appeal fees, the fee for filing a disclaimer, and fees for filing petitions seeking to revive an abandoned application and for extensions of time, would also be set in section 41(a) of Title 35, United States Code. Section 41(b) of Title 35, United States Code, as proposed to be amended by H.R. 6260, would set forth the fees for maintaining a patent in force. These fees would be due 3½, 7½, and 11½ years after grant of the patent or within a grace period of six months thereafter. Section 41(c) of Title 35, United States Code, as proposed to be amended by H.R. 6260, would provide for the acceptance of maintenance fees after the statutory grace period under certain conditions and with certain effects.

H.R. 6260 would also provide for the reduction by 50 per centum in the fees paid under section 41(a) and (b) of Title 35, United States Code, by independent inventors, small business concerns, and nonprofit organizations, who meet the definitions established, and to be established therefor.

Section 41(d) of Title 35, United States Code, as proposed to be amended by H. R. 6260, would also provide that the Commissioner establish fees for all other processing, services, or materials related to patents which are not covered in section 41(a)-(c) of Title 35, United States Code, to recover the estimated

average cost to the Office of the processing, services, or materials.

The changes which will become effective on October 1, 1982, *upon enactment of H.R. 6260 as a Public Law prior to October 1, 1982,* are (1) the rule changes common to Public Law 96–517 and H.R. 6260, and (2) the rule changes under H.R. 6260, which appear in Alternative B. H.R. 6260 includes other provisions which would be the subject of other proposals for rulemaking.

Discussion of Significant Changes

This rulemaking places into the appropriate sections of Title 37, Code of Federal Regulations, the various fees which are due on filing, during the pendency of a patent application, or during the term of a patent. A number of significant changes are made in order to implement either Public Law 96–517 or H.R. 6260.

Under H.R. 6260, and Alternative B of this rulemaking, fees under section 41 (a) and (b) of Title 35, United States Code, would be reduced by 50 per centum for independent inventors, small business concerns, and nonprofit organizations. H.R. 6260 would give the Commissioner authority to establish regulations defining independent inventors and nonprofit organizations. H.R. 6260 defines small business concerns by reference to section 3 of the Small Business Act and regulations established by the Small Business Administration. This rulemaking, in Alternative B, implements the fee system which would be established by H.R. 6260 and lists all applicable fees. Alternative A does not include fees relating to independent inventors, small business concerns, and nonprofit organizations since such fees are not authorized by Public Law 96–517.

Another significant change relates to fees established under Public Law 96–517 and which would be established by H.R. 6260 for petitions for extensions of time to take actions required by the Commissioner in an application. H.R. 6260 would establish a fee of $50 for filing a petition for a first one-month extension of time, an additional fee of $100 for filing a petition for a second one-month extension of time which would expire two months after the end of the time period set for taking action, and an additional fee of $200 for filing a petition for a third one-month extension of time which would expire three months after the end of the time period set for taking action. A fourth one-month extension with an additional fee of $200 could be requested if additional time was available under the statute. Under H.R. 6260, the Commissioner would have authority to issue regulations providing when, within any maximum time period permitted by statute, petitions for extensions of time, and the required fee therefor, may be filed. The Commissioner would also not be precluded by H.R. 6260 from waiving the fee for filing a petition for an extension of time where the Office extends the period due to equity considerations or sufficient cause. This rulemaking implements the extension of time provisions of H.R. 6260 by permitting applicants in the majority of situations to file the petition for an extension of time and the fee at the time of and along with the filing of the response for which a non-statutory or shortened statutory time period has been set. This will reduce the amount of paperwork involved and should significantly reduce the expenses of applicants and the Office since resources now devoted to the separate processing of petitions for extensions of time will no longer be required to be expended thereon. The fees are set to provide a proper control on the number of extensions of time given. The same procedures relating to extensions of time which would be established under Alternative B and H.R. 6260 will also be established under Alternative A and Public Law 96–517. Thus, whether the rules are effective on October 1, 1982, under Public Law 96–517 and Alternative A, or under H.R. 6260 and Alternative B, the same procedures for obtaining extensions of time will be in effect with the only differences being in the amount of the fees.

Another significant change relates to the implementation of the fee for revival of an unintentionally abandoned application which would be authorized under H.R. 6260. H.R. 6260 would establish two different fees for filing petitions with different standards to revive abandoned patent applications. The same two fees would be applicable to petitions to accept the delayed payment of the fee for issuing a patent. Under H.R. 6260, a fee of $50 is established in § 1.17(l) for filing a petition for revival under Sections 133 or 151 of Title 35, United States Code, in accordance with standards presently in effect where the delay resulting in the abandonment, or the delay in payment of the issue fee, was unavoidable. Under H.R. 6260, a fee of $500 is established in § 1.17(m) for filing each petition for revival, or for acceptance of the delayed payment of an issue fee, where the abandonment or the failure to pay the issue fee was unintentional. A mere statement that abandonment was unintentional plus the $500 fee is all that is required in this case for this purpose. Under H.R. 6260 and this rulemaking an applicant would have a choice of which petition and fee to file seeking revival depending on the circumstances involved. The changes discussed in this paragraph cannot be made effective without enactment of H.R. 6260 as a Public Law.

The rulemaking also provides for fees for filing certain petitions which have, in some cases, heretofore, been decided without a charge. These fees are established under Public Law 96–517 and are provided for by the amendment of Section 41(d) of Title 35, United States Code, which would be introduced by H.R. 6260. Under Section 41 of Title 35, United States Code, as amended by Public Law 96–517 or as it would be amended by H.R. 6260, fees are authorized for the processing of various petitions desiring certain actions to be taken regarding patent applications, for the recording of assignments, for reexamination of patents, and for the processing of international applications under the Patent Cooperation Treaty. In general, fees are not being required for those petitions which are supervisory in nature. For example, where applicants are petitioning from an allegedly improper action of the examiner, it is felt that such petitions should be processed and decided without charge since they are not asking for any special privilege but are attempting to correct an allegedly incorrect Office holding. The changes discussed in this paragraph will be in effect on October 1, 1982, whether the rules become effective under Public Law 96–517 and Alternative A, or under H.R. 6260 and Alternative B.

Many of the fees currently set forth in § 1.21 are being increased to reflect the cost of currently performing that service.

Discussion of Specific Sections Changed

The sections changed are grouped in this proposal under three different categories. Those changes which are common to Public Law 96–517 and H.R. 6260 appear first and are numbered 1–54. Those changes which relate only to Public Law 96–517 appear as Alternative A and are numbered 55–62. Those changes which are dependent upon enactment of H.R. 6260 appear as Alternative B and are numbered 63–71. The changes common to Public Law 96–517 and H.R. 6260 will become effective on October 1, 1982, whether or not H.R. 6260 is enacted as a Public Law. The changes contained in Alternative A will become effective on October 1, 1982, if H.R. 6260 does not become a Public Law prior to that date. Upon enactment of H.R. 6260 as a Public Law prior to October 1, 1982, Alternative B will

become effective on October 1, 1982, in which case Alternative A will not become effective.

Rule Changes Common to Public Law 96–517 and H.R. 6260

The following sections are changed, effective October 1, 1982, under either Public Law 96–517 or H.R. 6260:

Section 1.11 is amended to change the reference for the reexamination request fee to § 1.20(c).

Section 1.12 is amended to break the section into four paragraphs. Paragraph (a) maintains current practice but adds specific reference to § 1.19(a)(5) which sets the cost of copies. Paragraph (b) maintains current wording except for inserting "patent" after "abandoned" and changing "his" to "applicant's". Paragraph (c) includes new language relating to obtaining copies of assignment records not open to the public. Access can be obtained only with the applicant's permission or by petition with fee to the Commissioner for such access in particular situations. No change in the showing required by petition to obtain access is intended by this amendment. Paragraph (d) contains present language except for reference to the specific rule which sets forth the charge for time consumed in making assignment searches.

New paragraph (e) of § 1.14, sets forth the two ways in which access can be obtained to patent applications which are not open to the public. The two ways are (1) by petitioning and paying the petition fee and approval of the Commissioner of such petition and (2) by obtaining written approval from the applicant.

New § 1.19 provides fees for copies of various documents supplied by the Office. The fees have been grouped into 5 paragraphs. New paragraph (a) provides fees for uncertified copies. Subparagraphs (a) (1) and (2) indicate the prices of printed patent copies. Subparagraph (a)(3) provides a single fee for a copy of an application, as filed, for each 50 pages, or fraction thereof. This practice should make it much easier to determine the amount of the required fee. Subparagraph (a)(4) sets a single fee for a copy of each 100 pages, or fraction thereof, of a patent file wrapper. Subparagraph (a)(5) provides for a charge of 30 cents per page for copies of Office records other than those covered by subparagraphs (a) (1) through (4). Subparagraph (a)(6) provides a fee for a microfiche copy of a microfiche.

Paragraph (b) of § 1.19 sets fees for certified copies of Office documents. Subparagraph (b)(1) sets a fee for certifying Office records. Subparagraph (b)(2) provides a single fee for searching assignment records, preparing an abstract of the title and certification thereof. Subparagraph (b)(3) provides a fee for comparing copies not prepared by the Office prior to certification in order to provide basis for certification. Paragraph 1.19(c) sets the fees for subscribing to all of the patents issued annually in particular subclasses. This charge is in addition to the normal copy charge under § 1.19(a) (1) and (2). Paragarph 1.19(d) sets the fee for providing patent copies to libraries under 35 U.S.C. 13. Paragraph 1.19(e) provides fees for lists of United States patents in particular subclasses.

Section 1.21 is amended to contain those miscellaneous fees which do not relate to the topics covered in §§ 1.16–1.20. All of the fees in § 1.21 are established under the authority given the Commissioner by 35 U.S.C. 41(d) as amended by Public Law 96–517 or as proposed in H.R. 6260. Paragraph 1.21(a) establishes fees for admission to the examination for registration to practice, registration, reinstatement and issuance of certificates of good standing of patent attorneys and agents. Subparagraph 1.21(b)(1) sets forth the fee for establishing and reinstating deposit accounts, while subparagraph 1.21(b)(2) sets forth the fee due when the balance at the end of each month is below $40. Paragraph 1.21(c) sets the fee for filing a disclosure document. Paragraph 1.21(d) sets the fee for renting a delivery box. Paragraph 1.21(e) sets the fee for an international-type search report. Although all national applications now receive what is known as an international-type search, if a report thereof is desired in addition to an Office action, the fee set in § 1.21(e) is required. Paragraph 1.21(f) sets a fee for searching Office records for purposes not otherwise specified. Paragraph 1.21(g) sets the fee for tokens for copying machines. Paragraph 1.21(h) sets the fee for recording assignments, agreements, and other documents. Paragraph 1.21(i) sets forth the fee for publishing a notice of availability of a patent for licensing or sale in the *Official Gazette*. Paragraph 1.21(j) sets the fee for the Office providing a duplicate or replacement of a permanent Office user pass. Paragraph 1.21(k) indicates that the Commissioner may specify charges for items and services not otherwise specified at a level to recover the actual cost of providing such an item or service by the Office.

Section 1.24 is revised so that the denomination of coupons sold by the Office will be in more convenient amounts.

Section 1.25 is amended to provide, in paragraph (a), a reference to the fee for establishing a deposit account and a service charge if the end of the month balance is below $40.00. Paragraph (b) is amended by revising the present sentence to refer to post-issuance fees and by adding a second sentence which would specifically provide in the regulations for the possibility of an applicant giving a general authorization to charge any fee due under §§ 1.16–1.18 in a particular application to a deposit account during the entire pendency of the application. This general authorization would not apply after the patent issues, e.g., to maintenance fees. The last sentence of paragraph (b) permits fees during reexamination to be charged to a deposit account by filing an authorization with the request for reexamination.

Section 1.26 is amended to provide in paragraph (a) that a withdrawal of a request for an oral hearing will not entitle appellant to a refund. Paragraph 1.26(a) raises the amount which will not be refunded without specific request from fifty cents to one dollar. Paragraph (b) relating to refunds of international search fees during subsequent examination of a national application is deleted since such refunds are now covered by reductions in the appropriate fees paid under § 1.445 rather than solely by direct refunds. Paragraph (c) is amended to bring the spelling of "requester" into conformance with that used in other sections of the regulations.

Section 1.45 is amended to provide in paragraphs (b) and (c) for a petition and petition fee to be filed to correct misjoinder of inventorship situations in pending applications. The fee will cover the additional time required by the Office to process such applications.

Section 1.47 is amended to provide for petitions and fees for filing applications signed by less than all inventors, or a person not the inventor.

Section 1.51 is amended to refer to the filing fees in new § 1.16 and to add a new paragraph (c) indicating that applicants may file authorizations to charge fees required under any of §§ 1.16–1.18 to deposit accounts.

Section 1.52 is amended to add a reference in paragraph (a) to new paragraph (d). New paragraph (d) provides in the rules for filing an application in a language other than English if a verified English translation and fee under § 1.17(k) are timely submitted.

Section 1.55 is amended in paragraph (b) to require a petition and fee for processing priority papers submitted after the issue fee is paid.

Section 1.75 is amended to add a reference to § 1.16 and a sentence referring to the fee for multiple dependent claims set forth in § 1.16(d).

Section 1.85 is amended to delete the sentence relating to mounting of informal drawings.

Section 1.86 is removed to delete the reference to the Office draftsman making drawings since such service is no longer available.

Section 1.102 is amended by revising paragraph (a) and adding new paragraphs (c) and (d). Revised paragraph (a) refers to paragraph (b) and added paragraphs (c) and (d). Paragraph (c) requires a petition but no fee where the basis for the petition to make special is the applicant's age or health or the impact of the invention on improving the environment or conservation of energy. Paragraph (d) requires a petition and the fee set forth in § 1.17(i) for petitions to make special on grounds other than those above.

Section 1.103 is amended in paragraph (a) to provide for filing a petition and the fee set forth in § 1.17(i) for a suspension of action except that no fee would be required where the reason for the suspension is the fault of the Patent and Trademark Office. Paragraph (b) is amended to clearly indicate that suspensions are directed to actions by the Office and not responses by the applicant.

Section 1.104, paragraph (d) is amended to change the fee reference to correspond to § 1.21(e).

Section 1.134 is added to indicate that unless applicant is notified of any non-statutory or shortened statutory period in an Office action, a maximum period for response of six months is allowed.

Section 1.135 is amended to provide that if no response is filed within the time set in the Office action under § 1.134 or as it may be extended under § 1.136, the application will be abandoned unless an Office action indicates that another consequence, such as disclaimer, will take place. Paragraph (b) is amended to include a reference to paragraph (a). Paragraph (c) is amended to add that applicant's reply must be a bona fide attempt to respond as well as to advance the case to final action in order for applicant to be given an opportunity to supply any omission.

Section 1.136 is amended to revise the title and provide for two distinct procedures to extend the period for action or response in particular situations. The procedure which is available for use in a particular situation will depend upon the circumstances. Paragraph 1.136(a) permits an applicant to file a petition for extension of time and a fee as in § 1.17 (a), (b), (c), or (d) up to four months after the end of the time period set to take action except (1) where prohibited by statute, (2) in interference proceedings, or (3) where applicant has been notified otherwise in an Office action. The petition and fee can be filed prior to or with the response. The filing of the petition and fee will extend the time period to take action up to four months dependent on the amount of the fee paid except in those circumstances noted above. Paragraph 1.136(a) will effectively reduce the amount of paperwork required by applicants and the Office since the extension will be effective upon filing of the petition and payment of the appropriate fee and without acknowledgment or action by the Office and since the petition and fee can be filed with the response. Paragraph (b) provides for requests for extensions of time upon a showing of sufficient cause when the procedure of paragraph (a) is not available. Although the petition and fee procedure of § 1.136(a) will normally be available within 4 months after a set period for response has expired, an extension request for cause under § 1.136(b) must be filed during the set period for response. The sentence in paragraph (b) relating to who may grant an extension under paragraph (b) is eliminated thereby providing additional flexibility to designate persons to act on requests under paragraph (b). Extensions of time in interference proceedings are governed by § 1.245.

Section 1.165, paragraph (b) is amended to delete therefrom the last sentence which refers to a fee for mounting copies. Since little or no need has been found for this provision in the rules, it is deleted.

Section 1.171, as amended, adds a reference to § 1.19(b)(2) which sets forth the fee for title reports.

Section 1.177 is amended to require a petition and fee as set forth in § 1.17(i) where it is desired that divisions of a reissue issue on different dates.

Section 1.181 is amended to indicate in paragraph (d) that if a petition to the Commissioner is filed under the provisions of a section which requires a petition fee and the required fee is not paid, the petition will be dismissed. The amendment to paragraph (g) deletes the reference to § 1.183.

Section 1.182 is amended to add a sentence requiring any petition filed under this section to be accompanied by the petition fee set forth in § 1.17(h).

Section 1.183 is amended to specifically refer to the inherent authority of the Commissioner to suspend or waive the rules at the Commissioner's initiative. The amendment also indicates the Commissioner's authority to designate others to act for the Commissioner in appropriate circumstances. The rule language also requires the payment of the petition fee set forth in § 1.17(h) if a petition to suspend or waive the rules is filed.

Section 1.191 is amended to change the fee reference for filing a notice of appeal to § 1.17(e) and delete the word "primary" since some actions which are subject to appeal are not made by a "primary" examiner.

Section 1.192, paragraph (a), is amended to refer to the fee for filing an appeal brief set forth in § 1.17(f). The present language requiring a showing of sufficient cause for extensions of time for filing the brief and an indication that an oral hearing is desired at the time of filing the brief are removed from paragraph 1.192(a). Under the amendment to paragraph 1.192(a), the provisions of § 1.136 will apply to extensions of time for filing the brief. The time for requesting an oral hearing is now set in § 1.194(b).

Section 1.194 is amended to revise paragraphs (b) and (c) to refer to the fee for oral hearing in § 1.17(g) and to indicate in paragraph (b) that any request for an oral hearing must be made within one month after the mailing date of the examiner's answer.

Section 1.197, paragraph (b), is amended to modify the last sentence relating to extensions of time to make the provisions of § 1.136 applicable thereto. Paragraph 1.197(b) is also amended to limit requests for rehearing, reconsideration or modification of a Board decision to one. This will not significantly change present practice since such requests are now required to be filed within thirty days from the date of the original decision.

Section 1.231, paragraph (a)(1), is amended to change the reference to the fee for filing a request for reexamination to § 1.20(c).

Sections 1.245 and 1.246 are amended to indicate that the provisions of § 1.136 do not apply to time periods in interferences.

Section 1.263 is amended to add a reference to the fee for filing a disclaimer contained in § 1.20(d).

New § 1.268 is added to provide a rule relating to the filing of interference settlement agreements. The rule generally follows 35 U.S.C. 135(c) and provides for filing of petitions and fees in paragraphs 1.268 (b) and (c).

Section 1.292, paragraph (a), is amended to require the payment of the fee set forth in § 1.17(j) with any petition for the institution of public use proceedings.

Section 1.304, paragraph (a), is amended to provide for extension of the time period for filing an appeal or civil action to be subject to the provisions of § 1.136 and refer to the Court of Appeals for the Federal Circuit rather than to the Court of Customs and Patent Appeals.

Section 1.311 is amended to designate the present section as paragraph (a) and revise it in several ways. Paragraph (a) indicates that the notice of allowance will be sent to the correspondence address as indicated under § 1.33. The issue fee (§ 1.18) is indicated as being due 3 months from the date of mailing of the notice of allowance. Paragraph 1.311(b) permits an authorization to be filed either before or after the mailing of the notice of allowance to charge the issue fee to a deposit account.

Section 1.312 is amended to divide the section into two paragraphs and require a petition and payment of the fee under § 1.17(i) for any amendment filed after payment of the issue fee.

Section 1.313 is amended to provide in paragraph (a) clear basis for the Office withdrawing applications from issue on its own initiative or upon petition by applicant accompanied by the petition fee set forth in § 1.17(i). Any accompanying amendment must comply with the requirements of § 1.312. Paragraph (b) clarifies when an application will be withdrawn from issue after assignment of the issue date and patent number.

Section 1.314 is amended to revise the wording to eliminate reference to a portion of the issue fee and adds reference to the possibility that an application in which the issue fee was paid can be withdrawn from issue under § 1.313 or the issuance thereof deferred pursuant to a petition by the applicant and the payment of the petition fee under § 1.17(i).

Section 1.321 is amended to include references in both paragraphs (a) and (b) to the statutory disclaimer fee in § 1.20(d) and delete the reference to § 1.21.

Section 1.324 is amended to include reference to the fee in § 1.20(b) and change the word "application" to "petition".

Section 1.331, paragraph (a), is amended to add a new sentence which gives the citation of the fee for recording assignments and to indicate that instruments recorded on the Government register under Part 7 of Title 37, Code of Federal Regulations, do not require payment of such fee.

Section 1.332 is amended to refer to the fee in § 1.21(h) for recording an assignment.

Section 1.334 is amended to divide the rule into three paragraphs and also require an address of the assignee so that correspondence can be directed to the assignee if required. New paragraph (c) provides for filing a petition and the fee set in § 1.17(i) seeking to have the patent issue to the assignee where such assignment has not been recorded at the time the issue fee is paid.

Section 1.341, paragraph (h), is amended to refer to the fee set forth in § 1.21(a)(2) for registration of an attorney or agent.

Section 1.347 is amended to add a sentence referring to the fee set forth in § 1.21(a)(3) for reinstatement of an attorney or agent.

Section 1.445 is amended to increase the PCT transmittal fee and search fee to a level needed to cover the cost of performing the required functions. Paragraph 1.445(a)(2) is also amended to provide, in effect, for a reduction in the international search fee due to the United States Patent and Trademark Office as an International Searching Authority where a corresponding United States national application with fee has been filed. In addition, paragraph 1.445(a)(4) is amended to credit the national fee required under § 1.16(a)–(d) where an international search fee has been paid on the corresponding international application to the United States as an International Searching Authority. Where the amount of the credit is in excess of that required for the national fee a request for a refund of the excess under § 1.446(b) may be filed at the time of paying the national fee. The supplemental search fee for inventions in addition to the first, where lack of unity of invention has been found, is reduced since the present fee is more than is required to cover the costs. The national fee amount is the same as the national application filing fees in § 1.16(a)–(d).

Section 1.446(b) is revised to permit a refund of a portion of the search fee to the extent set forth in § 1.445(a)(4), if such refund is requested at the time of paying the national fee.

Section 1.451 is amended in paragraph (b) to revise the citation of the fees for a certified copy.

Section 1.510 is amended to cite the section which sets forth the fee for requesting reexamination. There is no change in the amount of this fee.

Alternative A—Rule Changes Under Only Public Law 96–517

The following sections will become effective under only Public Law 96–517 on October 1, 1982, unless H.R. 6260 is enacted as a Public Law prior to that date:

New §1.16 relates to application filing fees. Paragraph (a) sets a basic filing fee of $150 which will be required in all original patent applications. The term "original" as used in the regulations means "non-reissue". An "original" application can be a first filing, a division, a continuation, or a continuation-in-part application. Paragraph 1.16(b) provides for an additional fee of $15 for each independent claim in excess of 3 in an original application. New paragraph 1.16(c) provides for an additional fee of $5 for each claim in excess of 20, whether independent or dependent. A multiple dependent claim is considered to be that number of claims to which direct reference is made. Also, any claim which refers to a multiple dependent claim is considered for fee calculation purposes to be the number of claims to which direct reference is made in the multiple dependent claim. Paragraph 1.16(d) provides for a new fee of $50 in each application which contains one or more multiple dependent claims. The note following paragraph 1.16(d) is intended to clearly indicate that the applicant, attorney, or agent may pay any additional fees required under paragraphs (b), (c) and (d) of §1.16, or cancel such claims without payment of such additional fees, either at the time of filing or by the time a response is due to any notice of fee deficiency mailed by the Office. If the fees are not paid or the claims cancelled by the end of the period set for response to the notice of fee deficiency, the application will be held abandoned. Paragraph 1.16(e) is reserved under this Alternative (Alternative A). New paragraph 1.16(f) provides for a filing fee of $63.00 for a design application.

Paragraphs 1.16(g) and (h) establish the filing fees for plant and reissue applications.

Paragraphs 1.16(i) and (j) set forth the additional claim fees required in reissue applications based on claims in excess of those in the original patent.

New §1.17 relates to patent application processing fees which are normally due during the time a patent application is pending. New paragraphs (a), (b), (c) and (d) provide for the payment of an extension fee for obtaining an automatic extension of time upon filing a petition as provided for in §1.136(a). The extension fee can be paid during the period for which an extension of time to respond is desired, or after the original period for response has expired, provided that any maximum statutory period which may apply has not expired. The fees set forth in §1.17 are the total fees required under §1.136(a) for the periods indicated and any extension fee previously paid to

extend a particular period is credited toward the total extension fee required. Paragraph (e) sets forth the fee for filing a notice of appeal to the Board of Appeals. Paragraph (f) sets forth the fee for filing an appeal brief by appellant. Paragraph (g) provides for a new fee for requesting an oral hearing before the Board of Appeals. Paragraphs (h) and (i) set forth fees which will be required with petitions to the Commissioner under those sections of the regulations which specifically indicate that such petition fees are required. The amounts of the fees are set at two levels based on the degree of complexity of the petitions in order to recover the estimated average cost to the Office of processing the petitions. Paragraph (j) provides for a fee to be paid with any petition for institution of a public use proceeding to cover the estimated average cost of such a proceeding. Paragraph (k) sets forth a new fee for processing an application filed with a non-English language specification. The fee will cover the additional processing costs involved in such applications. New paragraph (l) incorporates into the regulations the fee which will be charged for filing a petition to revive or to accept late payment of the issue fee where the delay was unavoidable.

New §1.18 sets the amount of the issue fees pursuant to the authority contained in Public Law 96–517. New paragraph (a) establishes an issue fee of $250.00 for all original and reissue patents except for designs and plants. New paragraph (b) sets the amount of the issue fee for a design patent at a uniform $88.00 even though terms of 3½, 7, or 14 years may be requested. New paragraph (c) establishes the issue fee for a plant patent.

New §1.20 sets fees for various post-issuance functions performed by the Office. New paragraph (a) sets forth a fee for providing a certificate of correction of an applicant's mistake. New paragraph (b) sets a fee to accompany a petition to correct inventorship in a patent under §1.324. New paragraph (c) transfers the $1,500.00 fee for requesting reexamination from present §1.21(x) to this new section. New paragraph (d) provides for a fee for filing a disclaimer under §1.321. Maintenance fees required by Public Law 96–517 are placed in this section. Specific maintenance fees, which are required by Public Law 96–517, for those patents resulting from applications filed on and after December 12, 1980 and up to the date of enactment of H.R. 6260 are established at this time in paragraphs 1.20(e)–(g). The fees in paragraph 1.20(e)–(g) are only set at one level because they are established under Public Law 96–517 and are not subject to reduction for small entities, i.e., independent inventors, small business concerns, and nonprofit organizations. The details implementing the payment of maintenance fees are not being established at this time.

Section 1.137, as amended, designates the existing section as paragraph (a), adds a reference to the new fee under §1.17(l) for a petition for revival where the delay which resulted in abandonment was unavoidable, and states when the showing that the delay was unavoidable must be verified. Paragraph 1.137(b) is reserved under this Alternative (Alternative A). Paragraph (c) requires that any petition for revival under paragraphs (a) or (b) of §1.137 be promptly filed and that a terminal disclaimer, equivalent to the period of abandonment of the application, be filed with any petition filed more than six months after the date of abandonment.

Section 1.155 is amended to refer in paragraph (a) to §1.18(b) which sets forth the issue fee for a design application as being $88.00. Paragraph 1.155(b), as amended, includes a reference to the fee for delayed payment of the issue fee set forth in §1.17(l) where the delay in payment was unavoidable and states when showings that the delay was unavoidable must be verified. Paragraph 1.155(c) is reserved under this Alternative (Alternative A). Paragraph 1.155(d) is added to require a terminal disclaimer equivalent to the period of abandonment of the application where any petition under this section is not filed within six months of the date of abandonment.

Section 1.316 is amended to clarify the language and to delete reference to the fee specified in the notice of allowance. Paragraph (b) is amended to provide for petitions for revival with the fee in proposed §1.17(l) where the delay in payment was unavoidable and to state when showings that the delay was unavoidable must be verified. Paragraph (c) is reserved under this Alternative (Alternative A). Paragraph (d) is added to require a terminal disclaimer equivalent to the period of abandonment of the application where any petition under this section is not filed within six months of the date of abandonment.

Section 1.317 is amended to implement the statutory provisions of 35 U.S.C. 41(a) with regard to petition fees for patents lapsed for failure to pay the remaining balance of the issue fee. Paragraph (a) is amended to show that it applies only to patents in which the issue fee was paid prior to October 1, 1982. Issue fees paid on or after that date will be in accordance with §1.18. Paragraph (b) is amended to provide for petitions with the fee in §1.17(l) where the delay in payment was unavoidable and to state when showings that the delay was unavoidable must be verified. Paragraph(c) is reserved under this Alternative (Alternative A). Paragraph (d) is added to require a terminal disclaimer equivalent to the period of lapse of the patent where any petition under this section is not filed within six months of the date of lapse.

Alternative B—Rule Changes Under H.R. 6260

The following sections will become effective on October 1, 1982, upon enactment of H.R. 6260 as a Public Law prior to that date:

Section 1.16 in Alternative B establishes in the regulations those statutory fees which would be charged by the Commissioner for filing patent applications under H.R. 6260. Section 1.16 also includes additional filing fees set in 35 U.S.C. 41(a)(1) to cover the cost of examining complexities presented by certain applications, e.g., applications containing more than a specified number of claims and any application containing a multiple dependent claim. Section 1.16 also provides that fees will be charged when the number of claims is increased above the specified number or when a multiple dependent claim is first presented, whether on filing or at a later point in processing.

Under 35 U.S.C. 41(a) as it would be amended by H.R. 6260, the filing fee for an original patent, except in design or plant cases, is $300. In addition, on filing or on presentation at any other time, $30 is due for each claim in independent form which is in excess of three, $10 is due for each claim (whether independent or dependent) which is in excess of twenty, and $100 is due for each application containing a multiple dependent claim. The latter fee is a one-time charge per application due the first time a multiple dependent claim is presented for examination. For the purpose of computing fees, a multiple dependent claim as referred to in section 112 of Title 35, United States Code, or any claim depending therefrom, is considered as separate dependent claims in accordance with the number of claims to which reference is made.

The fees in § 1.16 are reduced by 50 per centum for applications filed by small entities, i.e., independent inventors, nonprofit organizations and small business concerns, in accordance with H.R. 6260. Therefore, two fees are listed under each paragraph.

New § 1.16 relates to application filing fees. Paragraph (a) sets a basic filing fee of $300 which will be required in all original patent applications. The term "original as used in the regulations means "non-reissue". An "original" application can be a first filing, a division, a continuation, or a continuation-in-part application. Paragraph 1.16(b) provides for an additional fee of $30 for each independent claim in excess of 3 in an original application. New paragraph 1.16(c) provides for an additional fee of $10 for each claim in excess of 20, whether independent or dependent. A multiple dependent claim is considered to be that number of claims to which direct reference is made. Also, any claim which refers to a multiple dependent claim is considered for fee calculation purposes to be the number of claims to which direct reference is made in the multiple dependent claim. Paragraph 1.16(d) provides for a new fee of $100 in each application which contains one or more multiple dependent claims. The note following paragraph 1.16(d) is intended to clearly indicate that the applicant, attorney, or agent may pay any additional fees required under paragraphs (b), (c) and (d) of § 1.16, or cancel such claims without payment of such additional fees, either at the time of filing or by the time a response is due to any notice of fee deficiency mailed by the Office. If the fees are not paid or the claims canceled by the end of the peirod set for response to the notice of fee deficiency, the application will be held abandoned. New paragraph 1.16(e) establishes the amount of the surcharge for filing the basic filing fee or oath or declaration on a date later than the filing date of the application. This fee is being established at this time, but will only be made effective when the statutory authority for the late filing of the fee or the oath or declaration becomes effective under 35 U.S.C. 111, as it would be amended by H.R. 6260. New paragraph 1.16(f) provides for a filing fee of $125.00 for a design application.

Paragraphs 1.16(g) and (h) incorporate into the regulations the filing fees for plant and reissue applications.

Paragraphs 1.16(i) and (j) set forth the additional claim fees required in reissue applications based on claims in excess of those in the original patent.

New § 1.17 relates to patent application processing fees which are normally due during the time a patent application is pending. New paragraphs (a), (b), (c) and (d) provide for the payment of an extension fee for obtaining an automatic extension of time upon filing a petition as provided for in § 1.136(a). The extension fee can be paid during the period for which an extension of time to respond is desired, or after the original period for response has expired, provided that any maximum statutory period which may apply has not expired. The fees set forth in § 1.17 are the total fees required under § 1.136(a) for the periods indicated and any extension fee previously paid to extend a particular period is credited toward the total extension fee required. Paragraph (e) sets forth the fee for filing a notice of appeal to the Board of Appeals. Paragraph (f) sets forth the fee for filing an appeal brief by appelant. Paragraph (g) provides for a new fee for requesting an oral hearing before the Board of Appeals. Paragraphs (h) and (i) set forth fees which will be required with petitions to the Commissioner under those sections of the regulations which specifically indicate that such petition fees are required. The amounts of the fees are set at two levels based on the degree of complexity of the petitions in order to recover the estimated average cost to the Office of processing the petitions. Paragraph (j) provides for a fee to be paid with any petition for institution of a public use proceeding to cover the estimated average cost of such a proceeding. Paragraph (k) sets forth a new fee for processing an application filed with a non-English language specification. The fee will cover the additional processing costs involved in such applications. New paragraph (1) incorporates into the regulations the fee which will be charged for filing a petition to revive or to accept late payment of the issue fee where the delay was unavoidable. New paragraph (m) incorporates into the regulations the fee which will be established in 35 U.S.C. 41(a)7, as amended H.R. 6260, to be charged for a petition for the revival of an unintentionally abandoned application for patent or for the unintentionally delayed payment of an issue fee.

Since paragraphs 1.17(h), (i), (j) and (k) are established under the authority given the Commissioner under 35 U.S.C. 41(d) as it would be amended by H.R. 6260, only one level of fee is set. H.R. 6260 only provides for the reduction of fees charged to small entities of those fees established in 35 U.S.C. 41(a) and (b).

New § 1.18 sets the amount of the issue fees specified by H.R. 6260. New paragraph (a) establishes an issue fee of $500.00 for all original and reissue patents except for designs and plants. New paragraph (b) sets the amount of the issue fee for a design patent. New paragraph (c) sets forth the issue fee for a plant patent. All fees in § 1.18 will be reduced by 50 per centum for small entities.

New § 1.20 sets fees for various post-issuance functions performed by the Office. New paragraph (a) sets forth a fee for providing a certificate of correction of an applicant's mistake. New paragraph (b) sets a fee to accompany a petition to correct inventorship in a patent under § 1.324. New paragraph (c) transfers the $1,500.00 fee for requesting reexamination from present § 1.21(x) to this new section. New paragraph (d) provides for a fee for filing a disclaimer under § 1.321. Maintenance fees required by Public Law 96–517 and which would be set in H.R. 6260 are placed in this section. Specific maintenance fees, which are required by Public Law 96–517, for those patents resulting from applications filed on and after December 12, 1980 and up to the date of enactment of H.R. 6260 are being established at this time in paragraphs 1.20(e)–(g). New paragraphs 1.20(h)–(j) incorporate into the regulations the maintenance fees which would be provided in 35 U.S.C. 41(b) by H.R. 6260. The fees in paragraphs 1.20(a)–(c) are only set at one level because they are established under 35 U.S.C. 41(d). The fees in paragraphs 1.20(e)–(g) are only set at one level because they are established under Public Law 96–517 and are not subject to reduction for small entities. The details implementing the payment of maintenance fees are not being established at this time.

Section 1.66 is amended to provide for the use of an apostille of a foreign official to attest to oaths or affirmations made in foreign countries in accordance with 35 U.S.C. 115 and 261, as amended by H.R. 6260.

Section 1.137, as amended, designates the existing section as part of paragraph (a), adds a reference to the new fee under § 1.17(l) for a petition for revival where the delay which resulted in abandonment was unavoidable, indicates that the petition must be promptly filed, and states when the showing that the delay was unavoidable must be verified. New paragraph 1.137(b) provides for filing a statement and a fee under § 1.17(m) for revival of an application which was unintentionally abandoned, and also indicates when such petitions can be filed. Paragraph (c) requires that any petition for revival under paragraph (a) of § 1.137 be promptly filed and that a terminal disclaimer, equivalent to the period of abandonment of the

application, be filed with any petition under paragraph (a) filed more than six months after the date of abandonment.

Section 1.155 is amended to refer in paragraph (a) to § 1.18(b) which sets forth the issue fee for a design application. Paragraph 1.155(b), as amended, includes a reference to the fee for delayed payment of the issue fee set forth in § 1.17(l) where the delay in payment was unavoidable, indicates that the petition must be promptly filed, and states when showings that the delay was unavoidable must be verified. New paragraph 1.155(c) provides for acceptance of the late payment of the issue fee where the delay was unintentional upon petition and payment of the fee set forth in § 1.17(m). New paragraph 1.155(c) also indicates when such petitions can be filed. Paragraph 1.155(d) is added to require a terminal disclaimer equivalent to the period of abandonment of the application where petition under paragraph (b) of § 1.155 is not filed within six months of the date of abandonment.

Section 1.316 is amended to implement the statutory provisions of 35 U.S.C. 41(a) with regard to petition fees for revival of applications abandoned for failure to pay the issue fee. Paragraph (b) is amended to provide for petitions for revival with the fee in § 1.17(l) where the delay in payment was unavoidable, to indicate that the petition must be promptly filed, and to state when showings that the delay was unavoidable must be verified. Paragraph (c) is added to provide for petitions for revival with the fee in § 1.17(m) where the delay was unintentional. New paragraph (c) also indicates when such petitions can be filed. Paragraph (d) is added to require a terminal disclaimer equivalent to the period of abandonment of the application where a petition under paragraph (b) of § 1.316 is not filed within six months of the date of abandonment.

Section 1.317 is amended to implement the statutory provisions of 35 U.S.C. 41(a) with regard to petition fees for patents lapsed for failure to pay the remaining balance of the issue fee. Paragraph (a) is amended to show that it applies only to patents in which the issue fee was paid prior to October 1, 1982. Issue fees paid on or after that date will be in accordance with § 1.18. Paragraph (b) is amended to provide for petitions with the fee in § 1.17(l) where the delay in payment was unavoidable, to indicate that the petition must be promptly filed, and to state when showings that the delay was unavoidable must be verified. Paragraph (c) is added to provide for petitions with the fee in § 1.17(m) where the delay was unintentional. New paragraph (c) also indicates when such petitions can be filed. Paragraph (d) is added to require a terminal disclaimer equivalent to the period of lapse of the patent where a petition under paragraph (b) of § 1.317 is not filed within six months of the date of lapse.

Response to Comments on the Rules

Specific comments were received on a number of the sections. All of the comments, including the written comments and the oral testimony, were considered in adopting the changes set forth herein.

Written comments were received from three patent law groups and eleven individuals. The three patent law groups were (1) the American Patent Law Association whose membership includes several thousand lawyers involved in the practice of law before the U.S. Patent and Trademark Office; (2) the Patent, Trademark and Copyright Section of the Virginia State Bar; and (3) the Patent, Trademark and Copyright Law Section of the Bar Association of the District of Columbia.

Oral comments were presented at the hearing on behalf of two patent law groups and by 3 individuals on their own behalf.

These comments appear below along with responses thereto.

Comments received relating to §§ 1.9, 1.27 and 1.28 and the forms of Part 3 are not discussed in substance in this rule change since additional time for submitting written comments is provided until August 13, 1982. All comments presented to these rules will be discussed in a later rule promulgation.

Comment: One person argued that it is unreasonable to require fees to lengthen a shortened statutory period.

Reply: A shortened statutory time is provided for by statute. The shortened period helps reduce patent pendency time and speed the disclosure of technology and information about patent rights. Many applicants can reply within the present three month shortened period which has been in effect for over fifteen years. The fee for extending the time provides a positive method for applicants to obtain an extension of time while still expediting the prosecution of their applications.

Comment: Another person commented that H.R. 6260 should be rejected in that the fee levels are too high.

Reply: The consideration of the merits of H.R. 6260 is not before the Office in this rule change.

Comment: Three patent bar groups and two individuals presented comments relating to the effect of the new extension of time fees in § 1.17 and the effect thereof on the current practice of granting an automatic one-month extension of time if a timely first response to a final rejection is filed by the applicant.

Reply: The Office plans to terminate the automatic one-month extension of time practice on October 1, 1982. It is felt that the extensions of time which are readily available under §§ 1.17 and 1.136 will meet the needs of applicants. The amount of the fees required to obtain an extension will be the same for periods of response before and after final rejection.

Comment: One suggestion was made to permit the filing of an appeal without the appeal fee where the office has not acted on a timely response after final rejection by applicant.

Reply: Such a procedure is not possible under the provisions of H.R. 6260 since it calls for the appeal fee "On filing an appeal" in § 41(a)6.

Comment: Two comments were received requesting that the rules be changed to make the due date for paying the fee for an oral hearing on appeal after the examiner's answer on appeal.

Reply: A change in the rules has been made to provide that the fee for an oral hearing is due no later than one month after the date of mailing of the examiner's answer.

Comment: Two comments were received requesting that no charge for revival of an abandoned application be made where the abandonment resulted from the non-receipt of an Office action by the applicant.

Reply: It is present Office practice to remail any Office action which is not received at applicant's correspondence address and start anew the response period. This procedure will continue in the future under the revised rules.

Comment: Three patent bar groups and two individuals indicated that the proposed deletion of the refund provisions due to PCT search reports in § 1.26(b) and § 1.446(b) would make the cost of filing under the Patent Cooperation Treaty prohibitively high and does not recognize the benefit of an earlier search on a corresponding application.

Reply: In view of these comments, proposed § 1.445(a)(2) and (4) and § 1.446(b) have been amended to provide a credit of $250 where there is a corresponding application.

Comment: One individual requested that the multiple dependent claim practice set forth in § 1.75(c) be changed

to permit one multiple dependent claim to refer to another multiple dependent claim as permitted under European practice.

Reply: This suggestion cannot be adopted since it is contrary to 35 U.S.C. 112 and cannot therefore be changed by rule.

Comment: One suggestion was made to change "official" to "Office" in § 1.135(b).

Reply: The suggestion has been adopted.

Comment: One suggestion was made to allow refund of the oral hearing fee if an oral hearing is not held.

Reply: This suggestion was not adopted since such refund is not appropriate in view of the fact that the fee is stated to be "for requesting an oral hearing" and not the actual conduct thereof.

Comment: Three patent bar groups raised the question as to whether an applicant would be permitted to revive an unintentionally abandoned application under § 1.137(b) after having been unsuccessful in the unavoidable approach under § 1.137(a) and suggested that this be made clear when the proposed rules are promulgated.

Reply: Yes, an applicant under certain conditions could use § 1.137(b) after having been unsuccessful in the unavoidable approach under § 1.137(a).

Comment: Several comments related to the possibility of reviving applications unintentionally abandoned up to 15 years ago.

Reply: In view of the comments received, § 1.137(b) is being implemented to provide only for the revival of applications which were unintentionally abandoned for a reasonable but limited period of time. This should create no substantial problems in regard to intervening rights situations. It would permit some greater flexibility than that originally proposed but should have no significant effect on the current case backlog, pendency or number of interferences pending.

Comment: One comment was received pointing out that the availability of an "unintentional abandonment" revival under § 1.137(b) should not result in stricter holdings in "unavoidable abandonment" revival petitions under § 1.137(a).

Reply: The Office plans to continue to use the current critieria used to decide petitions to revive applications unavoidably abandoned.

Comment: One written comment questioned whether the Commissioner has statutory authority to revive uninentionallly abandoned applications.

Reply: If Congress did not intend the Commissioner to have such authority there would have been no reason to establish fees in Section 41(a) 7 in H.R. 6260. The legislative history of H.R. 6260, House Report No. 97–542 (Committee on the Judiciary), also makes the Congressional intent clear. The provisions in H.R. 6260 relating to unintentional abandonment are substantive in addition to setting the fee.

Comment: One letter questioned what is intended by the statement in § 1.137(b) that the Commissioner may require additional information where there is a question whether the abandonment was unintentional.

Reply: Additional information would be required only where there is an indication that the abandonment was intentional, for example, where an express abandonment has been filed. The record should be clear how such an express abandonment was unintentional if the petition is to be granted.

Comment: One comment raised the question as to whether in a petition to revive on grounds that the delay was unavoidable under § 1.137(a), it would be sufficient that a registered attorney's statement be submitted which merely recites facts as related to him or her by another.

Reply: Statements must be made, where possible, by the person having direct personal knowledge of the facts. No change in the "showing" required or the persons making them is intended in such petitions. The rule merely clarifies that a statement by a registered attorney or agent need not be in the form of an oath or declaration.

Comment: One comment suggested that § 1.317 be changed to provide for the situation where there was a lapse in a patent due to the unintentional delay in paying a balance of issue fee due.

Reply: Section 1.317 has now been changed to provide for this lapse situation.

Comment: Three patent bar groups and one individual indicated that a full credit of the amount equal to the international search fee be made where both a U.S. national and international search are made by the United States Patent and Trademark Office.

Reply: While a complete credit is not considered proper in view of additional processing work (including searching) required in the second application, a credit of $250 has been provided in revising § 1.445(a) (2) and (4).

Comment: One person commented that the term "patent" should be inserted after "abandoned" in § 1.12(b).

Reply: The suggestion has been adopted.

Discussion of Significant Differences Between Proposed and Final Rules

A number of other changes which have been made as a result of the comments received and further review of the proposed rulemaking are identified below.

Implementation of the changes to § 1.9, new §§ 1.27 and 1.28, and the deletion of Part 3 are being deferred for further comments by August 13, 1982. See the discussion below.

Subparagraph (a)(5) of § 1.19 has been changed from that proposed by referring to subparagraphs (1) through (4) rather than (3) and (4) in order to clarify that copies of patents cannot be ordered at the rate set in subparagraph (a)(5). Instead, copies of patents must be ordered under paragraphs (a) (1) and (2) of § 1.19.

Section 1.24 has been changed from that proposed to provide for the sale of 40-cent coupons. Coupons in this denomination may be useful in view of the charge of forty cents for a printed copy of a registered mark in § 2.6(m) of Alternative A of the trademark rules.

Sections 1.137, 1.155 and 1.316 have been changed from that proposed in Alternative B to further specify the conditions under which unintentionally abandoned applications can be revived.

Sections 1.192 and 1.194 have been changed from that proposed so as to allow a request for an oral hearing and the payment of the required fee therefor to be made one month after the date of the examiner's answer. Previously, appellant was required to indicate a desire for an oral hearing at the time of filing the brief. The sections will now permit appellant to consider the examiner's answer before deciding whether to request an oral hearing and pay the required fee.

Section 1.317 has been changed in Alternative B to provide for the situation where there was a lapse in a patent due to the unintentional delay in paying a balance of issue fee due.

Section 1.445(a) (2) and (4) have been changed from that proposed to provide for a reduction in the international search fee where there have been a corresponding United States national applicaiton and a credit to the national fee where an international search fee has been paid in a corresponding international applicaiton and the international search has been made by the United States Patent and Trademark Office.

Section 1.446(b) has been changed from that proposed to permit a refund of a portion of the search fee to the extent set forth in § 1.445(a)(4), if such refund is

requested at the time of paying the national fee.

Implementation of Patent Fee Revision

The effective date of the patent fee revisions contained in this rulemaking is October 1, 1982. The changes which will become effective on October 1, 1982, under Public Law 96–517 (without enactment of H.R. 6260) are (1) the rule changes common to Public Law 96–517 and H.R. 6260, and (2) the rule changes under only Public Law 96–517, which appear in Alternative A. The changes which will become effective on October 1, 1982, upon enactment of H.R. 6260 as a Public Law prior to October 1, 1982, are (1) the rule changes common to Public Law 96–517 and H.R. 6260, and (2) the rule changes under H.R. 6260, which appear in Alternative B. The rule changes common to Public Law 96–517 and H.R. 6260 will become effective on October 1, 1982, whether or not H.R. 6260 is enacted as a Public Law prior to October 1, 1982. The rule changes in Alternative A will become effective on October 1, 1982, unless H.R. 6260 is enacted as a Public Law prior to October 1, 1982. If Alternative A becomes effective on October 1, 1982, the rule changes in Alternative B will not become effective on October 1, 1982. Upon enactment of H.R. 6260 as a Public Law prior to October 1, 1982, the rule changes in Alternative B will become effective on October 1, 1982, in which case the rule changes in Alternative A will not become effective on October 1, 1982.

Any fee which is due and payable on or after October 1, 1982, must be paid in the amount and in accordance with the procedures contained in this rulemaking. For purposes of determining the amount of the fee to be paid, the date of mailing indicated on a proper Certificate of Mailing under § 1.8 will be considered to be the date of receipt in the Office. In order to ensure clarity in the implementation a discussion of the implementation of specific sections is set forth below:

Implementation of Specific Sections

The various sections will be implemented in the manner set forth below:

§ 1.6 National application filing fees.

Any national patent application filing fees paid on or after October 1, 1982, must be paid in the amounts set forth in this section. Any additional fees which become due under § 1.16 in pending applications on or after October 1, 1982, or which have not been paid prior to October 1, 1982, must be paid in the amounts set forth in this section even though the application was filed prior to October 1, 1982. For example, if an application filed prior to October 1, 1982, is amended on or after October 1, 1982, to include a multiple dependent claim for the first time, the fee set forth in § 1.16(d) must be paid.

The surcharge in § 1.16(e) of Alternative B is being established at this time, but will only be made effective when the statutory authority for the late filing of the fee or the oath or declaration becomes effective under 35 U.S.C. 111, as it would be amended by H.R. 6260. The statutory authority for the late filing of the fee or the oath or declaration becomes effective six months after enactment of H.R. 6260 as a Public Law.

§ 1.17 Patent application processing fees.

Any patent application processing fees paid on or after October 1, 1982, must be paid in the amounts set forth in this section.

The extension fees which must accompany a petition for an extension of time become effective on October 1, 1982, and apply to any application for which the period for responding, i.e., taking action, expires on October 1, 1982, or thereafter. If a response or action by the applicant was due before October 1, 1982, and was not filed timely or an extension of time until October 1, 1982, or thereafter, was not obtained, then § 1.136(a) cannot be used to obtain an extension. *Any response or action required before October 1, 1982, cannot have its time extended by using § 1.136(a).* If one or more previous extensions have been granted prior to October 1, 1982, extending the time for taking action until October 1, 1982, or thereafter, the fees which are due for additional extensions under § 1.136(a) will be as set forth in § 1.17(a)–(d) under either Alternative A or B. For example, under Alternative A, if a first one-month extension has been granted prior to October 1, 1982 extending the time for taking action to October 15, 1982, a date on or after October 1, 1982, response within one month after the October 15 date to which the time for taking action has been extended would require a second month extension fee of $100. The $50 fee for the extension of the first month to October 15, 1982, would not be required since it had been granted before October 1, 1982. Response within two months after the October 15 date to which the time for taking action has been extended would require a $300 fee. Similarly, response within three months after the October 15 date to which the time for taking action has been extended would require a $500 fee. However, *in no case may an applicant respond later than the maximum time period set by statute.*

Other examples of the fees to be charged under Alternative A are contained in the following table:

Number of extensions(s) prior to Oct. 1, 1982	Total fee for response after date to which time for taking action has been extended as of Oct. 1, 1982		
	Within		
	1st month	2d month	3d month
1	$100	$300	$500
2	200	400	(1)
3	200	(1)	(1)

[1] If extensions for four months have previously been granted, no additional extensions are possible under § 1.136(a) but may be available under § 1.136(b) in certain limited situations.

The previous practice of extending the shortened statutory period an additional month upon the filing of a timely first response to a final rejection is being discontinued effective with any first response to a final rejection filed on or after October 1, 1982. Applicants can obtain additional time for response after that date by paying the appropriate fee for the same. An object of the previous practice, as expressed in § 714.13 of the Manual of Patent Examining Procedure, was to obviate the necessity for appeal or filing a continuing application merely to gain time to consider the examiner's position in reply to a response timely filed after final rejection. Under § 1.136(a) the object of the previous practice can be achieved without continuing the previous practice. Thus, under § 1.136(a) an applicant can file a timely first response to a final rejection within the initial period without having to file an appeal or a continuing application if the examiner's response is not received prior to the expiration of the initial period for response. If the timely first response places the application in condition for allowance no additional response and no extension fee from applicant is required. If the examiner's advisory action indicates the timely first response did not place the application in condition for allowance the applicant may then consider the examiner's position to determine whether further prosecution is desirable. If further prosecution is not desired the application can be abandoned without further response or expense. If further prosecution is desired, the applicant can petition and pay the necessary fee to extend the time to the extent appropriate up to the maximum permitted by statute. The availability of

this flexibility under § 1.136(a) eliminates the necessity for the previous practice. Further, under H.R. 6260 extensions of time would be granted in most instances by virtue of the payment of fees rather than without fees as in the previous practice. The elimination of the previous practice after final rejection is thus consistent with the letter and spirit of H.R. 6260.

After an applicant has petitioned and paid the extension fees of $550 for response within the fourth month pursuant to § 1.136(a), any further extensions which are permitted under the statute must be obtained under § 1.136(b).

A petition for extension of time under § 1.136(a) may incorporate by reference a previously filed response without including an additional copy of the response in circumstances where the response was received late and the petition is filed to extend the time so that the response will be considered timely.

The appeal fees set forth in § 1.17(e)–(g) are due for notices of appeal or briefs filed, or requests for oral hearings filed, on or after October 1, 1982. If more than one appeal occurs in an application, the fees are due for each notice of appeal, each brief, and each request filed for an oral hearing as long as a decision on the merits by the Board of Appeals resulted from the first notice of appeal, brief, and request for an oral hearing. If the examiner reopens prosecution in the application after appeal and prior to the decision by the Board of Appeals then the fee for the notice of appeal, brief, and request for an oral hearing will apply to a later appeal which does result in a decision by the Board of Appeals. No refund of any appeal fees is permitted since such are due on filing or on requesting an oral hearing. No fee is required for a reply brief.

The fees for petitions set forth in § 1.17(h)–(j) and (l) apply to any such petition filed on or after October 1, 1982. The fee set forth in §1.17(m) of Alternative B would apply, with enactment of H.R. 6260 prior to October 1, 1982, to petitions (1) for revival of an unintentionally abandoned application or (2) for the unintentionally delayed payment of the fee for issuing a patent. Section 1.137(b) of Alternative B would apply to applications unintentionally abandoned by failure to prosecute, e.g., failure to respond to an Office action. Sections 1.155(c) and 1.316(c) of Alternative B would apply to applications in which the payment of the fee for issuing a patent is unintentionally delayed. These sections would be implemented, with enactment of H.R. 6260 prior to October 1, 1982, by making them effective as to any applications which would be covered by the literal language of the sections. In addition, and for a transition period between October 1, 1982, and December 31, 1982, a petition to revive an unintentionally abandoned application would be granted if (i) the application received a decision on a petition to revive the application on or after October 1, 1981, and before July 30, 1982, or (ii) a petition was filed or renewed on or after October 1, 1981, and before July 30, 1982, provided in the case of both (i) and (ii) that a petition to revive was filed within one year of the date of abandonment. The dates in question were chosen so as to permit this remedial provision to be given as wide an application as possible to benefit applicants whose applications have previously been unintentionally abandoned, but who could not meet the previous requirements for a showing that the delay resulting in the abandonment was unavoidable. The dates were also chosen to prevent an applicant whose application has been abandoned for an unduly long period from attempting to take advantage of this new provision, possibly to the detriment of individuals or companies who had begun to make, use, or sell the subject matter of the application after the date of abandonment of the application. By using these dates the possibility of reviving the application of an applicant who has, in effect, abandoned the invention under 35 U.S.C. 102(c) is minimized. Implementing these sections in the manner set forth would be appropriate and proper in view of the legislative history of H.R. 6260, contained in House Report No. 97–542 (Committee on the Judiciary), which indicates that the Commissioner can establish time limits within which petitions to revive or to accept late payment of issue fees can be filed. Thus, it is entirely proper to limit such petitions in the manner set forth in order to prevent abuses from occuring. To ensure that abuses do not occur, §§ 1.137(b), 1.155(c), 1.316(c), and 1.317(c) specifically indicate that waivers of the time periods involved will not be considered via petitions under § 1.183.

The fee set forth in § 1.17(k) is required for any application filed on or after October 1, 1982, with a specification in a non-English language.

§ 1.18 Patent issue fees.

Any patent issue fee paid on or after October 1, 1982, must be paid in the amounts set forth in this section even if the notice of allowance was mailed prior to October 1, 1982, and indicates different amounts due. If the issue fee is paid prior to October 1, 1982, any balance of issue fee due must be paid in accordance with § 1.317.

§ 1.19 Document supply fees.

The document supply fees set forth in this section will apply to all orders and requests received by the Patent and Trademark Office on or after October 1, 1982.

§ 1.20 Post-issuance fees.

The post-issuance fees set forth in § 1.20(a)–(d) apply to any petitions, requests, or actions filed on or after October 1, 1982. The amounts of the maintenance fees are included in § 1.20.

Maintenance fees will be required for any patent actually applied for on or after December 12, 1980, whether or not the patent is entitled to the benefit of an earlier filing date under 35 U.S.C. 120 or a right of priority under 35 U.S.C. 119. For reissue patents, the controlling date would be the filing date of the original patent. For example, maintenance fees would only be required where the application for the original patent was filed on or after December 12, 1980. As to patents resulting from international applications filed under the Patent Cooperation Treaty, maintenance fees will be required on all patents resulting from international applications having PCT filing dates on or after December 12, 1980.

The details implementing payment of the maintenance fees are not being established at this time since such fees will not be due for some time and additional consideration of the problems thereof is required.

§ 1.21 Miscellaneous fees and charges.

The miscellaneous fees and charges set forth in this section will apply to all orders and requests received by the Patent and Trademark Office on or after October 1, 1982.

§ 1.445 International application filing and processing fees.

Any international application filing and processing fees paid on or after October 1, 1982, must be paid in the amounts set forth in this section.

Implementation Of Certain Sections Deferred For Further Comments

In view of the comments and the recommendations received at the hearing on July 9, 1982, the period for written comments on § 1.9(c), (d), (e), and (f), and on §§ 1.27 and 1.28, has been extended until August 13, 1982, (see 47 FR 32458, July 27, 1982).

Comments received at the hearing on July 9, 1982, expressed the view that there is no necessity to publish final rules on § 1.9(c), (d), (e), and (f), and on §§ 1.27 and 1.28, by August 2, 1982, and that further time for consideration and comment was necessary. Persons commenting stated a belief that the pressure of time does not apply to §§ 1.27 and 1.28 as it does apply to the fee rulemaking. Accordingly, the period for written comments on these sections is extended until August 13, 1982. After receiving written comments by August 13, 1982, the changes to § 1.9 and proposed §§ 1.27 and 1.28 will be adopted as final rules with such modifications as are found to be appropriate after review of the comments. These rule changes, with any appropriate modifications thereof, must become effective on October 1, 1982, with enactment of H.R. 6260 prior to October 1, 1982. Accordingly, adoption of the changes to §1.9 and new §§ 1.27 and 1.28 is being deferred at this time to permit additional written comments by August 13, 1982. However, these rule changes will be adopted, with any appropriate modifications, as soon as possible after receipt of the additional written comments. No additional poposal will be published and no additional hearing will be held prior to adoption of final rules on the changes to § 1.9 and on new §§ 1.27 and 1.28.

As a result of additional comments presented during the hearing on the proposed trademark fees, the period for written comments on the deletion of Part 3 was also extended until August 13, 1982, to provide an additional opportunity for interested persons to comment on this proposed change. Since it is not essential that this deletion be published by August 2, 1982, it is appropriate to extend the period for comments. No additional proposal will be published and no additional hearing will be held prior to a decision on whether or not to delete Part 3 as proposed.

Section II—Revision of Trademark Fees

Background: A notice of proposed rulemaking was published in the **Federal Register** on June 28, 1982, at 47 FR 28063–28065 and in the *Official Gazette* on June 29, 1982, at 1019 TMOG 110–119. An oral hearing was held on July 9, 1982. Three written letters and statements were submitted. Three persons testified at the oral hearing. Full consideration has been given to all of the letters, statements, and testimony.

Objectives of Rule Changes: These amendments establish fees for the filing and processing of an application for the registration of a trademark or other mark, and for providing all other services and materials relating to trademarks and other marks.

Public Law 96–517

Public Law 96–517 authorizes the Commissioner to establish fees for the filing and processing of an application for the registration of a trademark or other mark, and for providing all other services and materials relating to trademarks and other marks. Public Law 96–517 requires that by October 1, 1982, fees for the filing and processing of an application for the registration of a trademark or other mark be set to recover in the aggregate 50 percent of the estimated average cost to the Office of such processing. Also by October 1, 1982, fees for providing all other services and materials relating to trademarks and other marks are to be set to recover the estimated average cost to the Office of performing the service or furnishing the material.

H.R. 6260

On June 8, 1982, the House of Representatives passed H.R. 6260. This bill would amend the fee provisions to be implemented on October 1, 1982. H.R. 6260 would repeal the provisions in Public Law 96–517 requiring that filing and processing fees be set to recover in the aggregate 50 percent of the estimated average cost of such processing to the Office, and that fees for providing all other services and materials relating to trademarks and other marks be set to recover the estimated average cost to the Office of performing the service or furnishing the material. In passing H.R. 6260, the House of Representatives recommended a fee schedule to the Commissioner for fiscal year 1983. The fees set in Alternative B adopt the House recommendation.

This rule change, therefore, is also designed in the alternative to implement the fee provisions as they would be amended by H.R. 6260. The rule change contains changes which are common to Public Law 96–517 and H.R. 6260, as well as alternative rule changes which are specific to Public Law 96–517 (Alternative A) and to H.R. 6260 (Alternative B).

Discussion of Significant Changes

This rulemaking places into the appropriate sections of Title 37, Code of Federal Regulations, the various fees which are due on filing, during the pendency of a trademark application, or during the life of a registration.

Rule changes for implementing provisions of Public Law 96–517 or H.R. 6260 other than the fee provisions have not been included. Rule changes for implementing provisions other than the fee provisions will be published in a later rulemaking proposal.

Discussion of Specific Sections Changed

The sections changed are grouped in this document under three different categories. Those changes which are common to Public Law 96–517 and H.R. 6260 appear first and are numbered 72–76.

The change which relates only to Public Law 96–517 appears as Alternative A and is numbered 77. The change which is dependent upon enactment of H.R. 6260 appears as Alternative B and is numbered 78. The changes common to Public Law 96–517 and H.R. 6260 will become effective on October 1, 1982, whether or not H.R. 6260 is enacted as a Public Law. The changes contained in Alternative A will become effective on October 1, 1982, if H.R. 6260 does not become a Public Law prior to that date. Upon enactment of H.R. 6260 as a Public Law prior to October 1, 1982, Alternative B will become effective on October 1, 1982, in which case Alternative A will not become effective.

The specific rules for which changes are made are §§ 2.6, 2.85, 2.101, 2.146, 2.162 and 2.167.

Rule Changes Common to Public Law 96–517 and H.R. 6260

Section 2.85, paragraph (e), is amended to delete reference to late filed fees for oppositions and affidavits. The manner in which such fees shall be handled is described in the pertinent sections for affidavits and oppositions.

Section 2.101, paragraph (c), is amended to delete the reference to a service charge which will no longer be charged for late-filed fees for oppositions.

Section 2.146, paragraph (b), is amended to add a fee for filing a petition to the Commissioner. Paragraph (f) of this section which indicates that no fee is required is deleted.

Section 2.162, paragraph (d), is amended to remove the reference to a service charge for late-filed fees on section 8 affidavits.

Section 2.167, paragraph (g), is added to establish procedures relating to the fee for affidavits under section 15, 15 U.S.C. 1065, and to state the Office's action when no fee or an insufficient fee is filed.

Alternative A—Rule Change Only Under Public Law 96–517

Section 2.6 is revised to establish the fees authorized by Public Law 96–517 for filing and processing applications for the

registration of trademarks or other marks and for providing services and materials relating to trademarks or other marks.

Alternative B—Rule Change Only Under H.R. 6260

Section 2.6 is revised to establish the fees recommended by the House of Representatives under H.R. 6260 for filing and processing applications for the registration of trademarks or other marks and for providing services and materials relating to trademarks or other marks. The $10 fee recommended by the House for certified copies appears in paragraphs (n) and (o) as a fee of $6.50 for a copy of a registered mark showing title and/or status and a fee of $3.50 for certification.

Response to Comments on the Rules

Specific comments were received on several of the sections. All of the comments included in the written submissions and the oral testimony were considered in adopting the changes set forth herein.

Written comments were received from three individuals. Oral comments were presented at the hearing on behalf of a patent and trademark law group, the American Patent Law Association, and an organization of trademark owners and lawyers, the United States Trademark Association. One individual spoke on behalf of a law firm and expanded upon the points raised in his previously submitted written comments.

These comments appear below along with responses thereto, where appropriate.

Comment: The representative of the trademark association spoke favorably about the proposal presented. The organization opposed 100% recovery of trademark costs from user fees. It was felt that such an approach reflected a misconception that trademarks benefit only their owners and not consumers and the economy as a whole. The speaker solicited the assistance of the Patent and Trademark Office in altering this viewpoint.

Comment: The representative of the bar group questioned the fairness of the Office in establishing the fees under Alternative B. It appeared that the Office had accepted the USTA proposals only where they were higher. In all cases where the USTA recommendations were lower than those proposed, the difference was split. The filing fee was singled out as the most unfair fee.

Reply: In Alternative B, the rules adopt the fee levels recommended by the House Committee on the Judiciary in House Report No. 97–542. The Report recognizes that the Office needs to recover a certain amount of fee income over the next three years. The application filing fee is expected to furnish more than 60% of the estimated annual income. It could not be reduced further without endangering operations. The reduction from $200.00 to $175.00 per class was covered to a large extent by higher fees for other services.

Comment: The philosophy of H.R. 6260 is to recover no more than 100%. Final fees should recover this level and no more.

Reply: Projecting processing costs three years in advance can never be absolutely accurate. The Office must have sufficient funds to process anticipated workloads under the fees set during fiscal years 1983–1985 when costs are expected to be somewhat higher than present costs.

Comment: One suggestion involved retaining Part 4 of 37 CFR, at least for the present. Occasional users of the registration system find it to be a readily available reference. Certain information in the forms is available from no other source. The speaker believed the time pressures to implement the fee changes precluded proper consideration of the merits of Part 4.

Reply: The period for comment on deletion of Part 4 has been extended to August 13, 1982 to allow for additional public comment and internal consideration.

Comment: The suggestion was made that references to affidavits and oppositions should be eliminated from § 2.85(e) as the handling of late filed fees for these items is already covered directly in §§ 2.101(c), 2.162(d) and 2.167(g).

Reply: This suggestion was implemented.

Comment: A suggestion was made that §§ 2.101(c), 2.162(d) and 2.167(g) dealing with oppositions and affidavits under Section 8 and Section 15 be amended to require payment of all late filed fees within the time period specified in the notification by the Office.

Reply: All of the sections state that the affidavit or opposition "will not be refused if the required fee(s) * * * are filed in the Patent and Trademark Office within the time limit set forth in the notification of this defect by the Office." This language is considered sufficient to require payment of all fees or have the opposition, affidavit or declaration refused.

Comment: One suggestion was made to either cite § 2.6 in all sections being changed relative to fees or to cite it in none.

Reply: Citations of § 2.6 have been added to § 2.101(c) and § 2.146(b) to conform to § 2.162(d) and § 2.167(g).

Comment: It was suggested that the fee for a combined section 8 and 15 affidavit needed to be specified in the rules.

Reply: Section 2.6 has been changed to provide this combined fee

Discussion of Significant Differences Between Proposed and Final Rules

A number of changes which were made as a result of the comments received and further review of the proposed rulemaking are identified below.

Deletion of Part 4 has been deferred for further comments by August 13, 1982 (see 47 FR 32458, July 27, 1982). As elimination of Part 4 is not essential to the setting of fees, and does not have to be in place 60 days before implementation, it was decided to ask for further public comment.

Section 2.85(e) has been revised to eliminate the references to oppositions and affidavits. Because the handling of late filed fees for these items is specified elsewhere, these references in § 2.85(e) were redundant and confusing.

Both alternatives of § 2.6 have been revised to add a fee for a combined affidavit under sections 8 and 15 of the Act. In order to prevent possible confusion by users of the Trademark system, it was included separately.

Implementation of Trademark Fee Revision

The effective date of the trademark fee revisions contained in this rulemaking is October 1, 1982. The changes which will become effective on October 1, 1982, under Public Law 96–517 (without enactment of H.R. 6260) are (1) the rule changes common to Public Law 96–517 and H.R. 6260, and (2) the rule changes under only Public Law 96–517, which appear in Alternative A. The changes which will become effective on October 1, 1982, upon enactment of H.R. 6260 as a Public Law prior to October 1, 1982, are (1) the rule changes common to Public Law 96–517 and H.R. 6260, and (2) the rule changes under H.R. 6260, which appear in Alternative B. The rule changes common to Public Law 96–517 and H.R. 6260 will become effective on October 1, 1982, whether or not H.R. 6260 is enacted as a Public Law prior to October 1, 1982. The rule changes in Alternative A will become effective on October 1, 1982, unless H.R. 6260 is enacted as a Public Law prior to October 1, 1982. If Alternative A becomes effective on October 1, 1982, the rule changes in Alternative B will

not become effective on October 1, 1982. Upon enactment of H.R. 6260 as a Public Law prior to October 1, 1982, the rule changes in Alternative B will become effective on October 1, 1982, in which case the rule changes in Alternative A will not become effective on October 1, 1982.

Any fee which is due and payable on or after October 1, 1982, must be paid in the amount and in accordance with the procedures contained in this rulemaking. For purposes of determining the amount of the fee to be paid, the date of mailing indicated on a proper Certificate of Mailing under § 1.8 will be considered to be the date of receipt in the Office. In order to ensure clarity in the implementation a discussion of the implementation of Section 2.6 is set forth below:

Implementation of Section 2.6

Fees set forth in § 2.6 must be paid in the amounts set forth in this section on or after October 1, 1982. Any additional fees which become due under § 2.6 in pending applications on or after October 1, 1982, or which have not been paid prior to October 1, 1982, must be paid in the amounts set forth in this section even though the application was filed prior to October 1, 1982. For example, if an application filed prior to October 1, 1982, is amended on or after October 1, 1982, to include additional classes, the fee set forth in § 2.6(a) must be paid per class added.

Implementation of Certain Sections Deferred for Further Comments

As a result of additional comments presented during the hearing on the proposed trademark fees, the period for written comments on the deletion of Part 4 has also been extended until August 13, 1982, to provide an additional opportunity for interested persons to comment on this proposed change (see 47 FR 32458, July 27, 1982). Since it is not essential that this deletion be published by August 2, 1982, it is appropriate to extend the period for comments. No additional proposal will be published and no additional hearing will be held prior to a decision on whether or not to delete Part 4 as proposed.

Other Considerations Relating to Patent and Trademark Fee Revisions

Environmental, energy, and other considerations: The rule change will not have a significant impact on the quality of the human environment or the conservation of energy resources.

This rule change is in conformity with the requirements of the Regulatory Flexibility Act (Public Law 96–354), Executive Order 12291, and the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

The rule change will not have a significant adverse economic impact on a substantial number of small entities (Regulatory Flexibility Act. Pub. L. 96–354) for several reasons. Public Law 96–517 and H.R. 6260 have both taken into consideration the impact they may have on small entities. The fees under Public Law 96–517 are set to recover 50% of patent and trademark processing costs rather than full costs and generally the rate of increase in the fees is less than that of inflation since the last increase in fees in 1965. Further, the rules implementing Public Law 96–517 take into consideration small entities by setting a lower patent filing fee than issue fee to recover the required level of patent processing costs. The lower filing fee permits a small entity to file a patent application for a relatively low cost and not have to pay the higher balance of fees required to achieve Public Law 96–517 recovery levels until examination is complete and it is known that a patent will issue. Under H.R. 6260 and this rulemaking, small entities would be able to pay reduced fees for filing patent applications and for the issuance and maintenance in force of patents. In general, the rule change will also expedite proceedings before the Patent and Trademark Office, changing existing procedures where they can be simplified.

The Patent and Trademark Office has determined that this rule change is not a major rule under Executive Order 12291. The annual effect on the economy will be less than $100 million. There will be no major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. There will be no 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 rule change will not impose a burden under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et. seq.*, since no significant additional record keeping or reporting requirements are placed upon the public. In fact, some paperwork, especially that related to requests for extensions of time, will be reduced.

List of Subjects in 37 CFR Parts 1 and 2

Administrative practice and procedure, Courts, Inventions and patents, Lawyers, Nonprofit organizations, Small businesses, Trademarks.

Amendment of Regulations

For the reasons indicated above and pursuant to the authority given to the Commissioner of Patents and Trademarks by 35 U.S.C. 6, and under Sections 31 and 41 of the Trademark Act of July 5, 1946, 15 U.S.C. 1113, and 1123, Parts 1 and 2 of Title 37, Code of Federal Regulations, are amended as set forth below.

PART 1—RULES OF PRACTICE IN PATENT CASES

The table of contents for Part 1 is amended as follows:

Fees and Payments of Money

1.16 National application filing fees.
1.17 Patent application processing fees.
1.18 Patent issue fees.
1.19 Document supply fees.
1.20 Post-issuance fees.
1.21 Miscellaneous fees and charges.

* * * * *

Time for Response by Applicant; Abandonment of Application

1.134 Time period for response to an Office action.

* * * * *

Interferences: Termination

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1.268 Filing of interference settlement agreements.

SECTION I—REVISION OF PATENT FEES

Rule Changes Common to Public Law 96–517 and H.R. 6260

1. Section 1.11 is amended by revising paragraph (c) to read as follows:

§ 1.11 Files open to the public.

* * * * *

(c) All requests for reexamination for which the fee under § 1.20(c) has been paid, will be announced in the *Official Gazette*. Any reexaminations at the initiative of the Commissioner pursuant to § 1.520 will also be announced in the *Official Gazette*. The announcement shall include at least the date of the request, if any, the reexamination request control number or the Commissioner initiated order control number, patent number, title, class and subclass, name of the inventor, name of the patent owner of record, and the examining group to which the reexamination is assigned.

* * * * *

2. Section 1.12 is revised to read as follows:

§ 1.12 Assignment records open to public inspection.

(a) The assignment records, relating to original or reissue patents, including

digests and indexes, and assignment records relating to pending or abandoned trademark applications and to trademark registrations, are open to public inspection and copies of any instrument recorded may be obtained upon requests and payment of the fee set forth in § 1.19(a)(5).

(b) Assignment records, digests, and indexes, relating to any pending or abandoned patent application are not available to the public. Copies of any such assignment records and information with respect thereto shall be obtainable only upon written authority of the applicant or applicant's assignee or attorney or agent or upon a showing that the person seeking such information is a bona fide prospective or actual purchaser, mortgagee, or licensee of such application, unless it shall be necessary to the proper conduct of business before the Office or as provided by these rules.

(c) Any request by a member of the public seeking copies of any assignment records of any pending or abandoned patent application preserved in secrecy under § 1.14, or any information with respect thereto, must (1) be in the form of a petition accompanied by the petition fee set forth in § 1.17(i) or (2) include written authority granting access to the member of the public to the particular assignment records from the applicant or applicant's assignee or attorney or agent of record.

(d) An order for a copy of an assignment should give the identification of the record. If identified only by the name of the patentee and number of the patent, or in the case of a trademark registration by the name of the registrant and number of the registration, or by name of the applicant and serial number or international application number of the application, an extra charge as set forth in § 1.21(f) will be made for the time consumed in making a search for such assignment.

3. Section 1.14 is amended by adding a new paragraph (e) to read as follows:

§ 1.14 Patent applications preserved in secrecy.

* * * * *

(e) Any request by a member of the public seeking access to, or copies of, any pending or abandoned application preserved in secrecy pursuant to paragraphs (a) and (b) of this section, or of any papers relating thereto, must (1) be in the form of a petition and be accompanied by the petition fee set forth in § 1.17(i) or (2) include written authority granting access to the member of the public in that particular application from the applicant or the applicant's assignee or attorney or agent of record.

4. A new § 1.19 is added which reads as follows:

§ 1.19 Document supply fees.

The Patent and Trademark Office will supply copies of the following documents upon payment of the fees indicated:

(a) Uncertified copies of Office documents:
  (1) Printed copy of a patent, including a design patent, or defensive publication document, except color plant patent—$1.00
  (2) Printed copy of a plant patent in color—$8.00
  (3) Copy of patent application as filed, each 50 pages or fraction thereof—$18.00
  (4) Copy of patent file wrapper and contents, each 100 pages or fraction thereof—$30.00
  (5) Copy of Office records, except as provided in paragraphs (a) (1) through (4) of this section, per page—$0.30
  (6) Microfiche copy of microfiche, per microfiche—$2.00
(b) Certified copies of Office documents:
  (1) For certifying Office records, per certificate—$3.50
  (2) For a search of assignment records, abstract of title and certification, per patent—$12.00
  (3) For comparing copies not prepared by the Office with the original, prior to certification of the copies, per page—$0.10
(c) Subscription services:
  (1) Subscription orders for printed copies of patents as issued, annual service charge for entry of order and one subclass—$4.00
  (2) For annual subscription to each additional subclass in addition to the one convered by the fee under paragraph d (c)(1) of this section, per subclass—$0.40
(d) Library service (35 U.S.C. 13): For providing to libraries copies of all patents issued annually, per annum—$50.00
(e) Lists of patents in subclass:
  (1) For list of all United States patents in a subclass, per 100 patent numbers or fraction thereof—$2.00
  (2) For list of United States patents in a subclass limited by date or patent number, per 50 patent numbers or fraction thereof—$2.00

5. Section 1.21 is revised to read as follows:

§ 1.21 Miscellaneous fees and charges.

The Patent and Trademark Office has established the following fees for the services indicated:

(a) Registration of attorneys and agents:
  (1) For admission to examination for registration to practice, fee payable upon application—$75.00
  (2) On registration to practice—$50.00
  (3) For reinstatement to practice—$25.00
  (4) For certificate of good standing as an attorney or agent—$10.00
(b) Deposit accounts:
  (1) For establishing or reinstating a deposit account—$10.00
  (2) Service charge for each month when the balance at the end of the month is below $40—$2.00
(c) Disclosure document: For filing a disclosure document—$10.00
(d) Delivery box: Local delivery box rental, per annum—$24.00
(e) International-type search reports: For preparing an international-type search report of an international-type search made at the time of the first action on the merits in a national patent application—$25.00
(f) Search of Office records: For searching Patent and Trademark Office records for purposes not otherwise specified, per one-half hour or fraction thereof—$10.00
(g) Copy machine tokens: Token for copying machine, each—$0.20
(h) Recording of documents:
  (1) For recording each assignment, agreement or other paper relating to the property in a patent or application—$20.00
  (2) Where a document to be recorded under paragraph (h)(1) of this section refers to more than one patent or application, for each additional patent or application—$5.00
(i) Publication in *Official Gazette:* For publication in the *Official Gazette* of a notice of the availability of an application or a patent for licensing or sale, each application or patent—$6.00
(j) For a duplicate or replacement of a permanent Office user pass (There is no charge for the first permanent user pass)—$5.00
(k) For items and services, that the Commissioner finds may be supplied, for which fees are not specified by statute or by this section, such charges as may be determined by the Commissioner with respect to each such item or service—actual cost

6. Section 1.24 is revised to read as follows:

§ 1.24 Coupons.

Coupons in denominations of forty cents and one dollar are sold by the Patent and Trademark Office for the convenience of regular purchasers of U.S. patents and trademark registrations; these coupons may not be used for any other purpose. The 40-cent coupons are sold individually and in books of 50 with stubs for record for $20. The one dollar coupons are sold individually and in books of 50 with stubs for record for $50. These coupons are good until used; they may be transferred but cannot be redeemed.

7. Section 1.25 is revised to read as follows:

§ 1.25 Deposit accounts.

(a) For the convenience of attorneys, agents, and the general public in paying any fees due, in ordering services

offered by the Office, copies of records, etc., deposit accounts may be established in the Patent and Trademark Office upon payment of the fee for establishing a deposit account (§ 1.21(b)(1)). A minimum deposit of $50 or more, depending on the activity of the individual account, is required. At the close of each month's business, a statement will be rendered. A remittance must be made promptly upon receipt of the statement to cover the value of items or services charged to the account and thus restore the account to its established normal deposit value. An amount sufficient to cover all services, copies, etc., requested must always be on deposit. A service charge (§ 1.21(b)(2)) will be assessed for each month that the balance at the end of the month is below $40.

(b) Filing, issue, appeal, international-type search report, international application processing, petition, and post-issuance fees may be charged against these accounts. A general authorization to charge all fees, or only certain fees, set forth in §§ 1.16 to 1.18 to a deposit account may be filed in an individual application, either for the entire pendency of the application or with respect to a particular paper filed. An authorization to charge to a deposit account the fee for a request for reexamination pursuant to § 1.510 and any other fees required in a reexamination proceeding in a patent may also be filed with the request for reexamination.

8. Section 1.26 is revised to read as follows:

§ 1.26 Refunds.

(a) Money paid by actual mistake or in excess, such as a payment not required by law, will be refunded, but a mere change of purpose after the payment of money, as when a party desires to withdraw an application, an appeal, or a request for oral hearing, will not entitle a party to demand such a return. Amounts of one dollar or less will not be returned unless specifically demanded within a reasonable time, nor will the payer be notified of such amount; amounts over one dollar may be returned by check or, if requested, by credit to a deposit account.

(b) [Reserved]

(c) If the Commissioner decides not to institute a reexamination proceeding, a refund of $1,200.00 will be made to the requester of the proceeding. Reexamination requesters should indicate whether any refund should be made by check or by credit to a deposit account.

9. Section 1.45 is amended by revising paragraphs (b) and (c) to read as follows:

§ 1.45 Joint inventors.

* * * * *

(b) If an application for patent has been made through error and without any deceptive intention by two or more persons as joint inventors when they were not in fact joint inventors, the application may be amended to remove the names of those not inventors upon filing of a petition including a statement of the facts verified by all of the original applicants, the required fee (§ 1.17(h)), and an oath or declaration as required by § 1.65 by the applicant who is the actual inventor, provided the amendment is diligently made. Such amendment must have the written consent of any assignee.

(c) If an application for patent has been made through error and without any deceptive intention by less than all the actual joint inventors, the application may be amended to include all the joint inventors upon filing of a petition including a statement of the facts verified by, and an oath or declaration as required by § 1.65 executed by all the actual joint inventors, along with the required fee (§ 1.17(h)), provided the amendment is diligently made. Such amendment must have the written consent of any assignee.

10. Section 1.47 is revised to read as follows:

§ 1.47 Filing when an inventor refuses to sign or cannot be reached.

(a) If a joint inventor refuses to join in an application for patent or cannot be found or reached after diligent effort, the application may be made by the other inventor on behalf of himself or herself and the omitted inventor. The oath or declaration in such an application must be accompanied by a petition including proof of the pertinent facts and by the required fee (§ 1.17(h)) and must state the last known address of the omitted inventor. The Patent and Trademark Office shall forward notice of the filing of the application to the omitted inventor at said address. Should such notice be returned to the Office undelivered, or should the address of the omitted inventor be unknown, notice of the filing of the application shall be published in the *Official Gazette*. The omitted inventor may subsequently join in the application on filing an oath or declaration of the character required by § 1.65. A patent may be granted to the inventor making the application, upon a showing satisfactory to the Commissioner, subject to the same rights which the omitted inventor would have had if he or she had been joined.

(b) Whenever an inventor refuses to execute an application for patent, or cannot be found or reached after diligent effort, a person to whom the inventor has assigned or agreed in writing to assign the invention or who otherwise shows sufficient proprietary interest in the matter justifying such action may make application for patent on behalf of and as agent for the inventor. The oath or declaration in such an application must be accompanied by a petition including proof of the pertinent facts and a showing that such action is necessary to perserve the rights of the parties or to pevent irreparable damage, and by the required fee (§ 1.17(h)) and must state the last known address of the inventor. The assignment, written agreement to assign or other evidence or proprietary interest, or a verified copy thereof, must be filed in the Patent and Trademark Office. The Office shall forward notice of the filing of the application to the inventor at the address stated in the application. Should such notice be returned to the Office undelivered, or should the address of the inventor be unknown, notice of the filing of the application shall be published in the *Official Gazette*. The inventor may subsequently join in the application on filing an oath or declaration of the character required by § 1.65. A patent may be granted to the inventor upon a showing satisfactory to the Commissioner.

11. Section 1.51 is amended by revising paragraph (a)(4) and by adding a new paragraph (c) to read as follows:

§ 1.51 General requisites of an application.

(a) * * *

(4) The prescribed filing fee, see § 1.16.

* * * * *

(c) Applicants may desire and are permitted to file with, or in, the application an authorization to charge, at any time during the pendency of the application, any fees required under any of §§ 1.16 to 1.18 to a deposit account established and maintained in accordance with § 1.25.

12. Section 1.52 is amended by revising paragraph (a) and by adding a new paragraph (d) to read as follows:

§ 1.52 Language, paper, writing, margins.

(a) The application, any amendments or corrections thereto, and the oath or declaration must be in the English language except as provided for in § 1.69 and paragraph (d) of this section, or be accompanied by a verified translation of the application and a translation of any corrections or amendments into the

English language. All papers which are to become a part of the permanent records of the Patent and Trademark Office must be legibly written, typed, or printed in permanent ink or its equivalent in quality. All of the application papers must be presented in a form having sufficient clarity and contrast between the paper and the writing, typing, or printing thereon to permit the direct reproduction of readily legible copies in any number by use of photographic, electrostatic, photo-offset, and microfilming processes. If the papers are not of the required quality, substitute typewritten or printed papers of suitable quality may be required.

* * * * *

(d) An application including a signed oath or declaration may be filed in a language other than English if it is accompanied by the fee set forth in § 1.17(k). A verified English translation of the non-English language application is required to be filed with the application or within such time as may be set by the Office.

13. Section 1.55 is amended by revising paragraph (b) to read as follows:

§ 1.55 Serial number and filing date of application.

* * * * *

(b) An applicant may claim the benefit of the filing date of a prior foreign application under the conditions specified in 35 U.S.C. 119. The claim to priority need be in no special form and may be made by the attorney or agent if the foreign application is referred to in the oath or declaration as required by § 1.65. The claim for priority and the certified copy of the foreign application specified in the second paragraph of 35 U.S.C. 119 must be filed in the case of interference (§ 1.224); when necessary to overcome the date of a reference relied upon by the examiner; or when specifically required by the examiner; and in all other cases they must be filed not later than the date the issue fee is paid. If the papers filed are not in the English language, a translation need not be filed except in the three particular instances specified in the preceding sentence, in which event a sworn translation or a translation certified as accurate by a sworn or offical translator must be filed. If the priority papers are submitted after the date the issue fee is paid, they must be accompanied by a petition requesting their entry and the fee set forth in § 1.17(i).

* * * * *

14. Section 1.75 is amended by revising paragraph (c) to read as follows:

§ 1.75 Claim(s).

* * * * *

(c) One or more claims may be presented in dependent form, referring back to and further limiting another claim or claims in the same application. Any dependent claim which refers to more than one other claim ("multiple dependent claim") shall refer to such other claims in the alternative only. A multiple dependent claim shall not serve as a basis for any other multiple dependent claim. For fee calculation purposes under § 1.16, a multiple dependent claim will be considered to be that number of claims to which direct reference is made therein. For fee calculation purposes, also, any claim depending from a multiple dependent claim will be considered to be that number of claims to which direct reference is made in that multiple dependent claim. In addition to the other filing fees, any original application which is filed with, or is amended to include, multiple dependent claims must have paid therein the fee set forth in § 1.16(d). Claims in dependent form shall be construed to include all the limitations of the claim incorporated by reference into the dependent claim. A multiple dependent claim shall be construed to incorporate by reference all the limitations of each of the particular claims in relation to which it is being considered.

* * * * *

15. Section 1.85 is revised to read as follows:

§ 1.85 Informal drawings.

The requirements of § 1.84 relating to drawings will be strictly enforced. A drawing not executed in conformity thereto, if suitable for reproduction, may be admitted but in such case the drawing must be corrected or a new one furnished, as required.

§ 1.86 [Removed]

16. Section 1.86 is removed.

17. Section 1.102 is amended by revising paragraph (a) and adding new paragraphs (c) and (d) to read as follows:

§ 1.102 Advancement of examination.

(a) Applications will not be advanced out of turn for examination or for further action except as provided by this part, or upon order of the Commissioner to expedite the business of the Office, or upon filng of a request under paragraph (b) of this section or upon filing a petition under paragraphs (c) or (d) of this section with a verified showing which, in the opinion of the Commissioner, will justify so advancing it.

* * * * *

(c) A petition to make an application special may be filed without a fee if the basis for the petition is the applicant's age or health or that the invention will materially enhance the quality of the environment or materially contribute to the development or conservation of energy resources.

(d) A petition to make an application special on grounds other than those referred to in paragraph (c) of this section must be accompanied by the petition fee set forth in § 1.17(i).

18. Section 1.103 is amended by revising paragraphs (a) and (b) to read as follows:

§ 1.103 Suspension of action.

(a) Suspension of action by the Office will be granted for good and sufficient cause and for a reasonable time specified upon petition by the applicant and, if such cause is not the fault of the Office, the payment of the fee set forth in § 1.17(i). Action will not be suspended when a response by the applicant to an Office action is required.

(b) If action by the Office on an application is suspended when not requested by the applicant, the applicant shall be notified of the reasons therefor.

* * * * *

19. Section 1.104 is amended by revising paragraph (d) to read as follows:

§ 1.104 Nature of examination; examiner's action.

* * * * *

(d) Any national application may also have an international-type search report prepared thereon at the time of the national examination on the merits, upon specific written request therefor and payment of the international-type search report fee. See § 1.21(e) for amount of fee for preparation of international-type search report.

* * * * *

20. Section 1.134 is added and reads as follows:

§ 1.134 Time period for response to an Office action.

An Office action will notify the applicant of any non-statutory or shortened statutory time period set for response to an Office action. Unless the applicant is notified in writing that response is required in less than six months, a maximum period of six months is allowed.

21. Section 1.135 is amended by revising paragraphs (a), (b) and (c) to read as follows:

§ 1.135 Abandonment for failure to respond within time period.

(a) If an applicant of a patent application fails to respond within the time period provided under §§ 1.134 and 1.136, the application will become abandoned unless an Office action indicates otherwise.

(b) Prosecution of an application to save it from abandonment pursuant to paragraph (a) of this section must include such complete and proper action as the condition of the case may require. The admission of an amendment not responsive to the last Office action, or refusal to admit the same, and any proceedings relative thereto, shall not operate to save the application from abandonment.

(c) When action by the applicant is a bona fide attempt to respond and to advance the case to final action, and is substantially a complete response to the Office action, but consideration of some matter or compliance with some requirement has been inadvertently omitted, opportunity to explain and supply the omission may be given before the question of abandonment is considered.

* * * * *

22. Section 1.136 is revised to read as follows:

§ 1.136 Filing of timely responses with petition and fee for extension of time and extensions of time for cause.

(a) If an applicant is required to respond within a non-statutory or shortened statutory time period, applicant may respond up to four months after the time period set if a petition for an extension of time and the fee set in §1.17 are filed prior to or with the response, unless (1) applicant is notified otherwise in an Office action or (2) the application is involved in an interference declared pursuant to § 1.207. The date on which the response, the petition, and the fee have been filed is the date of the response and also the date for purposes of determining the period of extension and the corresponding amount of the fee. The expiration of the time period is determined by the amount of the fee paid. In no case may an applicant respond later than the maximum time period set by statute, or be granted an extension of time under paragraph (b) of this section when the provisions of this paragraph are available.

(b) When a response with petition and fee for extension of time cannot be filed pursuant to paragraph (a) of this section, the time for response will be extended only for sufficient cause, and for a reasonable time specified. Any request for such extension must be filed on or before the day on which action by the applicant is due, but in no case will the mere filing of the request effect any extension. In no case can any extension carry the date on which response to an Office action is due beyond the maximum time period set by statute or be granted when the provisions of paragraph (a) of this section are available. See § 1.245 for extension of time in interference proceedings.

23. Section 1.165 is amended by revising paragraph (b) to read as follows:

§ 1.165 Drawings.

* * * * *

(b) The drawing may be in color and when color is a distinguishing characteristic of the new variety, the drawing must be in color. Two copies of color drawings must be submitted. Color drawings may be made either in permanent water color or oil, or in lieu thereof may be photographs made by color photography or properly colored on sensitized paper. Permanently mounted color photographs are acceptable. The paper in any case must correspond in size, weight and quality to the paper required for other drawings. See § 1.84.

24. Section 1.171 is revised to read as follows:

§ 1.171 Application for reissue.

An application for reissue must contain the same parts required for an application for an original patent, complying with all the rules relating thereto except as otherwise provided, and in addition, must comply with the requirements of the rules relating to reissue applications. The application must be accompanied by a certified copy of an abstract of title or an order for a title report accompanied by the fee set forth in § 1.19(b)(2), to be placed in the file, and by an offer to surrender the original patent (§ 1.178).

25. Section 1.177 is revised to read as follows:

§ 1.177 Reissue in divisions.

The Commissioner may, in his or her discretion, cause several patents to be issued for distinct and separate parts of the thing patented, upon demand of the applicant, and upon payment of the required fee for each division. Each division of a reissue constitutes the subject of a separate specification descriptive of the part or parts of the invention claimed in such division; and the drawing may represent only such part or parts, subject to the provisions of §§ 1.83 and 1.84. On filing divisional reissue applications, they shall be referred to the Commissioner. Unless otherwise ordered by the Commissioner upon petition and payment of the fee set forth in § 1.17(i), all the divisions of a reissue will issue simultaneously; if there be any controversy as to one division, the others will be withheld from issue until the controversy is ended, unless the Commissioner shall otherwise order.

26. Section 1.181 is amended by revising paragraphs (d) and (g) to read as follows:

§ 1.181 Petition to the Commissioner.

* * * * *

(d) Where a fee is required for a petition to the Commissioner the appropriate section of this part will so indicate. If any required fee does not accompany the petition, the petition will be dismissed.

* * * * *

(g) The Commissioner may delegate to appropriate Patent and Trademark Office officials the determination of petitions.

27. Section 1.182 is revised to read as follows:

§ 1.182 Questions not specifically provided for.

All cases not specifically provided for in the regulations of this part will be decided in accordance with the merits of each case by or under the authority of the Commissioner, and such decision will be communicated to the interested parties in writing. Any petition seeking a decision under this section must be accompanied by the petition fee set forth in § 1.17(h).

28. Section 1.183 is revised to read as follows:

§ 1.183 Suspension of rules.

In an extraordinary situation, when justice requires, any requirement of the regulations in this part which is not a requirment of the statutes may be suspended or waived by the Commissioner or the Commissioner's designee, sua sponte, or on petition of the interested party, subject to such other requirements as may be imposed. Any petition under this section must be accompanied by the petition fee set forth in § 1.17(h).

29. Section 1.191 is amended by revising paragraph (a) to read as follows:

§ 1.191 Appeal to Board of Appeals.

(a) Every applicant for a patent or for reissue of a patent, or every owner of a patent under reexamination, any of the claims of which have been twice rejected, or who has been given a final rejection (§ 1.113), may, upon the

payment of the fee set forth in § 1.17(e), appeal from the decision of the examiner to the Board of Appeals within the time allowed for response.

* * * * *

30. Section 1.192 is amended by revising paragraph (a) to read as follows:

§ 1.192 Appellant's brief.

(a) The appellant shall, within 2 months from the date of the notice of appeal under § 1.191 in an application, reissue application, or patent under reexamination, or within the time allowed for response to the action appealed from, if such time is later, file a brief in triplicate. The brief must be accompanied by the requisite fee set forth in § 1.17(f) and must set forth the authorities and arguments on which the appellant will rely to maintain the appeal. The brief must include a concise explanation of the invention which should refer to the drawing by reference characters, and a copy of the claims involved. The time periods set forth herein are subject to the provisions of § 1.136.

* * * * *

31. Section 1.194 is amended by revising paragraphs (b) and (c) to read as follows:

§ 1.194 Oral hearing.

* * * * *

(b) If appellant desires an oral hearing, appellant must file a written request for such hearing accompanied by the fee set forth in § 1.17(g) within one month after the date of the examiner's answer. If appellant requests an oral hearing and submits therewith the fee set forth in § 1.17(g), an oral argument may be presented by, or on behalf of, the primary examiner if considered desirable by either the primary examiner or the Board.

(c) If no request and fee for oral hearing have been timely filed by the appellant, the appeal will be assigned for consideration and decision. If the appellant has requested an oral hearing and has submitted the fee set forth in § 1.17(g), a day of hearing will be set, and due notice thereof given to the appellant and to the primary examiner. Hearing will be held as stated in the notice, and oral argument will be limited to twenty minutes for the appellant and fifteen minutes for the primary examiner unless otherwise ordered before the hearing begins.

32. Section 1.197 is amended by revising paragraph (b) to read as follows:

§ 1.197 Action following decision.

* * * * *

(b) A single request for rehearing or reconsideration, or modification of the decision, may be made if filed within thirty days from the date of the original decision, unless that decision is so modified as to become, in effect, a new decision, and the Board of Appeals so states. Such time may be extended under the provisions of § 1.136.

* * * * *

33. Section 1.231 is amended by revising paragraph (a)(1) to read as follows:

§ 1.231 Motions before the primary examiner.

(a) Within the period set in the notice of interference for filing motions any party to an interference may file a motion seeking:

(1) To dissolve as to one or more counts, except that such motion based on facts sought to be established by affidavits, declarations or evidence outside of official records and printed publications will not normally be considered. A motion to dissolve an interference in which a patentee is a party on the ground that the claims corresponding to the counts are unpatentable to the patentee over patents or printed publications will be considered through reexamination if it complies with the requirements of § 1.510(b) and is accompanied by the fee for requesting reexamination set in § 1.20(c). Otherwise, a motion to dissolve an interference in which a patentee is a party will not be considered if it would necessarily result in the conclusion that the claims of the patent which correspond to the counts are unpatentable to the patentee on a ground which is not ancillary to priority. Where a motion to dissolve is based on prior art, service on opposing parties must include copies of such prior art. A motion to dissolve on the ground that there is no interference in fact will not be considered unless the interference involves a design or plant patent or application or unless it relates to a count which differs from the corresponding claim of an involved patent or of one or more of the involved applications as provided in §§ 1.203(a) and 1.205(a).

* * * * *

34. Section 1.245 is revised to read as follows:

§ 1.245 Extension of time.

Extensions of time in any interference proceeding not otherwise provided for may be had by stipulation of the parties, subject to approval, or on motion duly brought, sufficient cause being shown for such extension. The provisions of § 1.136 do not apply to time periods in interferences.

35. Section 1.246 is revised to read as follows:

§ 1.246 Late papers.

A motion or other paper belatedly filed will not normally be considered except upon a showing, under oath or in the form of a declaration (§ 1.68), of sufficient cause as to why such motion or paper was not timely presented. The provisions of § 1.136 do not apply to time periods in interferences.

36. Section 1.263 is revised to read as follows:

§ 1.263 Statutory disclaimer by patentee.

The disclaimer referred to in § 1.262, when made by a patentee in interference is not a disclaimer under 35 U.S.C. 253. If a disclaimer under the statute and the fee set forth in § 1.20(d) (see § 1.321) cancelling claims involved in the interference from the patent, is made by the patentee, including all assignees as shown by the records of the Patent and Trademark Office, the interference will be dissolved pro forma as to such claims.

37. Section 1.268 is added to read as follows:

§ 1.268 Filing of interference settlement agreements.

(a) Any agreement or understanding between parties to an interference, including any collateral agreements referred to therein, made in connection with or in contemplation of the termination of the interference, must be in writing and a true copy thereof filed in the Patent and Trademark Office, directed to the Board of Patent Interferences, before the termination of the interference as between the said parties to the agreement or understanding.

(b) If any party filing the agreement or understanding pursuant to paragraph (a) of this section so requests, the copy will be kept separate from the file of the interference, and made available only to Government agencies on written request, or to any person upon petition accompanied by the fee set forth in § 1.17(i) and on a showing of good cause.

(c) Failure to file the copy of the agreement or understanding pursuant to paragraph (a) of this section, will render permanently unenforceable such agreement or understanding and any patent of the parties involved in the interference or any patent subsequently issued on any application of the parties so involved. The Commissioner may, however, upon petiton accompanied by the fee set forth in § 1.17(h) and on a showing of good cause for failure to file

within the time prescribed, permit the filing of the agreement or understanding during the six-month period subsequent to the termination of the interference as between the parties to the agreement or understanding.

38. Section 1.292 is amended by revising paragraph (a) to read as follows:

§ 1.292 Public use proceedings.

(a) When a petition for the institution of public use proceedings, supported by affidavits or declarations and the fee set forth in § 1.17(j) is filed by one having information of the pendency of an application and is found, on reference to the primary examiner, to make a prima facie showing that the invention involved in an interference or claimed in an application believed to be on file had been in public use or on sale one year before the filing of the application, or before the date alleged by an interfering party in his or her preliminary statement or the date of invention established by such party, a hearing may be had before the Commissioner to determine whether a public use proceeding should be instituted. If instituted, times may be set for taking testimony, which shall be taken as provided by §§ 1.271 to 1.286. The petitioner will be heard in the proceedings but after decision therein will not be heard further in the prosecution of the application for patent.

* * * * *

39. Section 1.304 is amended by revising paragraph (a) to read as follows:

§ 1.304 Time for appeal or civil action.

(a) The time for filing the notice and reasons of appeal to the U.S. Court of Appeals for the Federal Circuit (§ 1.302) or for commencing a civil action (§ 1.303) is sixty days from the date of the decision of the Board of Appeals or the Board of Patent Interferences. If a request for rehearing or reconsideration, or modification of the decision, is filed within the time provided pursuant to § 1.197(b) or § 1.256(b), the time for filing an appeal or commencing a civil action shall expire at the end of the sixty-day period or thirty days after action on the request, whichever is later. The time periods set forth herein are subject to the provisions of § 1.136.

* * * * *

40. Section 1.311 is revised to read as follows:

§ 1.311 Notice of allowance.

(a) If, on examination, it shall appear that the applicant is entitled to a patent under the law, a notice of allowance will be sent to applicant at the correspondence address indicated in § 1.33, calling for the payment of a specified sum constituting the issue fee (§ 1.18), which shall be paid within 3 months from the date of the mailing of the notice of allowance.

(b) An authorization to charge the issue fee (§ 1.18) to a deposit account may be filed in an individual application, either before or after mailing of the notice of allowance. Where an authorization to charge the issue fee to a deposit account has been filed before the mailing of the notice of allowance, the issue fee will be automatically charged to the deposit account at the time of mailing the notice of allowance.

41. Section 1.312 is revised to read as follows:

§ 1.312 Amendments after allowance.

(a) No amendment may be made as a matter of right in an application after the mailing of the notice of allowance. Any amendment pursuant to this paragraph filed before the payment of the issue fee may be entered on the recommendation of the primary examiner, approved by the Commissioner, without withdrawing the case from issue.

(b) Any amendment pursuant to paragraph (a) of this section filed after the date the issue fee is paid must be accompanied by a petition including the fee set forth in § 1.17(i) and a showing of good and sufficient reasons why the amendment is necessary and was not earlier presented.

42. Section 1.313 is revised to read as follows:

§ 1.313 Withdrawal from issue.

(a) Applications may be withdrawn from issue for further action at the initiative of the Office or upon petition by the applicant. Any such petition by the applicant must include a showing of good and sufficient reasons why withdrawal of the application is necessary and, if the reason for the withdrawal is not the fault of the Office, must be accompanied by the fee set forth in § 1.17(i). If the application is withdrawn from issue, a new notice of allowance will be sent if the application is again allowed. Any amendment accompanying a petition to withdraw an application from issue must comply with the requirements of § 1.312.

(b) When the issue fee has been paid, and the patent to be issued has received its issue date and patent number, the application will not be withdrawn from issue for any reason except (1) mistake on the part of the Office, (2) a violation of § 1.56 or illegality in the application, (3) unpatentability of one or more claims, or (4) for interference.

43. Section 1.314 is revised to read as follows:

§ 1.314 Issuance of patent.

If payment of the issue fee is timely made, the patent will issue in regular course unless (a) the application is withdrawn from issue (§ 1.313) or (b) issuance of the patent is deferred. Any petition by the applicant requesting deferral of the issuance of a patent must be accompanied by the fee set forth in § 1.17(i) and must include a showing of good and sufficient reasons why it is necessary to defer issuance of the patent.

44. Section 1.321 is revised to read as follows:

§ 1.321 Statutory disclaimer.

(a) A disclaimer under 35 U.S.C. 253 must be accompanied by the fee set forth in § 1.20(d) and identify the patent and the claim or claims which are disclaimed, and be signed by the person making the disclaimer, who shall state therein the extent of his or her interest in the patent. A disclaimer which is not a disclaimer of a complete claim or claims may be refused recordation. A notice of the disclaimer is published in the *Official Gazette* and attached to the printed copies of the specification. In like manner any patentee or applicant may disclaim or dedicate to the public the entire term, or any terminal part of the term, of the patent granted or to be granted.

(b) A terminal disclaimer, when filed in an application to obviate a double patenting rejection, must be accompanied by the fee set forth in § 1.20(d) and include a provision that any patent granted on that application shall be enforceable only for and during such period that said patent is commonly owned with the application or patent which formed the basis for the rejection.

45. Section 1.324 is revised to read as follows:

§ 1.324 Correction of inventorship in patent.

Whenever a patent is issued and it appears that there was a misjoinder or nonjoinder of inventors and that such misjoinder or omission occurred by error and without deceptive intention, the Commissioner may, on petition of all the parties and the assignees and satisfactory proof of the facts and payment of the fee set forth in § 1.20(b), or on order of a court before which such matter is called in question, issue a certificate deleting the misjoined inventor from the patent or adding the non-joined inventor to the patent.

46. Section 1.331 is amended by revising paragraph (a) to read as follows:

§ 1.331 Recording of assignments.

(a) Assignments, including grants and conveyances, of patents, national applications, or international applications which designate the United States of America, will be recorded in the Patent and Trademark Office under 35 U.S.C. 261. Other instruments affecting title to a patent, a national application, or an international application which designates the United States of America, and licenses, even though the recording thereof may not serve as constructive notice under 35 U.S.C. 261, will be recorded as provided in this section or at the discretion of the Commissioner. Any instrument to be recorded, except those under Part 7 of this title, must be accompanied by the fee set forth in § 1.21(h).

* * * * *

47. Section 1.332 is revised to read as follows:

§ 1.332 Receipt and recording.

Assignments are recorded in regular order as promptly as possible, and then transmitted with the date and identification of the record stamped thereon to the persons entitled to them. The date of the record is the date of the receipt of the assignment at the Office in proper form and accompanied by the fee set forth in § 1.21(h).

48. Section 1.334 is revised to read as follows:

§ 1.334 Issue of patent to assignee.

(a) In case of an assignment of the entire interest in the invention and application, or of the entire interest in the patent to be granted, the patent will normally issue to the assignee. If the assignee should hold an undivided part interest, the patent will normally issue jointly to the inventor and the assignee. If it is desired that the patent so issue, the assignment in either case must first have been recorded, and at a day not later than the date payment is made of the issue fee.

(b) At the time of payment of the issue fee, a statement must be furnished indicating whether or not an assignment has been filed with the Patent and Trademark Office. In the event an assignment has been filed, such statement must include the name and address of the assignee and indicate whether or not an acknowledgement of a recorded assignment has been received from the Patent and Trademark Office.

(c) If the assignment is recorded after the date of payment of the issue fee, the assignee may petition that the patent issue to the assignee as recorded. Any such petition must be accompanied by the fee set forth in § 1.17(i).

49. Section 1.341 is amended by revising paragraph (h) to read as follows:

§ 1.341 Registration of attorneys and agents.

* * * * *

(h) *Oath and registration fee.* Before his or her name may be entered on the register of attorneys or on the register of agents, every applicant for registration must, after his or her application is approved, subscribe and swear to an oath or make a declaration prescribed by the Commissioner of Patents and Trademarks and pay the prescribed registration fee. (See § 1.21(a)(2).)

* * * * *

50. Section 1.347 is revised to read as follows:

§ 1.347 Removing names from registers.

Attorneys and agents, registered to practice before the Patent and Trademark Office, should notify the Office of any change of address for entry on the register, by letter separate from any notice of change of address filed in individual applications. The Office may address a letter to any person on the registers, at the address of which separate notice for the register was last received, for the purpose of ascertaining whether such person desires to remain on the register. The name of any person failing to reply and give the information requested within a time limit specified will be removed from the register, and the names so removed published in the *Official Gazette*. Any name so removed may be reinstated, either on the register of attorneys or the register of agents, as may be appropriate. Any request for reinstatement must be accompanied by the fee set forth in § 1.21(a)(3).

51. Section 1.445 is amended by revising paragraphs (a) (1) through (4) to read as follows:

§ 1.445 International application filing and processing fees.

(a) * * *

(1) A transmittal fee (see 35 U.S.C. 361(d) and PCT Rule 14)—$125.00

(2) A search fee (see 35 U.S.C. 361(d) and PCT Rule 16) where:

(i) No corresponding prior United States national application with fee has been filed—$500.00

(ii) Corresponding prior United States national application with fee has been filed—$250.00

(3) A supplemental search fee when required (see PCT Art. 17(3)(a) and PCT Rule 40.2)—$125.00 per additional invention.

(4) The national fee, that is, the amount set forth as the filing fee under § 1.16 (a) through (d) credited by an amount of $250 where an international search fee has been paid on the corresponding international application to the United States as an International Searching Authority. Where the amount of the credit is in excess of that required for the national fee, a request for a refund of the excess under § 1.446(b) may be filed at the time of paying the national fee. Only one such credit is permitted based on a single international search fee.

* * * * *

52. Section 1.446 is amended by revising paragraph (b) to read as follows:

§ 1.446 Refund of international application filing and processing fees.

* * * * *

(b) Refund of a portion of the search fee may be made to the extent set forth in § 1.445(a)(4) if requested at the time of paying the national fee.

* * * * *

53. Section 1.451 is amended by revising paragraph (b) to read as follows:

§ 1.451 The priority claim and priority document in an international application.

* * * * *

(b) Whenever the priority of an earlier United States national application is claimed in an international application, the applicant may request in a letter of transmittal accompanying the international application upon filing with the United States Receiving Office, that the Patent and Trademark Office prepare a certified copy of the national application for transmittal to the International Bureau (PCT Art. 8 and PCT Rule 17). The fee for preparing a certified copy is stated in § 1.19(a)(4) and (b)(1).

* * * * *

54. Section 1.510 is amended by revising paragraph (a) to read as follows:

§ 1.510 Request for reexamination.

(a) Any person may, at any time during the period of enforceability of a patent, file a request for reexamination by the Patent and Trademark Office of any claim of the patent on the basis of prior art patents or printed publications cited under § 1.501. The request must be accompanied by the fee for requesting reexamination set in § 1.20(c).

* * * * *

Alternative A—Rule Changes Under Only Public Law 96-517

Prior to October 1, 1982, the Department of Commerce will publish a document confirming the amendments under either Alternative A or Alternative B set forth herein depending upon enactment of H.R. 6260 as a Public Law.

55. A new §1.16 is added which reads as follows:

§ 1.16 National application filing fees.

(a) Basic fee for filing each application for an original patent, except design or plant cases—$150.00
(b) In addition to the basic filing fee in an original application, for filing or later presentation of each independent claim in excess of 3—$15.00
(c) In addition to the basic filing fee in an original application, for filing or later presentation of each claim (whether independent or dependent) in excess of 20 (Note that § 1.75(c) indicates how multiple dependent claims are considered for fee calculation purposes.)—$5.00
(d) In addition to the basic filing fee in an original application, if the application contains, or is amended to contain, a multiple dependent claim(s), per application—$50.00
(If the additional fees required by paragraphs (b), (c) and (d) are not paid on filing or on later presentation of the claims for which the additional fees are due, they must be paid or the claims cancelled by amendment, prior to the expiration of the time period set for response by the Office in any notice of fee deficiency.)
(e) [Reserved]
(f) For filing each design application—$63.00
(g) Basic fee for filing each plant application—$100.00
(h) Basic fee for filing each reissue application—$150.00
(i) In addition to the basic filing fee in a reissue application, for filing or later presentation of each independent claim which is in excess of the number of independent claims in the original patent—$15.00
(j) In addition to the basic filing fee in a reissue application, for filing or later presentation of each claim (whether independent or dependent) in excess of 20 and also in excess of the number of claims in the original patent (Note that § 1.75(c) indicates how multiple dependent claims are considered for fee purposes.)—$5.00

Note.—See § 1.445 for international application filing and processing fees.

56. A new § 1.17 is added which reads as follows:

§ 1.17 Patent application processing fees.

(a) Extension fee for response within first month pursuant to § 1.136(a)—$50.00
(b) Extension fee for response within second month pursuant to § 1.136(a)—$150.00
(c) Extension fee for response within third month pursuant to § 1.136(a)—$350.00
(d) Extension fee for response within fourth month pursuant to § 1.136(a)—$550.00
(e) For filing a notice of appeal from the examiner to the Board of Appeals—$58.00
(f) In addition to the fee for filing a notice of appeal, for filing a brief in support of an appeal—$58.00
(g) For filing a request for an oral hearing before the Board of Appeals—$50.00
(h) For filing a petition to the Commissioner under a section of this part listed below which refers to this paragraph—$120.00
—§ 1.45—for correction of inventorship
—§ 1.47—for filing by other than all the inventors or a person not the inventor
—§ 1.182—for decision on questions not specifically provided for
—§ 1.183—to suspend the rules
—§ 1.268—for late filing of interference settlement agreement
(i) For filing a petition to the Commissioner under a section of this part listed below which refers to this paragraph—$60.00
—§ 1.12—for access to an assignment record
—§ 1.14—for access to an application
—§ 1.55—for entry of late priority papers
—§ 1.102—to make application special
—§ 1.103—to suspend action in application
—§ 1.177—for divisional reissues to issue separately
—§ 1.268—for access to interference settlement agreement
—§ 1.312—for amendment after payment of issue fee
—§ 1.313—to withdraw an application from issue
—§ 1.314—to defer issuance of a patent
—§ 1.334—for patent to issue to assignee, assignment recorded late
(j) For filing a petition to institute a public use proceeding under § 1.292—$750.00
(k) For processing an application filed with a specification in a non-English language (§ 1.52(d))—$20.00
(l) For filing a petition (1) for the revival of an abandoned application under 35 U.S.C. 133, or (2) for delayed payment of the issue fee under 35 U.S.C. 151—$120.00

57. A new § 1.18 is added which reads as follows:

§ 1.18 · Patent issue fees.

(a) Issue fee for issuing each original or reissue patent, except a design or plant patent—$250.00
(b) Issue fee for issuing a design patent for a 3½, 7 or 14 year term—$88.00
(c) Issue fee for issuing a plant patent—$125.00

58. A new § 1.20 is added which reads as follows:

§ 1.20 Post-issuance fees.

(a) For providing a certificate of correction of applicant's mistake (§ 1.323)—$40.00
(b) Petition for correction of inventorship in patent (§ 1.324)—$120.00
(c) For filing a request for reexamination (§ 1.510(a))—$1,500.00
(d) For filing each statutory disclaimer (§ 1.321)—$50.00
(e) For maintaining an original or reissue patent, except a design patent, based on an application filed on or after December 12, 1980, in force beyond 4 years; the fee is due by three years and six months after the original grant—$200.00
(f) For maintaining an original or reissue patent, except a design patent, based on an application filed on or after December 12, 1980, in force beyond 8 years; the fee is due by seven years and six months after the original grant—$400.00
(g) For maintaining an original or reissue patent, except a design patent, based on an application filed on or after December 12, 1980, in force beyond 12 years; the fee is due by eleven years and six months after the original grant—$600.00.

59. Section 1.137 is revised to read as follows:

§ 1.137 Revival of abandoned application.

(a) An application abandoned for failure to prosecute may be revived as a pending application if it is shown to the satisfaction of the Commissioner that the delay was unavoidable. A petition to revive an abandoned application must be accompanied by a showing of the causes of the delay, by the proposed response unless it has been previously filed, and by the petition fee set forth in § 1.17(1). Such showing must be a verified showing if made by a person not registered to practice before the Patent and Trademark Office.

(b) [Reserved]

(c) Any petition filed pursuant to paragraph (a) of this section must be promptly filed after the applicant is notified of, or otherwise becomes aware of, the abandonment. Any such petition not filed within six months of the date of abandonment must be accompanied by a terminal disclaimer with fee under § 1.321 dedicating to the public a terminal part of the term of any patent granted thereon equivalent to the period of abandonment of the application.

60. Section 1.155 is revised to read as follows:

§ 1.155 Issue and term of design patents. (a) If, on examination, it shall appear that the applicant is entitled to a design patent under the law, a notice of allowance will be sent to the applicant, or applicant's attorney or agent, calling for the payment of the issue fee (§ 1.18(b)). If this issue fee is not paid within 3 months of the date of the notice of allowance, the application shall be regarded as abandoned.

(b) The Commissioner may accept the payment of the issue fee later than three months after the mailing of the notice of allowance as though no abandonment

had ever occurred if upon petition the delay in payment is shown to have been unavoidable. The petition to accept the delayed payment must be accompanied by (1) the issue fee, unless it has been previously submitted, (2) the fee for delayed payment (§ 1.17(1)), and (3) a showing that the delay was unavoidable. Such showing must be a verified showing if made by a person not registered to practice before the Patent and Trademark Office.

(c) [Reserved]

(d) Any petition filed pursuant to paragraph (b) of this section must be promptly filed after the applicant is notified of, or otherwise becomes aware of, the abandoment. Any such petition not filed within six months of the date of abandonment must be accompanied by a terminal disclaimer with fee under § 1.321 dedicating to the public a terminal part of the term of any patent granted thereon equivalent to the period of abondonment of the application.

61. Section 1.316 is revised to read as follows:

§ 1.316 Application abandoned for failure to pay issue fee.

(a) If the issue fee is not paid within 3 months from the date of the notice of allowance, the application will be regarded as abandoned. Such an abandoned application will not be considered as pending before the Patent and Trademark Office.

(b) The Commissioner may accept the payment of the issue fee later than three months after the mailing of the notice of allowance as through no abandonment had ever occurred if upon petition the delay in payment is shown to have been unavoidable. The petition to accept the delayed payment must be a accompanied by (1) the issue fee, unless it has been previously submitted, (2) the fee for delayed payment (§ 1.17(1)), and (3) a showing that the delay was unavoidable. Such showing must be verified showing if made by a person not registered to practice before the Patent and Tradmark Office.

(c) [Reserved]

(d) Any petition filed pursuant to paragraph (b) of this section must be promptly filed after the applicant is notified of, or otherwise becomes aware of, the abandonment. Any such petition not filed within six months of the date of abandonment must be accompanied by a terminal disclaimer with fee under § 1.321 dedicating to the public a terminal part of the term of any patent granted thereon equivalent to the period of abandonment of the application.

62. Section 1.317 is revised to read as follows:

§ 1.317 Lapsed patents; delayed payment of balance of issue fee.

(a) If the issue fee was paid prior to October 1, 1982, any remaining balance of the issue fee is to be paid within three months from the date of notice thereof and, if not paid, the patent will lapse at the termination of the three month period.

(b) The Commissioner may accept the payment of the remaining balance of the issue fee later than three months after the mailing of the notice thereof as though no lapse had ever occurred if upon petition the delay in payment is shown to have been unavoidable. The petition to accept the delayed payment must be accompanied by (1) the remaining balance of the issue fee, unless it has been previously submitted, (2) the fee for delayed payment (§ 1.17(1)), and (3) a showing that the delay was unavoidable. Such showing must be a verified showing if made by a person not registered to practice before the Patent and Trademark Office.

(c) [Reserved]

(d) Any petition filed pursuant to paragraph (b) of this section must be promptly filed after the applicant is notified of, or otherwise becomes aware of, the lapse. Any such petition not filed within six months of the date of lapse must be accompanied by a terminal disclaimer with fee under § 1.321 dedicating to the public a terminal part of the term of the patent equivalent to the period of lapse of the patent.

Alternative B—Rule Changes Under H.R. 6260.

Prior to October 1, 1982, the Department of Commerce will publish a document confirming the amendments under either Alternative A or Alternative B set forth herein depending upon enactment of H.R. 6260 as a Public Law.

63. A new § 1.16 is added which reads as follows:

§ 1.16 National application filing fees.

(a) Basic fee for filing each application for an original patent, except design or plant cases:
By a small entity (§ 1.9(f))—$150.00
By other than a small entity—$300.00

(b) In addition to the basic filing fee in an original application, for filing or later presentation of each independent claim in excess of 3:
By a small entity (§ 1.9(f))—$15.00
By other than a small entity—$30.00

(c) In addition to the basic filing fee in an original application, for filing or later presentation of each claim (whether independent or dependent) in excess of 20 (Note that § 1.75(c) indicates how multiple dependent claims are considered for fee calculation purposes):
By a small entity (§ 1.9(f))—$5.00
By other than a small entity—$10.00

(d) In addition to the basic filing fee in an original application, if the application contains, or is amended to contain, a multiple dependent claim(s), per application:
By a small entity (§ 1.9(f))—$50.00
By other than a small entity—$100.00
(If the additional fees required by paragraphs (b), (c) and (d) are not paid on filing or on later presentation of the claims for which the additional fees are due, they must be paid or the claims cancelled by amendment, prior to the expiration of the time period set for response by the Office in any notice of fee deficiency.)

(e) Surcharge for filing the basic filing fee or oath or declaration on a date later than the filing date of the application:
By a small entity (§ 1.9(f))—$50.00
By other than a small entity—$100.00

(f) For filing each design application:
By a small entity (§ 1.9(f))—$62.50
By other than a small entity—$125.00

(g) Basic fee for filing each plant application:
By a small entity (§ 1.9(f))—$100.00
By other than a small entity—$200.00

(h) Basic fee for filing each reissue application:
By a small entity (§ 1.9(f))—$150.00
By other than a small entity—$300.00

(i) In addition to the basic filing fee in a reissue application, for filing or later presentation of each independent claim which is in excess of the number of independent claims in the original patent:
By a small entity (§ 1.9(f))—$15.00
By other than a small entity—$30.00

(j) In addition to the basic filing fee in a reissue application, for filing or later presentation of each claim (whether independent or dependent) in excess of 20 and also in excess of the number of claims in the original patent. (Note that § 1.75(c) indicates how multiple dependent claims are considered for fee purposes.):
By a small entity (§ 1.9(f))—$5.00
By other than a small entity—$10.00
(Note, see § 1.445 for international application filing and processing fees.)

64. A new § 1.17 is added which reads as follows:

§ 1.17 Patent application processing fees.

(a) Extension fee for response within first month pursuant to § 1.136(a):
By a small entity (§ 1.9(f))—$25.00
By other than a small entity—$50.00

(b) Extension fee for response within second month pursuant to § 1.136(a):
By a small entity (§ 1.9(f))—$75.00
By other than a small entiry—$150.00

(c) Extension fee for response within third month pursuant to § 1.136(a):
By a small entity (§ 1.9(f))—$l175.00
By other than a small entity—$350.00

(d) Extension fee for response within fourth month pursuant to § 1.136(a):
By a small entity (§ 1.9(f))—$275..00
By other than a small entity—$555.00

(e) For filing a notice of appeal from the examiner to the Board of Appeals:
By a small entity (§ 1.9(f))—$57.50
By other than a small entity—$115.00
(f) In addition to the fee for filing notice of appeal, for filing brief in support of an appeal:
By a small entity (§ 1.9(f))—$57.50
By other than a small entity—$115.00
(g) For filing a request for an oral hearing before the Board of Appeals:
By a small entity (§ 1.9(f))—$50.00
By other than a small entity—$100.00
(h) For a filing a petition to the Commissioner under a section of this part listed below which refers to this paragraph—$120.00
—§ 1.45—for correction of inventionship
—§ 1.47—for filing by other than all the inventors or a person not the inventor
—§ 1.182—for decision on questions not specifically provided for
—§ 1.183—to suspend the rules
—§ 1.268—for late filing of interference settlement agreement
(i) For filing a petition to the Commissioner under a section of this part listed below which refers to this paragraph—$60.00
—§ 1.12—for access to an assignment record
—§ 1.14—for access to an application
—§ 1.55—for entry of late priority papers
—§ 1.102—to make application special
—§ 1.103—to suspend action in application
—§ 1.177—for divisional reissues to issue separately
—§ 1.268—for access to interference settlement agreement
—§ 1.312—for amendment after payment of issue fee
—§ 1.313—to withdraw an application from issue
—§ 1.314—to defer issuance of a patent
—§ 1.334—for patent to issue to assignee, assignment recorded late
(j) For filing a petition to institute a public use proceeding under § 1.292—$750.00
(k) For processing an application filed with a specification in a non-English language (§ 1.52(d))—$20.00
(l) For filing a petition (1) for the revival of an abandoned application under 35 U.S.C. 133, or (2) for delayed payment of the issue fee under 35 U.S.C. 151:
By a small entity (§ 1.9(f))—$25.00
By other than a small entity—$50.00
(m) For filing a petition (1) for revival of an unintentionally abandoned application or (2) for the unintentionally delayed payment of the fee for issusing a patent:
By a small entity (§ 1.9(f))—$250.00
By other than a small entity—$500.00

65. A new § 1.18 is added which reads as follows:

§ 1.18 Patent issue fees.

(a) Issue fee for issuing each original or reissue patent, except a design or plant patent:
By a small entity (§ 1.9(f))—$250.00
By other than a small entity—$500.00
(b) Issue fee for issuing a design patent:
By a small entity (§ 1.9(f))—$87.50
By other than a small entity—$175.00
(c) Issue fee for issuing a plant patent:
By a small entity (§ 1.9(f))—$125.00
By other than a small entity—$250.00

66. A new § 1.20 is added which reads as follows:

§ 1.20 Post-issuance fees.

(a) For providing a certificate of correction of applicant's mistake (§ 1.323)—$40.00
(b) Petition for correction of inventorship in patent (§ 1.324)—$120.00
(c) For filing a request for reexamination (§ 1.510(a))—$1,500.00
(d) For filing each statutory disclaimer (§ 1.321):
By a small entity (§ 1.9(f))—$25.00
By other than a small entity—$50.00
(e) For maintaining an original or reissue patent, except a design or plant patent, based on an application filed on or after (*date of enactment*), in force beyond 4 years; the fee is due by three years and six months after the original grant—$200.00
(f) For maintaining an original or reissue patent, except a design or plant patent, based on an application filed on or after (*date of enactment*), in force beyond 8 years; the fee is due by seven years and six months after the original grant—$400.00
(j) For maintaining an original or reissue patent, except a design or plant patent, based on an application filed on or after (*date of enactment*), in force beyond 12 years; the fee is due by eleven years and six months after the original grant—$600.00
(h) For maintaining an original or reissue patent, except a design patent, based on an application filed on or after December 12, 1980 and before (*date of enactment*), in force beyond 4 years; the fee is due by three years and six months after the original grant:
By a small entity (§ 1.9(f))—$200.00
By other than a small entity—$400.00
(i) For maintaining an original or reissue patent, except a design patent, based on an application filed on or after December 12, 1980 and before (*date of enactment*), in force beyond 8 years; the fee is due by seven years and six months after the original grant:
By a small entity (§ 1.9(f))—$400.00
By other than a small entity—$800.00
(i) For maintaining an original or reissue patent, except a design patent, based on an application filed on or after December 12, 1980 and before (*date of enactment*), in force beyond 12 years; the fee is due by eleven years and six months after the original grant:
By a small entity (§ 1.9(f))—$600.00
By other than a small entity—$1,200.00

67. Section 1.66 is revised to read as follows:

§ 1.66 Officers authorized to administer oaths.

(a) The oath or affirmation may be made before any person within the United States authorized by law to administer oaths. An oath made in a foreign country may be made before any diplomatic or consular officer of the United States authorized to administer oaths, or before any officer having an official seal and authorized to administer oaths in the foreign country in which the applicant may be, whose authority shall be proved by a certificate of a diplomatic or consular officer of the United States, or by an apostille of an official designated by a foreign country which, by treaty or convention, accords like effect to apostilles of designated officials in the United States. The oath shall be attested in all cases in this and other countries, by the proper official seal of the officer before whom the oath or affirmation is made. Such oath or affirmation shall be valid as to execution if it complies with the laws of the State or country where made. When the person before whom the oath or affirmation is made in this country is not provided with a seal, his official character shall be established by competent evidence, as by a certificate from a clerk of a court of record or other proper officer having a seal.

(b) When the oath is taken before an officer in a country foreign to the United States, any accompanying application papers, except the drawings, must be attached together with the oath and a ribbon passed one or more times through all the sheets of the application, except the drawings, and the ends of said ribbon brought together under the seal before the latter is affixed and impressed, or each sheet must be impressed with the official seal of the officer before whom the oath is taken. If the papers as filed are not properly ribboned or each sheet impressed with the seal, the case will be accepted for examination, but before it is allowed, duplicate papers, prepared in compliance with the foregoing sentence, must be filed.

68. Section 1.137 is revised to read as follows:

§ 1.137 Revival of abandoned application.

(a) An application abandoned for failure to prosecute may be revived as a pending application if it is shown to the satisfaction of the Commissioner that the delay was unavoidable. A petition to revive an abandoned application must be promptly filed after the applicant is notified of, or otherwise becomes aware of, the abandonment, and must be accompanied by a showing of the causes of the delay, by the proposed response unless it has been previously filed, and by the petition fee set forth in § 1.17(l). Such showing must be a verified showing if made by a person not registered to practice before the Patent and Trademark Office.

(b) An application unintentionally abandoned for failure to prosecute may be revived as a pending application if the delay was unintentional. A petition to revive an unintentionally abandoned application must be filed within one year of the date on which the application became abandoned or be filed within three months of the date of the first decision on a petition to revive under paragraph (a) of this section which was filed within one year of the date of abandonment of the application. A petition to revive an unintentionally abandoned application must be accompanied by (1) a statement that the abandonment was unintentional, (2) a proposed response unless it has been previously filed, and (3) a petition fee as set forth in § 1.17(m). Such statement must be a verified statement if made by a person not registered to practice before the Patent and Trademark Office. The Commissioner may require additional information where there is a question whether the abandonment was unintentional. The three month period set forth in this paragraph may be extended under the provisions of § 1.136(a), but no further extensions under § 1.136(b) will be granted. Petitions to the Commissioner under § 1.183 to waive any time periods for requesting revival of an unintentionally abandoned application will not be considered, but will be returned to the applicant.

(c) Any petition pursuant to paragraph (a) of this section not filed within six months of the date of abandonment must be accompanied by a terminal disclaimer with fee under § 1.321 dedicating to the public a terminal part of the term of any patent granted thereon equivalent to the period of abandonment of the application.

69. Section 1.155 is revised to read as follows:

§ 1.155 Issue and term of design patents.

(a) If, on examination, it shall appear that the applicant is entitled to a design patent under the law, a notice of allowance will be sent to the applicant, or applicant's attorney or agent, calling for the payment of the issue fee (§ 1.18(b)). If this issue fee is not paid within 3 months of the date of the notice of allowance, the application shall be regarded as abandoned.

(b) The Commissioner may accept the payment of the issue fee later than three months after the mailing of the notice of allowance as though no abandonment had ever occurred if upon petition the delay in payment is shown to have been unavoidable. The petition to accept the delayed payment must be promptly filed after the applicant is notified of, or otherwise becomes aware of, the abandonment, and must be accompanied by (1) the issue fee, unless it has been previously submitted, (2) the fee for delayed payment (§ 1.17(1)), and (3) a showing that the delay was unavoidable. Such showing must be a verified showing if made by a person not registered to practice before the Patent and Trademark Office.

(c) The Commissioner may, upon petition, accept the payment of the issue fee later than three months after the mailing of the notice of allowance as though no abandonment had ever occurred if the delay in payment was unintentional. The petition to accept the delayed payment must be filed within one year of the date on which the application became abandoned or be filed within three months of the date of the first decision on a petition under paragraph (b) of this section which was filed within one year of the date of abandonment of the application. The petition to accept the delayed payment must be accompanied by (1) the issue fee, unless it has been previously submitted, (2) the fee for unintentionally delayed payment (§ 1.17(m)), and (3) a statement that the delay was unintentional. Such statement must be a verified statement if made by a person not registered to practice before the Patent and Trademark Office. The Commissioner may require additional information where there is a question whether the abandonment was unintentional. The three-month period from the date of the first decision referred to in this paragraph may be extended under the provisions of § 1.136(a), but no further extensions under § 1.136(b) will be granted. Petitions to the Commissioner under § 1.183 to waive any time periods for requesting revival of an unintentionally abandoned application will not be considered, but will be returned to the applicant.

(d) Any petition pursuant to paragraph (b) of this section not filed within six months of the date of abandonment must be accompanied by a terminal disclaimer with fee under §1.321 dedicating to the public a terminal part of the term of any patent granted thereon equivalent to the period of abandonment of the application.

70. Section 1.316 is revised to read as follows:

§ 1.316 Application abandoned for failure to pay issue fee.

(a) If the issue fee is not paid within 3 months from the date of the notice of allowance, the application will be regarded as abandoned. Such an abandoned application will not be considered as pending before the Patent and Trademark Office.

(b) The Commissioner may accept the payment of the issue fee later than three months after the mailing of the notice of allowance as though no abandonment had ever occurred if upon petition the delay in payment is shown to have been unavoidable. The petition to accept the delayed payment must be promptly filed after the applicant is notified of, or otherwise becomes aware of, the abandonment, and must be accompanied by (1) the issue fee, unless it has been previously submitted, (2) the fee for delayed payment (§ 1.17(1)), and (3) a showing that the delay was unavoidable. Such showing must be a verified showing if made by a person not registered to practice before the Patent and Trademark Office.

(c) The Commissioner may, upon petition, accept the payment of the issue fee later than three months after the mailing of the notice of allowance as though no abandonment had ever occurred if the delay in payment was unintentional. The petition to accept the delayed payment must be filed within one year of the date on which the application became abandoned or be filed within three months of the date of the first decision on a petition under paragraph (b) of this section which was filed within one year of the date of abandonment of the application. The petition to accept the delayed payment must be accompanied by (1) the issue fee, unless it has been previously submitted, (2) the fee for unintentionally delayed payment (§ 1.17(m)), and (3) a statement that the delay was unintentional. Such statement must be a verified statement if made by a person not registered to practice before the Patent and Trademark Office. The Commissioner may require additional information where there is a question whether the abandonment was unintentional. The three-month period from the date of the first decision referred to in this paragraph may be extended under the provisions of § 1.136(a), but no further extensions under § 1.136(b) will be granted. Petitions to the Commissioner under § 1.183 to waive any time periods for requesting revival of an unintentionally abandoned application will not be considered, but will be returned to the applicant.

(d) Any petition pursuant to paragraph (b) of this section not filed within six months of the date of abandonment must be accompanied by a terminal disclaimer with fee under § 1.321 dedicating to the public a

terminal part of the term of any patent granted thereon equivalent to the period of abandonment of the application.

71. Section 1.317 is revised to read as follows:

§ 1.317 Lapsed patents; delayed payment of balance of issue fee.

(a) If the issue fee was paid prior to October 1, 1982, any remaining balance of the issue fee is to be paid within three months from the date of notice thereof and, if not paid, the patent will lapse at the termination of the three month period.

(b) The Commissioner may accept the payment of the remaining balance of the issue fee later than three months after the mailing of the notice thereof as though no lapse had ever occurred if upon petition the delay in payment is shown to have been unavoidable. The petition to accept the delayed payment must be promptly filed after the applicant is notifed of, or otherwise becomes aware of, the lapse, and must be accompanied by (1) the remaining balance of the issue fee, unless it has been previously submitted, (2) the fee for delayed payment (§ 1.17(1)), and (3) a showing that the delay was unavoidable. Such showing must be a verified showing if made by a person not registered to practice before the Patent and Trademark Office.

(c) The Commissioner may, upon petition, accept the payment of the remaining balance of the fee later than three months after the mailing of the notice thereof as though no lapse had ever occurred if the delay in payment was unintentional. The petition to accept the delayed payment must be filed within one year of the date on which the patent lapsed or be filed within three months of the date of the first decision on a petition under paragraph (b) of this section which was filed within one year of the date of lapse of the patent. The petition to accept the delayed payment must be accompanied by (1) the remaining balance of the issue fee, unless it has been previously submitted, (2) the fee for unintentionally delayed payment (§ 1.17(m)), and (3) a statement that the delay was unintentional. Such statement must be a verified statement if made by a person not registered to practice before the Patent and Trademark Office. The Commissioner may require additional information where there is a question whether the delay in payment was unintentional. The three-month period from the date of the first decision referred to in this paragraph may be extended under the provisions of § 1.136(a), but no further extensions under § 1.136(b) will be granted. Petitions to the Commissioner under § 1.183 to waive any time periods for requesting acceptance of an unintentionally delayed payment will not be considered, but will be returned to the applicant.

(d) Any petition pursuant to paragraph (b) of this section not filed within six months of the date of lapse must be accompanied by a terminal disclaimer with fee under § 1.321 dedicating to the public a terminal part of the term of the patent equivalent to the period of lapse of the patent.

(35 U.S.C. 6 and 25)

PART 2—RULES OF PRACTICE IN TRADEMARK CASES

Section II—Revision of Trademark Fees

Rule Changes Common to Public Law 96-517 and H.R. 6260

72. Section 2.85 is amended by revising paragraph (e) to read as follows:

§ 2.85 Classification schedules.

* * * * *

(e) Where the amount of the fee received on filing an appeal in connection with an application or on an application for renewal or in connection with a petition for cancellation is sufficient for at least one class of goods or services but is less than the required amount because multiple classes in an application or registration are involved, the appeal or renewal application or petition for cancellation will not be refused on the ground that the amount of the fee was insufficient if the required additional amount of the fee is received in the Patent and Trademark Office within the time limit set forth in the notification of this defect by the Office, or if action is sought only for the number of classes equal to the number of fees submitted.

* * * * *

73. Section 2.101 is amended by revising paragraph (c) to read as follows:

§ 2.101 Filing an opposition.

* * * * *

(c) If no fee, or a fee insufficient to cover at least one class, is filed within 30 days after publication of the mark to be opposed or within an extension of the time for filing an opposition, the opposition will not be refused if the required fee(s) (See § 2.6) are filed in the Patent and Trademark Office within the time limit set forth in the notification of this defect by the Office.

* * * * *

74. Section 2.146 is amended by revising paragraph (b) to read as follows, and by removing paragraph (f):

§ 2.146 Petition to the commissioner.

* * * * *

(b) Any such petition must contain a statement of the facts involved and the point or points to be reviewed and the action requested and the requisite fee (See § 2.6). Any brief in support thereof should accompany or be embodied in the petition; in contested cases any brief in opposition shall be filed within fifteen days after service of the petition. Where facts are to be proved in ex parte cases (as in petition to revive an abandoned application), the proof in the form of affidavits or declarations in accordance with § 2.20 (and exhibits, if any) must accompany the petition.

* * * * *

75. Section 2.162 is amended by revising paragraph (d) to read as follows:

§ 2.162 Requirements for affidavit or declaration during sixth year.

* * * * *

(d) Include the required fee for each class to which the affidavit or declaration pertains in the registration. If no fee, or a fee insufficient to cover at least one class, is filed before the expiration of the sixth year following the date of registration or of publication under Section 12(c) of the Act, the affidavit or declaration will not be refused if the required fee(s) (See § 2.6) are filed in the Patent and Trademark Office within the time limit set forth in the notification of this defect by the Office. If insufficient fees are included to cover all classes in the registration, the particular class or classes to which the affidavit or declaration pertains should be specified.

* * * * *

76. Section 2.167 is amended by adding a paragraph (g) as follows:

§ 2.167 Affidavit or declaration under Section 15.

* * * * *

(g) Include the required fee for each class to which the affidavit or declaration pertains in the registration. If no fee, or a fee insufficient to cover at least one class, is filed at an appropriate time, the affidavit or declaration will not be refused if the required fee(s) (See § 2.6) are filed in the Patent and Trademark Office within the time limit set forth in the notification of this defect by the Office. If insufficient fees are included to cover all classes in the registration, the particular class or

classes to which the affidavit or declaration pertains should be specified.

Alternative A—$Rule Change Only Under Public Law 96-517

Prior to October 1, 1982, the Department of Commerce will publish a document confirming the amendments under either Alternative A or Alternative B set forth herein depending upon enactment of H.R. 6260 as a Public Law.

77. Section 2.6 is revised to read as follows:

§2.6 Trademark fees.

The following fees and charges are established by the Patent and Trademark Office for trademark cases:

(a) For filing an application, per class—$$88.00
(b) For filing an application for renewal of a registration, per class—$150.00
(c) For filing to publish a mark under § 12(c), per class—$50.00
(d) For issuing a new certificate of registration upon request of assignee—$50.00
(e) For a certificate of correction of registrant's error—$50.00
(f) For filing a disclaimer to a registration—$50.00
(g) For filing an amendment to a registration—$50.00
(h) For filing an affidavit under § 8 of the Act, per class—$50.00
(i) For filing an affidavit under § 15 of the Act, per class—$50.00
(j) For filing a combined affidavit under §§ 8 and 15 of the Act, per class—$100.00
(k) For petitions to the Commissioner—$50.00
(l) For filing petition to cancel or notice of opposition, per class—$100.00
(m) For ex parte appeal to the Trademark Trial and Appeal Board, per class—$50.00
(n) For printed copy of registered mark Copy only—.40 cents
Copy showing title and/or status—6.50
(o) For certifying trademark records, per certificate—3.50
(p) For photocopies or other reproductions of records, drawings, or printed material, per page of the material copied—.30
(q) For recording trademark assignment, per document—20.00
For each mark in addition to one assigned in the same document—5.00
(r) For abstracts of title to each registration or application, including the search—12.00
(s) For special service handling of late filed fees in connection with a renewal—50.00
(t) For items and services that the Commissioner finds may be supplied, for which fees are not specified, such charges as may be determined by the Commissioner with respect to each such item or service—actual cost.

Alternative B—Rule Change Only Under H.R. 6260

Prior to October 1, 1982, the Department of Commerce will publish a document confirming the amendments under either Alternative A or Alternative B set forth herein depending upon enactment of H.R. 6260 as a Public Law.

78. Section 2.6 is revised to read as follows:

§2.6 Trademark fees.

The following fees and charges are established by the Patent and Trademark Office for trademark cases:

(a) For filing an application, per class—$175.00
(b) For filing an application for renewal of a registration, per class—$300.00
(c) For filing to publish a mark under section 12(c), per class—$100.00
(d) For issuing a new certificate of registration upon request of assignee—$100.00
(e) For a certificate of correction of registrant's error—$100.00
(f) For filing a disclaimer to a registration—$100.00
(g) For filing an amendment to a registration—$100.00
(h) For filing an affidavit under §8 of the Act, per class—$100.00
(i) For filing an affidavit under §15 of the Act, per class—$100.00
(j) For filing a combined affidavit under §§8 and 15 of the Act, per class—$200.00
(k) For petitions to the Commissioner—$100.00
(l) For filing petition to cancel or notice of opposition, per class—$200.00
(m) For exparte appeal to the Trademark Trial and Appeal Board, per class—$100.00
(n) For printed copy of registered mark Copy only —$1.00
Copy showing title and/or status—$6.50
(o) For certifying trademark records, per certificate—$3.50
(p) For photocopies or other reprodutions of records, drawings, or printed materal, per page of the material copied—30 cents
(q) For recording trademark assignments, per document—$100.00
For each mark in addition to one assigned in the same document—$20.00
(r) For abstracts of title to each registration or application, including the search—$12.00
(s) For special service handling of late filed fees in connection with a renewal—$100.00
(t) For items and services that the Commissioner finds may be supplied, for which fees are not specified, such charges as may be determined by the Commissioner with respect to each such item or service—actual cost.

(Secs. 31 and 41 of the Trademark Act of July 5, 1946 (15 U.S.C. 1113 and 1123); (35 U.S.C. 6 and 25))

Dated: July 14, 1982.

Gerald J. Mossinghoff,

Commissioner of Patents and Trademarks.

[FR Doc. 82-20680 Filed 7-29-82; 8:45 am]

BILLING CODE 3510-16M

Friday
July 30, 1982

Part V

Department of the Interior

Bureau of Land Management

Federally Owned Coal; Amendments to Coal Management Program Regulations

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Circular No. 2508]

43 CFR Parts 3400, 3410, 3420, 3430, 3440, 3450, 3460, and 3470

Coal Management; Federally Owned Coal; Amendments to Coal Management Program Regulations

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: The final rulemaking will eliminate burdensome, outdated and unneeded provisions of the existing coal management regulations. The specific amendments to the existing regulations resulted from public comments requested by the Secretary of the Interior and from an extensive review of the coal management program by Bureau of Land Management and Department of the Interior personnel.

EFFECTIVE DATE: August 30, 1982.

ADDRESS: Any suggestions or inquiries should be sent to: Director (540), Bureau of Land Management, 1800 C Street, N.W., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT:
Monte Jordan, (202) 343–4636
or
Robert C. Bruce, (202) 343–8735.

SUPPLEMENTARY INFORMATION: The proposed rulemaking amending the existing coal management program regulations was published in the **Federal Register** on December 16, 1981 (46 FR 61390). Comments were invited for a 60-day period during which time a total of 76 comments were received. The comments came from the following sources: 29 from companies, 26 from associations, 12 from state governments, 5 from individuals, 3 from Federal agencies and 1 from local government. The comments have been carefully reviewed as part of the decisionmaking process on this final rulemaking.

This final rulemaking has been coordinated with the amendments being made to Title 30 of the Code of Federal Regulations Part 211—Coal Exploration and Mining Operations—published elsewhere in the **Federal Register.** The two sets of regulations have been cross-referenced for the convenience of the users.

This final rulemaking reflects the formation of the Minerals Management Service on January 19, 1982, by Secretarial Order No. 3071 and the involvement of that agency in the Federal coal management program. References to U.S. Geological Survey and the Conservation Division have been changed to references to Minerals Management Service throughout Group 3400 except where reference is to the Bureau of Land Management/Geological Survey/Office of Surface Mining Memorandum of Understanding. The Minerals Management Service will carry out the duties of the former Conservation Division of the Geological Survey under this memorandum of understanding.

The discussion of the comments is divided into two categories. The general comments that were offered will be discussed first and then the comments that were offered in connection with specific sections will be discussed.

General Comments

A majority of the comments commended the Department of the Interior for its effort and intent to clarify and reduce the paperwork burden and duplication imposed by the existing regulations. One comment summarized this sentiment, stating "that the proposed rules restore fairness, equity, practicality and recognition of Congressional intent." Some of the comments stated that some additional changes could still be made that would further reduce the burden on the public. For example, some comments suggested that what they viewed as the arbitrariness of the unsuitability criteria be reduced and that more be done to dispel the idea that coal mining is a "desperation social activity" or a "use of last resort" for Federal lands.

On the other hand, a relatively large number of comments expressed the view that the proposed rulemaking should not be adopted. These comments suggested that the changes made by the proposed rulemaking would lead to excessive leasing of Federal lands, reduce the role of citizens and State governments in the leasing process, systematically remove the obligation in the existing regulations to protect environmental and socioeconomic values, reduce the protection given surface owners by the existing regulations and not be in the public interest.

Most of the comments that expressed opposition to the adoption of the proposed rulemaking in final form were of the view that the new rulemaking constituted a new program which required the preparation of an environmental impact statement. Some comments stated that the proposed rulemaking did not meet the land use planning requirements of the various statutes that impact the Federal coal management program. One comment expressed the opinion that the adoption of the proposed rulemaking as a final rulemaking would destroy years of effort to integrate coal leasing with land use planning on Federal lands.

Several comments requested that detailed procedures not be moved from the regulations and placed only in the Bureau of Land Management's manuals. One comment suggested that much of what some might call "burdensome" is the paperwork and consultation needed to make sure that the decisionmakers are as well informed as possible.

The Federal coal program management regulations being revised by this final rulemaking contained many detailed internal procedures. This wealth of procedural detail amounted to self-regulation by the Bureau of Land Management. Such self-regulation is more appropriately contained in internal memoranda and manuals.

A few of the comments objected to what they viewed as a less-than-candid explanation of the proposed rulemaking which focused on reducing the burdensome requirements in the existing regulations, while, in fact, making major changes in the regulations. The Department of the Interior strongly disagrees with the view that the proposed rulemaking was misleading in any way.

There are many different aspects to burdensome regulations. The paperwork requirements apply not just to the administrative agency but also to the applicant. Reducing the agency's paperwork should benefit both the applicant and the public by producing quicker decisions and thereby saving time and expense.

The proposed rulemaking resulted from a careful review of the existing regulations by Department of the Interior and Bureau of Land Management personnel with the aim of changing the existing regulations to continue an effective Federal coal management program with less burden on the affected public. Both the proposed rulemaking and this final rulemaking represent the Department of the Interior's best effort to achieve this goal. This final rulemaking continues the principal aims of the 1979 Federal coal management program, including provisions for integration of the coal leasing program with the Bureau's land use planning process and for public participation in the entire process. While the final rulemaking does represent a considerable improvement in the existing regulations, it does so while preserving the essential features of the existing Federal coal management program.

As noted earlier in this preamble, several comments questioned the absence of a new or supplemental program environmental impact statement for the proposed rulemaking. A few of the comments argued that the proposed rulemaking would have substantially greater impacts on the environment than the existing coal program and questioned the conclusion set out in the proposed rulemaking that the proposed rulemaking would not result in any significant changes in the level or types of environmental impacts created by the existing program as determined in the Final Environmental Statement Federal Coal Program (INT FES 79–19) (1979) ("Program EIS").

The Program EIS studied seven alternative coal programs, including leasing to satisfy industry's indication of need. This final rulemaking revises the existing program to permit enough leasing to approximate the demand for Federal coal reserves. Although perhaps less than leasing to satisfy industry's indications of need, the changes may result in more leasing than the existing program which is based on production goals.

The Program EIS, in chapter 5, analyzes the environmental impacts of the various alternatives and concludes that the impacts are not significantly different. The Program EIS finds that leasing to satisfy industry's indication of need would not result in significantly greater impacts on a nationwide basis than the preferred alternative. The environmental impact statement does find that leasing to satisfy industry's indication of need would result in greater impacts in the western regions, although it does not describe these increased impacts as significant.

The environmental assessment on the proposed rulemaking has been clarified and strengthened and a new finding of no significant impact has been made. This assessment and finding more clearly recognize that additional impacts may result from this final rulemaking, compared to the existing program, particularly in the western regions, but that these impacts would not be significantly greater than those anticipated from the existing program. These additional impacts are within the impacts assessed and analyzed in the discussion of other alternatives in the Program EIS.

The comments also criticized the deletion by the proposed rulemaking of § 3420.3–4 of the existing regulations which sets the criteria for updating or revising the Program EIS. The Department of the Interior considers this a dispute of form over substance. The comments argue that a deletion of this provision of the regulations demonstrates the Department's lack of commitment to protection of the environment. The preamble to the proposed rulemaking stated that the provisions had been deleted in order to allow flexibility to respond to changing circumstances.

Regardless of whether this provision is deleted or retained, the Department must revise or update the Program EIS when its assumptions, analyses and conclusions are no longer valid. It is extremely difficult to predict when changing circumstances will require preparation of a new environmental impact statement. The exact procedures necessary for compliance with the National Environmental Policy Act of 1969 at some future time are even more difficult to predict. For these reasons, the Department has decided to delete this provision in the final rulemaking, while recognizing that its obligations under the National Environmental Policy Act remain unchanged.

Specific Comments

Part 3400—Coal Management—General

Subpart 3400—Introduction—General

Approximately half of those commenting on the proposed rulemaking made comments aimed specifically at this subpart. A few comments suggested that the responsibilities section that was deleted by the proposed rulemaking be retained in the regulations. A few of the comments were of the view that the section was helpful in making clear the responsibilities of each of the Department of the Interior bureaus that were involved with the coal leasing program. There were a few comments that supported dropping the section. The section is too detailed, difficult to keep current and unnecessary, since the responsibilities of the Bureau of Land Management, Minerals Management Service and the Office of Surface Mining are detailed in the three-way memorandum of understanding which is available to the public from appropriate offices of all three bureaus.

The definitions section drew a sizable number of comments. The comments suggested that the definitions of each of the bureaus involved in the coal leasing program should be identical or should cross-reference one another to reduce the confusion as to the meaning of various terms. The suggestion that the bureaus cross-reference their definitions to reduce confusion was accepted and has been done to the extent possible in the final rulemaking.

As an example of this cross-referencing, the definition of the term "alluvial valley floor" has been changed in the final rulemaking to reflect the definition that appears in Chapter VII of Title 30 of the Code of Federal Regulations. This term was the focus of a comment that requested a change in the definition in the existing regulations to place more emphasis on the farming aspect, which the comment indicated was the intent of Congress. The change recommended by the comment was not adopted in the final rulemaking.

Making bidding rights transferable, which was accomplished by the change in the term "certificate of bidding rights" by the proposed rulemaking, was the subject of two comments that expressed the view that transferable bidding rights were bad policy and illegal. The comments were based on the view that the transfer provisions reward past speculators by offering valuable bidding rights in exchange for leases with no value. Further, the comments claimed that the transferable bidding rights also create a new commodity which the Bureau of Land Management is not authorized to manage, the buying and selling of bidding rights. These comments misunderstand the change made by the proposed rulemaking. Bidding rights, which are authorized by statute, are granted in exchange for leases and, in some cases, rights to lease, or investments in the minerals based on the fair market value of those leases, rights to lease or investments. The Bureau does not intend to engage in the buying or selling of bidding rights. The amendment made by the proposed rulemaking and adopted in the final rulemaking merely makes the bidding rights transferable to another party in much the same way that a lease is transferable. Written notification of the transfer would be required to allow the Bureau to keep track of valid certificate holders. The change was supported by one comment.

One comment noted that the term "environmental analysis" was used in the proposed rulemaking in place of "environmental assessment" but no definition was given for the term. The comment asked if the term had the same meaning as the term "environmental assessment", which is defined. The term "environmental analysis" was intended to be a shorthand reference to the procedures to be followed to comply with the National Environmental Policy Act of 1969. Such analysis could result in an environmental assessment or an environmental impact statement, depending on the circumstances of the action under consideration. However, in response to the comment, the change made by the proposed rulemaking is not adopted in the final rulemaking. Full and

complete compliance with the National Environmental Policy Act and its implementation under 40 CFR Parts 1500 to 1508 is the meaning of the term "environmental assessment" as it is used in the final rulemaking.

A few comments requested a change in the definition of the term "substantial legal and financial commitments", as used in the unsuitability process, even though that term had not been addressed in the proposed rulemaking. The comments suggested that the definition should be expanded to include the costs of surface acquisition, environmental assessment and control and fixed capital improvements. While it is acknowledged that it is difficult to arrive at a list of commitments that covers all areas and is satisfactory to everyone, the commitments presently contained in the definition meet those envisioned by the provisions of the Surface Mining Control and Reclamation Act. No change has been made in this definition in the final rulemaking.

One comment wanted the definition of the term "surface management agency" changed to reflect clearly the Federal jurisdiction over Federal coal underlying private surface within the National Grasslands. The definition has not been changed in the final rulemaking because it adequately shows the jurisdiction of the Forest Service in such areas.

In commenting on § 3400.1 of the proposed rulemaking, a comment questioned what stipulations might be imposed on a lease or license in an area found suitable for multiple mineral development. Suitable stipulations would be those to make simultaneous or sequential operations feasible and possible for coal and other minerals.

Several comments raised questions concerning the change made in § 3400.4 by the proposed rulemaking that allows the regional coal team to solicit participation from State and Federal agencies, rather than continuing to require it, as provided in the existing regulations. There are simply too many Federal and State agencies with tangential relations to the Federal coal management program to require contacting all of them. Instead, all regional coal team meetings are open to the public and to all agencies that might wish to participate. In practice, each regional coal team consults with all State and Federal agencies that show a continuing interest in its proceedings or that have relevant expertise. No change from the proposed rulemaking has been made in this section in the final rulemaking.

A sentence has been added by the final rulemaking to § 3400.5, Coal Production Regions, to clarify that these regions are the areas in which regional coal lease sales will be conducted.

Part 3410—Exploration Licenses

Subpart 3410—Exploration Licenses

Four comments were concerned about the changes made by the proposed rulemaking in § 3410.2–2 regarding the environmental assessment procedure. Special concern was expressed about the deletion of the language on substantial disturbance. The relevant language on substantial disturbance is contained in § 3410.2–2(a)(1) of the final rulemaking. The Department of the Interior recognizes its statutory responsibilities under the National Environmental Policy Act and Federal Coal Leasing Amendments Act and fully intends to implement those laws in the issuance of exploration licenses. In the unlikely event that an environmental impact statement is required prior to the decision on whether or not to issue an exploration license, the language of this final rulemaking has been changed to allow for the preparation of an impact statement. To clarify this, the phrase "or environmental impact statement, if necessary" has been added to § 3410.2–2 of the final rulemaking.

A few comments raised questions about the provisions of § 3410.2–1(c) of the proposed rulemaking which require applicants for exploration licenses to allow all interested parties to participate in the exploration program. One comment went so far as to suggest that the regulations should describe in some detail the rights and obligations of participants. The relative rights and obligations of participants is an area that is best left to negotiation by those participants because they are the best judges of their respective needs and limitations.

Questions were raised about the requirement in § 3410.2–1(c) for publication of the Notice of Invitation. It will be retained. The Notice of Invitation is an administrative means of lessening environmental impacts on Federal coal lands by reducing the amount of repetitive drilling on the same lands by numerous parties.

In addition, the 30-day requirement imposed by § 3410.2–1(c)(2) is adequate time for a person who wishes to participate in an exploration license to apply, and does not impose an undue burden on a licensee. Therefore, the language of § 3410.2–1 as set forth in the proposed rulemaking is adopted in the final rulemaking.

Two comments objected to the proposed deletion of the consultation requirements in §§ 3410.2–4 and 3410.3–1(g) (1) and (2) because it was felt the deletion would diminish environmental protection. Consultation with other agencies will occur as required by law, and the deletions made by the proposed rulemaking are intended to eliminate redundant language in the regulations. The language of the proposed rulemaking is adopted in the final rulemaking.

Four comments raised questions concerning the administrative procedures used for processing exploration licenses, particularly the requirement that exploration licenses are only valid for two years and may not be extended. The two-year limitation on the term of an exploration license is statutorily set in section 4 of the Federal Coal Leasing Amendments Act. This limitation means that a licensee must reapply for a new license at the end of a two-year term and automatic extensions cannot be granted. To streamline processing time for a new two-year license, renewal procedures may be worked out in advance, but the licensee will have to reapply for a license every two years. The final rulemaking contains the language of the proposed rulemaking for § 3410.3–1(b).

There was a sizable number of comments on the sections of the proposed rulemaking dealing with surface owner protection. Several of the comments took issue with the statements in the preamble to the proposed rulemaking that the existing regulations delegated responsibilities to the surface owner with respect to bond amounts and whether license terms have been met. One comment wanted the regulations to contain language that would protect the licensee from exorbitant surface owner demands.

The Department of the Interior believes that the rights of private surface owners on split estate lands are adequately protected by the changes made by the proposed rulemaking in § 3410.3–4(b). In addition, nothing in the existing regulations prevents the surface owner from taking an active interest in exploration drilling and reclamation activities taking place on his/her lands. The regulations give the authorized officer final authority for determining the sufficiency of the amount of any bond offered for reclamation protection and whether or not the operator has complied with the terms and conditions of the exploration license.

The qualified surface owner provisions of the Surface Mining Control and Reclamation Act apply only to Federal coal leases of lands on which the coal will be mined by methods other than underground techniques. They do not apply to exploration licenses. With

respect to exploration license activities, the rights of private surface owners on split estate lands generally include compensation for damages to crops and improvements. Of course, owners living on the lands where exploration activities occur are concerned that adequate surface protection measures are taken by the licensee. The licensee has an incentive to act in accordance with the terms and conditions of the license. There is a favorable climate for negotiation between the licensee and the surface owner concerning just compensation for damages, with the authorized officer acting only as the impartial final decisionmaker on bonding and bond release. The changes made by the proposed rulemaking to § 3410.3–4(b) are unchanged in the final rulemaking.

A few comments expressed concern about the deletion by the proposed rulemaking of the language in § 3410.4(a) giving the authorized officer authority to require the licensee to collect ground and surface water data. The comments also raised questions about the appropriate time for the collection of the data, the adequacy of the protection given licensee-submitted data and the uses to which the data were being put by the U.S. Government.

The final rulemaking restores paragraph (a) to § 3410.4. The authorized officer has the discretionary authority of requiring hydrology data from applicants. The purpose of this provision is to minimize disturbances to the environment by collecting data for the water resource only once. The authorized officer would only require such data in those specific cases where the data are needed for environmental assessment and tract delineation purposes and where those data are not available from other sources.

Where applicable, the data submitted by a licensee will be treated as proprietary by the Minerals Management Service under the provisions of 43 CFR 2.13 and 30 CFR 211.6. It will be used in the resources information data base.

Three comments noted that there are no incentives for seeking exploration licenses because there is no method for licensees to recover their exploration costs. Several methods of reimbursement were mentioned: exploration licensees could deduct exploration costs from the first production royalty if they are the successful bidder on a coal lease tract; if not the successful bidder on a coal lease tract, the successful bidder would reimburse the exploration licensee for exploration costs; and the licensee could be given the right to obtain the lease by meeting the high bid and then deducting the exploration costs from the first production royalty.

The major problems with the first two suggested incentives are cost verification and which costs to allow for recovery. An audit of exploration expenses would have to be conducted by the Federal Government to determine which costs were recoverable and to verify those costs. This would result in extra administrative costs for the Federal Government and inconvenience for the licensee. The third suggestion would violate the Federal Coal Leasing Amendments Act because the coal lease sale would not be truly competitive and because the licensee would be getting a right to lease coal. Unfortunately, there appears to be no administratively simple remedy for the problem of inadequate exploration license cost incentives. The suggestions have not been adopted and the final rulemaking contains the language of the proposed rulemaking on this section. However, the Department of the Interior will continue to review this issue in an attempt to derive effective and administratively simple incentives for the private sector to acquire exploration licenses.

Part 3420—Competitive Leasing

Subpart 3420——Competitive Leasing

Several comments were directed at the changes in terminology from "environmental assessment" to "environmental analysis" in the proposed rulemaking, making the point that the term "environmental assessment" was defined in the regulations but that the term "environmental analysis" was not. As stated earlier in this preamble, the term "environmental assessment" or "environmental impact statement" will be used throughout the regulations rather than the term "environmental analysis."

The comments discussed above expressed concern that the changes made by the proposed rulemaking in § 3420.0–2 and at other points in the regulations downgraded environmental protection and land use planning. The revised objectives section is meant to focus more clearly on the objectives of the coal management program, as opposed to the overall objectives of public land management. The objectives of the Bureau of Land Management's land use planning program are set out in 43 CFR Part 1600. Other than the change involving environmental assessment, the final rulemaking adopts the language of the proposed rulemaking for § 3420.0–2.

A few comments objected to the proposed deletion of § 3420.1–1, which gave general information about the leasing program made by the proposed rulemaking. The material contained in § 3420.1–1 is repetitive of language that appears in other parts of the subpart and it is not needed. The final rulemaking deletes § 3420.1–1.

Four comments objected to the proposed rulemaking's deletion of the section on leasing of lands within known recoverable coal resource areas (section 3420.1–3). There appears to be some misunderstanding on the part of the comments about the identification of known recoverable coal resource areas. Even though known recoverable coal resource areas will continue to be identified, and the identification of the areas will continue to aid land use planning, leasing will no longer be limited to those areas. Leasing will occur on those lands found acceptable in land use planning and in the activity planning process; no other formal land classification action is required by statute. Section 3420.1–3 has been deleted by the final rulemaking.

Several comments strongly favored the change made by the proposed rulemaking in § 3420.1–2 that would provide an opportunity for coal resource information to be brought into the planning process at an early point in time. A small number of comments were concerned that the earlier introduction of coal resource information would bias the planning process, since there is no formal call for other resource and environmental information at the preplanning stage. The Department of the Interior expects that the request for coal resource information will normally be combined with the notice of intent to conduct land use planning or with the issue identification process. At that time, interested parties may also submit information concerning any other resources. Acquiring the coal resource information early will increase the efficiency of the planning process, since planning efforts will be directed to areas where there is interest in development. Some comments indicated that the process should allow the inclusion of additional areas at later stages of the process. This will be possible, but early selection of planning areas is the key to increasing planning efficiency. The need for confidentiality in treatment of information was stressed in two of the comments. Wording has been added to the final rulemaking to provide that proprietary data be sent to the Minerals Management Service for protection of confidentiality.

Wording has also been added to clarify the timing of the call and the role of other surface managing agencies.

Based on the above discussion, the final rulemaking has adopted the language of the proposed rulemaking except for the changes discussed herein.

Two comments suggested quantifying the term "reasonable number" as it applies to tracts for special leasing opportunities in renumbered § 3420.1–3. This is impractical, since the need for special leasing will vary over time and from region to region. The final rulemaking does not quantify the term.

Several comments recommended retention of the standards for judging the adequacy of a land use plan or land use analysis that are being deleted by the proposed rulemaking. The change, which has been included in the final rulemaking, will have no effect on the determination of the validity of a land use plan or land use analysis, since the general standards for adequate land use plans are found in 43 CFR Part 1600 and the specific coal-related components of a land use plan are described in § 3420.1. Therefore, the language of the proposed rulemaking has been adopted in the final rulemaking.

The final rulemaking makes a change in the first sentence of § 3420.1–4 so that it corresponds to section 3(A)(i) of the Federal Coal Leasing Amendments Act. This change is required because the Act states that no coal lease sale may be held until a land use plan or analysis has been completed, which is not consistent with the present wording of the section.

A few comments addressed the deletion by the proposed rulemaking of the § 3420.1–5(e) covering the use of a comprehensive land use plan or land use analysis prepared under 43 CFR Part 1600. The Bureau of Land Management plans to use resource management plans as soon as they are available, but, in some cases, the current planning schedule will not produce resource management plans by December 31, 1984. In those instances, the Bureau will rely on management framework plan amendments that meet the requirements of applicable statutes. No change has been made to this provision in the final rulemaking.

A comment questioned the substitution of the word "estimate" for the word "assessment" in the newly designated paragraph (d) of § 3420.1–4. This change has been retained in the final rulemaking because the word "estimate" better describes the process by which quantities of recoverable coal are ascertained.

Several comments objected to the deletion of the sequential screening process in § 3420.2 by the proposed rulemaking, while two supported the change. The screening process has not been eliminated. The only change is the deletion of the requirement that the screens be applied sequentially. The Department of the Interior believes that this change allows the authorized officer greater flexibility in determining the timing and sequence of application of the screening factors and the section has, therefore, been retained in the final rulemaking.

The language of § 3420.1–4(d) of the proposed rulemaking, renumbered § 3420.1–4(e) by the final rulemaking, has been revised to clarify which areas will be considered for coal leasing during activity planning. In addition, the language of § 3420.1–4 has been changed by the final rulemaking to clarify the role of surface managing agencies in land use planning. In response to comments, the requirement that multiple land use decisions shall be made during the land use planning process has been reinstated in § 3420.1–4(e)(3) by the final rulemaking.

Several comments indicated that surface owner consultation should be broadened to include all surface owners of split estate lands, not just those who are qualified under the Surface Mining Control and Reclamation Act or who have not given written permission. Everyone, of course, has the right to comment on the land use plan. The intent of this section of the regulations is to gain some indication of how many qualified surface owners object to leasing. No change from the proposed rulemaking has been made in the final rulemaking.

Several comments made objections to the elimination of threshold levels by the proposed rulemaking. Experience has shown that no land use plans to date have eliminated lands from further consideration for coal leasing as a result of the threshold provision of the existing regulations. However, the threshold concept is inherent in multiple use tradeoffs which are required by the existing regulations. Balancing coal development against other resource values and determining whether a level of development will induce adverse and unacceptable effects on these values is the essence of tract ranking and the regional environmental impact statement. This balancing is a threshold analysis.

Several comments objected to changing "may" to "shall" in the proposed rulemaking in renumbered § 3420.1–5. This change was made to eliminate duplication of the hearing requirements in 43 CFR Part 1600 and has no actual effect on the public's right to request a hearing. Elimination of paragraph (b) of this section removes procedural requirements that are more appropriately part of the Bureau of Land Management's manuals. The Bureau recognizes its obligation under 30 U.S.C. 201(a)(3)(c) to conduct pre-lease sale hearings. However, hearings conducted during the land use planning process should satisfy this requirement. No change has been made in this section of the final rulemaking.

Section 3420.2 was the focus of a relatively large number of comments. Many of these comments supported the concept of leasing to meet the demand for reserves or supported a more market oriented approach. One comment noted that, although it was desirable, it was not possible to lease for reserves because of the diligence requirements of the Federal Coal Leasing Amendments Act. Other comments were opposed to leasing to meet the demand for reserves, for the following reasons: it would decrease competition; prevent a fair return to the public treasury; encourge speculation; and encourage high grading in the mining of coal. Several comments felt that the Secretary of the Interior should be required to consider all the factors; that the mandatory criteria in § 3420.2(b) are hopelessly vague; that no data have been set forth on why the previous procedures were thought to be anti-competitive and inflationary; and that the proposed process depends too much on what industry tells the Department of the Interior.

The various concerns expressed by those comments that were opposed to the proposed changes have been extensively analyzed by the Federal agencies involved in the coal leasing program over several years. The Department of Justice, the Department of Energy, the General Accounting Office and the Council on Wage and Price Stability have all concluded that the Department of the Interior was not proposing to lease enough coal.

It is important to note that the research for the Office of Technology Assessment report referred to by several comments basically addressed the development and production potential of Federal coal lands. The study was never intended to assess the need for additional Federal coal leasing, and it did not make any such assessments. The question of production potential of specific leases, while very important, is only one of the factors to be considered in determining the appropriate level of leasing. It cannot substitute for other needed assessment of competition, inventory requirements, allowance for forecasting uncertainties and other factors.

One comment also stated that leasing for reserves, if not carefully controlled,

might lead to a glut of reserves which has the potential to destroy the value of certain Federal coal reserves to the detriment of specific lessees. The Department of the Interior would like to lease sufficient coal so that the market place can determine which tracts actually go into production. The tracts that go into production will be those with fewer environmental problems and more efficient production possibilities. The effect of this change on specific lessees will depend on the unique attributes of their tracts and their business capabilities relative to tracts held by other lessees or private owners and their business capabilities. Fear of competition by the holders of existing leases is an insufficient reason for not proceeding with new leasing.

A number of comments questioned the meaning of the term "leasing to meet the demand for reserves." Other comments stated that the change in policy might well be given more explicit expression within the wording of the regulation itself. One comment stated that it is essential that the coal States and the Department of the Interior articulate a clear and precise procedure for the implementation of this concept prior to promulgation of the final rulemaking.

On December 17, 1981, the Federal-State Coal Advisory Board met to discuss the changes made by the proposed rulemaking. Board members, particularly the State members, expressed considerable concern over the methods used to estimate the demand for reserves. The Board recommended "a working group or a task force be put together between the States and the Bureau of Land Management to explore the development of the technique for forecasting the demand for reserves." This recommendation was approved by the Under Secretary of the Department of the Interior on February 22, 1982. The Department is in the process of working with the States on this issue. Staff from the Bureau have met with State representatives to collect ideas for a report which will discuss in some detail the concept of leasing levels to meet the demand for reserves.

Some comments suggested adding a phrase to § 3420.2(a)(1) of the proposed rulemaking so that initial leasing levels would be based on the advice of the regional coal team and include factors specified in any guidebook on leasing level methodologies. We feel that this suggestion would tend to make the process redundant since the initial level is only a first cut at a range of numbers to be sent to the regional coal team members to obtain their advice. The regional coal team is free to give advice at any time; however, it is preferable not to build in a requirement for having a regional coal team meeting prior to having some draft numbers to consider. Any guidebook which might be developed would only elaborate on the factors listed in this rulemaking.

A large number of comments stated that the Department of the Interior should provide for public comment on the initial range of leasing levels and that the public/industry should be allowed to comment further on leasing level methodologies. Opportunity for the public to comment on the initial range of leasing levels will be provided at the regional coal team meeting where the regional coal team members present their findings and recommendations. The notice for the meeting will inform the public of this opportunity and also indicate the initial range is available for review by the public. One comment stated that Indian tribes are brought into the process too late under the proposed rulemaking and that initial leasing levels should be provided to tribes also. The comment expressed the view that the comments of all affected parties should be transmitted to the Secretary. This comment has not been adopted because the regional coal team is a preferable mechanism for receiving public input and incorporating it into the team's transmittal to the Secretary. It is expected that the regional coal teams and any tribes will also be working in close cooperation. The comments of all affected parties will be included in the official records of the regional coal team's actions. Therefore, the language of the proposed rulemaking is adopted in this final rulemaking.

Some comments expressed the view that setting ranges for leasing levels means that environmental analysis will be made more difficult and less precise. This should not be the case since there should be no change in the number of alternatives analyzed in the environmental impact statement, nor in the composition of the alternatives based on the tracts being analyzed. It is important to note that the "range of leasing levels" concept was developed to facilitate the regional coal team's work. It is much easier to identify an array of tracts with total reserves somewhere between 1.5 and 1.9 billion tons than to come up with tracts totaling exactly 1.7 billion tons. This gives the regional coal team more flexibility in selecting tracts. It is also important to recognize that the environmental impact statement evaluation of alternatives relies on specific tracts—not a "range." Thus, the tonnage of the tracts contained in an alternative is a specific figure which lies somewhere within the range.

One comment was of the opinion that there was inadequate provision in the proposed rulemaking for considering market demand for coal and that the State Director should perform a market analysis in developing initial levels. Changes to the regulations emphasize development of initial leasing levels by assembling a number of pertinent factors from various sources rather than through econometric modeling or statistical market analysis. Of course, if such information exists, the State Director will consider that along with the other inputs.

Several comments stated that the regional coal team should recommend a preferred level, not just alternative levels. This suggestion has not been adopted in the final rulemaking. The role of the regional coal team with respect to leasing levels is twofold: (1) Collect and review data and comments from the State Governors, industry, agencies with coal responsibilities and members of the public; and (2), after analyzing these data and comments, provide the Secretary of the Interior, through the Director, Bureau of Land Management, with reasonable alternative leasing levels. Governors of the affected States may provide comments and recommendations on leasing levels through their representatives on the regional coal team. All such comments and recommendations from the Governors will be transmitted without change to the Secretary. After receiving the regional coal team transmittal, the Secretary consults separately with the Governors of the affected States to obtain their final comments and recommendations before setting the leasing level for that coal production region. The regional coal team will, after the final environmental impact statement has been completed, make a recommendation to the Secretary on the final lease sale schedule.

Some of these same comments also suggested that § 3420.2(a)(5) be rewritten so that a copy of the Bureau of Land Management Director's separate document would be sent to the regional coal team at the same time as it is transmitted to the Secretary of the Interior. This procedure is currently being followed since the regional coal team members are included in the courtesy copy list for such documents.

Several of the comments expressed the opinion that the factors need to be rewritten or issued in a separate rulemaking that defines in more detail how the various factors are to be

measured. This type of technical detail properly belongs in manuals or workbooks. A number of comments provided specific editorial suggestions for rewording § 3420.2 (b) and (c).

The comments were not adopted because they would change the substance and intent of these sections. However, in § 3420.2(c), the reference to the Department of Energy production goals has been changed to U.S. coal production goals. Several comments were of the view that § 3420.2(c) should be changed to require that leasing levels "shall" be based on factors listed in order to provide an objective standard and mandatory language. This suggestion has been adopted in the final rulemaking. Finally, other minor editorial changes have been made in § 3420.2 of the final rulemaking to improve it.

A number of comments stated that the Secretary of the Interior should be guided by the established levels in his final leasing decisions rather than being "not constrained." This suggestion is not practical to implement because the Secretary establishes leasing levels before the environmental impact statement is completed and makes final leasing decisions after consideration of the final environmental impact statement and based on its analysis of the leasing levels. The environmental impact statement may contain new information that would indicate that some alternative other than the proposed action ought to be chosen. In such a case, the Secretary should be free to choose a different set of tracts or a different level of leasing in the final leasing decisions.

One comment received on § 3420.3–1(b) of the proposed rulemaking suggested that the last phrase of the last sentence be changed since land owners frequently change their minds and transfer their interests; however, the existing regulations could lock in a decision of a land owner not to give consent for a period of 10 years. Refusals to consent are not a part of the land use planning process and are not fixed for the life of the land use plans. Refusals are part of the activity planning process for Federal coal leasing. The activity planning process is a continually cycling endeavor. For each activity planning cycle, the surface owner will be contacted for consent, giving him/her the chance to make a new decision on the question of whether or not to give consent. Therefore, § 3427.2(i) has been revised by the final rulemaking to clarify this point. This revision changes the 1979 regulation on the life of refusals to consent.

Another comment stated that surface owner consent had been removed from coal activity planning. This is an erroneous interpretation of the provisions of the proposed rulemaking as the preceding paragraph makes clear. Still another comment asked why the proposed rulemaking deleted the words "shall upon verification" from renumbered § 3420.3–1(b). The change is an attempt to correct an earlier typographical error in the word "shall." The final rulemaking makes no changes in this section.

Several comments stated that no public input would be involved in the establishment of coal lease sale schedules. This interpretation is incorrect because the regional coal team will discuss and vote on schedules that will be recommended to the Secretary of the Interior in the public meetings held by the regional coal teams. Public comment will be accepted at the public meetings on all issues discussed. No change has been made on this subject in the final rulemaking.

A few comments were received concerning the expression of leasing and industry interests. The comments alleged that the coal companies are now running the coal leasing program and that the input of the regional coal leasing teams and other governmental bodies is diminished. This comment is not well taken because the regional coal team will, through coordination with the various public bodies which have representation on the team, suggest which tracts will be considered and recommend how they will be delineated. All interested parties will have an opportunity to comment to the regional coal team and to provide recommendations. The suggested changes were not adopted in the final rulemaking.

One comment expressed the opinion that the call for expressions of interest contained in § 3420.3–2 of the proposed rulemaking should be based on a Secretarial determination that additional leasing may be needed to meet coal needs. One of the factors to be considered by the Secretary of the Interior in establishing leasing levels is the result of the call for expressions of interest. Therefore, the call should be made following the completion of a land use plan update in order to provide part of the information needed by the Secretary to determine whether additional leasing is needed. The final rulemaking contains the language of the proposed rulemaking.

One comment expressed the view that the retention of a call for expressions of interest may be redundant in view of the proposed "call for coal resource information." The earlier call for information serves to alert the public to the fact that an area is being studied for possible designation as acceptable for further consideration for coal leasing. The information requested is used in the land use planning process. The purpose of the call is to obtain as much data as possible about the resources and to identify the issues to be addressed in the land use plan. The call for expressions of interest comes after land use planning is completed, which may be one or more years later. At that time, much more specific information is needed in order to delineate tracts. The final rulemaking contains the language of the proposed rulemaking.

A comment suggested deletion of the requirement that calls for expressions of interest to be made after land use planning and the establishment of "areas acceptable for further consideration." The comment has not been adopted because the principle of completing land use planning prior to beginning activity planning as established in the 1979 regulations should be retained. Another issue raised by the same comment was a desire that the 60-day time period allowed for expressions of interest be retained. This is not an appropriate requirement for the regulations, and it has not been adopted in the final rulemaking, because circumstances surrounding the time for filing expressions of interest will differ among the various coal regions.

One comment stated that the Department of the Interior should allow data which are considered proprietary to be submitted as part of an expression of interest, but to consider it confidential. The inclusion of proprietary or confidential data in an expression of interest is not desirable because it is reviewed by the regional coal teams and may be subject to public review. Proprietary information considered critical to the evaluation of resource quality and quantity should be provided separately to the Department using other established methods which allow for the proper protection of proprietary data. No change has been made in this area by the final rulemaking.

Several comments felt that language should be retained in the final rulemaking which gives the regional coal teams authority to determine the location, priority and timing of tract delineation and site specific enviornmental inventory and analysis. The concerns of this comment are fully addressed in the new language that the proposed and final rulemakings added

to § 3420.3–1(c) which lists the responsibilities of the regional coal team.

Several comments noted that the opportunity for public comment on tract delineation and ranking prior to the completion of the draft environmental impact statement appeared to have been eliminated by the proposed rulemaking. The proposed rulemaking anticipated that an opportunity for the public to comment on these subjects would occur at the public meetings held by the regional coal teams as it has in the past. This issue has been further clarified by language adopted in the final rulemaking.

A number of comments were received on the proposed rulemaking's streamlining of the language concerning ranking factors. Ranking factors will continue to be developed by the regional coal teams during public meetings and will be published in the regional environmental impact statement for public review and comment. In this same area, other comments expressed concern about public participation in tract ranking. Public participation in tract ranking will be provided through the public forum provided by the regional coal team activities where public comment is solicited on each step of the process. No change has been made on this subject by the final rulemaking.

Another comment suggested that ranking in classes of high, medium or low seems unnecessary. This comment has not been adopted in the final rulemaking because some of the tracts under consideration may be less desirable due to environmental, socioeconomic or coal quality factors. This reflects a checks and balances system which allows tradeoffs to occur with one factor not overpowering other significant factors in a given region.

A comment on the involvement of Indian tribes in the coal management program stated that they should be consulted. The policy of the Department of the Interior is to consult with the tribes when they may be directly affected by a leasing action. Tribes are invited to attend all regional coal team meetings and are specifically consulted on leasing levels and lease sale schedules. No change in tribal consultation has been made in the final rulemaking.

A comment made the suggestion that tract ranking should occur prior to the establishment of the leasing level in the process. This suggestion is not generally feasible since the process is designed to allow the regional coal team to have the results of the Secretary's decision on the leasing level in order to select tracts to meet that level. Tract ranking and selection are usually done at the same regional coal team meeting. However, ranking may occur prior to the establishment of the leasing level, but the final rulemaking does not require it. This suggestion has not been adopted in the final rulemaking.

Several comments urged that the regional coal team be required to identify alternative tract combinations for the regional lease sale environmental impact statement. Section 3420.3–4(b)(1) has been changed in the final rulemaking to provide that the regional coal team must identify a tract combination for each reasonable alternative leasing level. The final rulemaking also provides that the team may identify alternative tract combinations within any leasing level. This has been left to the team's discretion because it is best able, after analyzing the tracts available at any given time, to determine whether alternative tract selections within a leasing level are appropriate. It is impossible to predict the various situations each regional coal team might face. Therefore, the teams are given flexibility to adjust their selection accordingly.

Some comments suggested that the words "cumulative" and "bypass" be retained in § 3420.3–4(b)(2) of the final rulemaking. Cumulative impacts are determined as a result of the regional environmental impact statement analysis which does not take place until after the ranking and selection stage. Only the site specific impact data are available at this point in the process. Therefore, the language of the proposed rulemaking has been retained in the final rulemaking. The regional coal team can also take measures to avoid any type of potential future emergency leasing, whether for bypass or some other reason. The intent is to provide the regional coal team necessary leeway in tract selection in order to keep the integrity of the regional leasing process from being compromised by the emergency leasing process.

Several comments requested a variety of changes in § 3420.3–4(c) of the regulations. The final rulemaking has been changed to reflect that the proposed action in the regional lease sale environmental impact statement will be a combination of tracts approximating the leasing level established by the Secretary of the Interior under § 3420.2, and that the alternatives analyzed in the statement will include other reasonable combinations of tracts identified in the selection process or subsequent review. Specifically, the impact statement must analyze all tract combinations selected by the regional coal team for the various leasing levels.

The responsibility for preparing the environmental impact statement is set out in the final rulemaking, as one comment requested. The impact statement must analyze, among other things, the cumulative impacts of the proposed coal leasing level on the region. This analysis would include such aspects as the timing of production impacts, so that it is not necessary to specify sale schedules as alternatives, as one comment requested. Also, interregional cumulative impacts are the concern of the Federal Coal Management Program Environmental Impact Statement, not the regional environmental impact statement, as one comment suggested.

Several comments criticized the deletion by the proposed rulemaking of the regional lease sale environmental impact statement updating requirement. The Department of the Interior has determined that, for purposes of clarity, this requirement should be included in the final rulemaking. However, as more lands are leased or become available for leasing, it is imprudent to require four-year leasing cycles. The final rulemaking has been amended to require revision or repetition of the tract ranking, selection and scheduling process and the regional environmental impact statement as needed rather than on a regular basis. The final rulemaking changes the wording in the last sentence of § 3420.3–4(h) to delete the word "preliminary" since this term is no longer used in tract delineation and basically to restore the language of the existing regulations, except for changing leasing targets to leasing levels.

A few comments stated that consultation with the Governor(s) should occur upon consideration of any revisions to the lease sale decisions. These comments did not result in a change in the final rulemaking because this consultation is provided for in § 3420.4–3.

Comments were received on the reduced consultation period for the Governors in § 3420.4–3(a) of the proposed rulemaking. No change has been made on this point in the final rulemaking because 30 days should be sufficient since most of the consultations will be done orally. In this same vein, the comments raised objections to the reduction of the consultation period for Indian tribes from 60 days to 30 days by the proposed rulemaking. The final rulemaking has not been changed because, as discussed above, the consultation process will be a direct

process and 30 days should be a sufficient period.

One comment requested that § 3420.6–2 of the existing regulations be retained in the final rulemaking. This suggestion has not been adopted in the final rulemaking because there will be publication of descriptions of the tracts and a call for surface owner agreements much earlier in the process, as well as when the sale notice is published.

Subpart 3422—Lease Sales

Subpart 3422 drew a variety of comments. Some of the comments objected to the deletion by the proposed rulemaking of the requirement that the Geological Survey (now Minerals Management Service) determine maximum economic recovery prior to lease sale. Other comments supported this deletion. The Department of the Interior, in deciding to include this deletion in the final rulemaking, notes that the Minerals Management Service will continue to solicit public comments on maximum economic recovery (as well as on fair market value of tracts prior to a sale) for at least 30 days prior to publication of the sale notice, and that after a high bidder has been identified, the Minerals Management Service will make a preliminary determination of maximum economic recovery in compliance with section 3 of the Federal Coal Leasing Amendments Act (30 U.S.C. 201(a)(3)(C)). In further compliance with the Federal Coal Leasing Amendments Act, the Minerals Management Service will make a final determination of maximum economic recovery in conjunction with the review and approval of the resource recovery and protection plan for the lease.

Two comments were of the opinion that all economic information which might affect the determination of fair market value should be available prior to the sale for public review and comment. All non-proprietary data are available in the appropriate offices of the Minerals Management Service for public review. Therefore, no change has been made in this area in the final rulemaking.

One comment felt that the language of the proposed rulemaking in § 3422.1 fails to indicate that anyone will evaluate fair market value and maximum economic recovery. As noted above, the Minerals Management Service will evaluate maximum economic recovery, as stated in § 3422.3–2(b) of the final rulemaking, and a sale panel will evaluate the high bid and whether it equals or exceeds fair market value. One comment felt that no written findings are required by the proposed rulemaking and that no objective standards are in place to judge the adequacy of the bids. The final rulemaking makes a change in § 3422.3–2(b) that requires the sale panel's recommendation and the authorized officer's decision to be in writing and entered in the lease case file maintained by the Bureau of Land Management. The objective standards for fair market value are set forth in 43 CFR 3400.0–5(n). Other objective standards include the bidder qualifications set forth in 43 CFR Subpart 3472.

One comment asked that lease stipulations be released prior to the Department of the Interior's solicitation of comments on fair market value. Two comments asked that the notice of sale and lease terms and conditions be posted at least 60 days prior to the sale. Lease stipulations will continue to be released contemporaneously with the detailed statement of lease terms under § 3422.2, at least 30 days prior to the scheduled sale. Thirty days is an adequate period to assess the cost of complying with stipulations. Furthermore, the progress of activity planning leading to the sale gives a very strong indication of the nature of stipulations to be attached to a lease. The tract profiles will indicate issues that may lead to stipulations and the environmental impact statement will discuss specific mitigating measures that will likely be treated by stipulations. The final rulemaking makes no changes in this area.

One comment suggested that the regulations include a minimum period for comments. In rejecting this suggestion, the Department of the Interior notes that the comment period under § 3422.1 begins at least 30 days prior to publication of the sale notice, which in turn must be posted at least 30 days prior to the lease sale. Furthermore, as a general practice, the Minerals Management Service begins the solicitation of comments on fair market value and maximum economic recovery shortly after publication of the final regional lease sale environmental impact statement, to ensure adequate time for interested parties to comment.

Many comments supported § 3422.2(b)(1) of the proposed rulemaking which allows the publication of "minimum acceptable bids" to be discretionary, while some comments strongly opposed any change in the regulations that would not require the publication of "minimum acceptable bids." One comment indicated the change was unclear as to whether publication was discretionary or not, given the preamble explanation of the proposed rulemaking. Those opposed to the change felt that failure to publish "minimum acceptable bids" prior to a lease sale, and the deferring of judgment of acceptability until after the sale, would result in the United States not being assured of a proper return for the sale of its resources.

In response to the comments discussed above and after a detailed review of the history of this subpart, the Department of the Interior has changed the language of the final rulemaking to require publication of a "minimum bid" with the Notice of Sale. The term "minimum bid" avoids confusion over whether the "minimum acceptable bid" required by the existing regulations in the Notice of Sale for each tract was acceptable as fair market value for leasing or only acceptable as an entry level for having the bid considered by the sale panel. A "minimum acceptable bid" was that required for the bid to be considered at all by the sale panel; fair market value has always been that which the high bid must meet or exceed before a lease can be awarded.

The distinction between minimum acceptable bids and pre-sale estimates of fair market value has been blurred because practices were followed which essentially equated the two. Nothing in the existing regulations requires this practice, just as nothing in them prohibits a policy of announcing minimum acceptable bids as entry bids only, reserving determination of fair market value until after the sale.

The preamble to the proposed rulemaking was somewhat unclear as to whether or not the proposed change, which would make announcement of "minimum bids" discretionary, meant that in all cases fair market value would be determined after lease sale. This final rulemaking clarifies that in all cases "minimum bids" will be published prior to lease sale; it does not, however, preclude decisions to equate the "minimum bid" with pre-sale estimates of fair market value, if such an estimate is made.

The competitive interest at lease sales is a good indicator of fair market value. For instance, fair market value is likely to be reflected in a high bid that results from bidding among a large number of bidders. In other instances, where, for example, only one bid is expected on a tract, it may be appropriate for the Federal Government to estimate fair market value prior to the lease sale and to publish this value as the "minimum bid" in the Notice of Sale. The final rulemaking preserves the Department of the Interior's discretionary right to use any method of establishing minimum bids, including those described above.

The concerns about the United States not receiving fair market value for the

sale of its resources are without merit. Both the Federal Coal Leasing Amendments Act and this final rulemaking require the Department of the Interior to receive a fair market return for the public resources sold.

Three comments suggested that the Department of the Interior not make any determination of fair market value, either prior to or after the lease sale, and instead, accept in all cases any bid above the existing regulatory minimum of $25 per acre. Such a process would be an abrogation of the Secretary of the Interior's statutory responsibility to receive fair market value, which must be judged on a tract-by-tract basis. This suggestion was not adopted in the final rulemaking.

The minimum bonus bid for consideration in a Federal coal lease sale has been raised from not less than $25 per acre to not less than $100 per acre by this final rulemaking. This action could be taken as a matter of policy under the existing regulations, simply by using no amount less than $100 per acre in future sale notices, but this policy should be and is codified in final rulemaking. This new policy is fully consistent with the law and in no way affects previous decisions by the Department to award leases based on high bids received that were below $100 per acre inasmuch as those bids passed the test for fair market value. Setting the new minimum bid level establishes the policy of leasing the higher value tracts first. If tracts receive bids below $100 per acre, they will not be leased.

One comment proposed that bonuses be deductible from the first royalty payment. This suggestion merits further study and may be the subject of a further rulemaking; no change in the current process of separate and distinguishable payment of bonuses and royalties is being made in this final rulemaking.

One comment asked whether, in the case of fair market value determinations after lease sales, high bonus bids could be raised or lowered to meet the post-sale determination. Such a process would violate the requirements of the Federal Coal Leasing Amendments Act that leases be awarded by competitive bidding, and thus no change is made by the final rulemaking.

One comment suggested that the changes made by the proposed rulemaking with respect to fair market value and maximum economic recovery are direct violations of the requirements of the Federal Coal Leasing Amendments Act. The Department of the Interior strongly disagrees; no bid will be accepted which is less than fair market value, as determined by the Secretary. The Federal Coal Leasing Amendments Act does not require fair market value to be calculated prior to lease sale. Rather, this determination must be made before a bid is accepted. Similarly, the Federal Coal Leasing Amendments Act requires that the Secretary evaluate maximum economic recovery only prior to lease issuance, not prior to sale. The Act states that this evaluation shall not prohibit lease issuance. As required by the statute, no mining will be permitted which does not achieve maximum economic recovery of the coal within the tract.

One comment noted that because the Department of Energy's authority to establish bidding systems for leasable minerals (including coal) was repealed in December 1981, the Department of the Interior ought now to set bidding systems. The Department agrees with this recommendation and § 3422.3–1 has been modified in the final rulemaking to indicate the transfer of rulemaking authority from the Department of Energy to the Department of the Interior with respect to bidding systems. By this rulemaking, the Department may use cash bonus bidding with fixed royalties and any other bidding system adopted through future rulemaking procedures. A cash bonus bidding, fixed royalty system for coal had been adopted by the Department of Energy prior to the repeal of its authority to establish bidding systems.

Two comments suggested that high bidders be allowed up to three working days after a lease sale in which to submit the balances required to bring their one-fifth sealed bids up to one-fifth of their final high bids. The existing regulations call for each high bidder to make up any difference at the close of the bidding. Under the existing regulations, oral bidding was permitted at the discretion of the authorized office. The final rulemaking removes that discretion; all Federal coal lease auctions will be conducted using sealed bidding only. Elimination of the use of oral bidding will, it is hoped, result in bidding that more accurately reflects a lease sale participant's perception of actual tract value.

Several comments agreed with the deletion of § 3422.3–2 on intertract bidding, and suggested that intertract bidding is an inappropriate sale procedure. One comment remarked that it is especially important to maintain intertract bidding as an option, given the changes made by the proposed rulemaking in § 3420.2 relating to leasing levels. The Department of the Interior agrees that intertract bidding is not, strictly speaking, a bidding system, but is a sale procedure. The Department will maintain the right under this final rulemaking to use intertract bidding in appropriate situations.

One comment requested that intertract bidding procedures be specified in the regulations. The Department of the Interior prefers to specify the details of both the bidding system and the sale procedure as a part of the notice and detailed statement announcing a lease sale. The comment was not adopted in the final rulemaking.

One comment expressed concern that while intertract bidding is maintained as a sale procedure, its deletion as a bidding system removed the requirement that there be a public interest determination prior to its use. While the Department of the Interior does not believe such a determination is specifically required, a recommendation to use intertract bidding will generally originate with a regional coal team. Its recommendations are made after public meetings and consideration of the public interest.

Two comments supported the elimination of the detailed listing of the Department of the Justice's requirements for data from the high bidder regarding antitrust aspects of lease issuance. Two other comments objected to the proposed elimination. In adopting the change in the final rulemaking, the Department of the Interior notes that the Department of Justice will continue to specify the data necessary for its review and that this procedure and the change in the regulations have been approved by the Department of Justice. The detailed list of data will be available at the Bureau of Land Management State offices. This revision allows the Bureau to avoid making continual changes in these regulations because they will not have to be revised each time the Department of Justice makes a change in the data it requires.

Three comments suggested that the standard for deciding when one-half of the leases are offered for sale by deferred bonus bidding be based on a per sale basis rather than a per year basis. This suggestion has been rejected in the final rulemaking; the yearly standard is less burdensome administratively.

One comment expressed concern that the changes made by the proposed rulemaking in § 3422.4(a) would require the successful bidder to pay only his/her proportionate share of the cost of publishing the notice of sale, instead of the full share that is implied in the existing regulations. The concern is unfounded and the change has been adopted in the final rulemaking. The phrase "proportionate share" is

intended to clarify the situation where one sale notice announces the auction of several tracts. In such situations, each successful bidder pays only his/her fair share of the cost of publication.

One comment wanted to know the circumstances under which a deposit submitted with a bid would be refunded. The circumstances would be situations where the Department of the Interior is unable to issue a lease for reasons beyond the control of the high bidder. An example might be the erroneous verification of surface owner consent resulting in a lack of authority to lease the tract or a portion of it. Section 3422.4(a) has been revised in this final rulemaking to include circumstances under which a bid deposit may be forfeited.

One comment suggested that bidding competition would be enhanced if data required from an exploration license issued under subpart 3410 were not protected from general dissemination. While it is clear that the availability of equal information for all bidders would benefit competitive allocation of resources, any potential bidder has the opportunity to participate in an exploration program conducted under a Federal license. The only requirement for such participation is that all participants pay their proportionate share of exploration activity costs.

Subpart 3425—Leasing on Application

Several comments expressed opposition to the proposed rulemaking's elimination from § 3425.1–4 of the two-year production requirement for mining operations prior to applying for an emergency lease; retention of the maximum tonnage (8 years of reserves) allowed under any emergency lease; and elimination of paragraph (c) which allows only one emergency lease at a time for the same mining operation. An equal number of comments supported these changes.

Those comments opposing the elimination of the two-year mining operation requirements did so on the basis that it would encourage speculation, i.e., the opening of a mine without sufficient reserves, applying for permits to mine on adjacent State lands with the intention of tying up, but not mining, reserves. The supporters of this change cited the maximum enonomic recovery provisions of the Federal Coal Leasing Amendments Act as support for the change.

The elimination of the two-year requirement will not encourage speculation, but rather will allow legitimate operators access to Federal coal where there is a need, particularly in situations where the coal would have to be mined early in the sequence of operations or else would be bypassed. No operator who opened a mine with insufficient reserves in the expectation of acquiring a Federal lease would be considered to have a legitimate need for the coal.

Three comments expressed concern about the phrase "annual level of production on the date of application" in § 3425.1–4(a)(1), the emergency leasing qualifications. One comment expressed the view that the method of calculating reserves would lead to speculation by parties located on lands adjacent to Federal coal who could obtain options or letters of intent to produce large tonnages of coal, and then obtain a Federal emergency coal lease based on the options or letters of intent. This comment's concern is unfounded because the term "contract," as it is used in this subsection, does not include options or letters of intent to produce coal for emergency leasing purposes. No lease would be issued based on such documents. Furthermore, these regulations require that contracts must have been executed prior to July 19, 1979.

Two comments expressed concern about situations in which the emergency lease applicant has no prior annual level of production. In those cases, production data from a similar mining operation could be used in calculating lease reserves. These same comments were concerned about situations in which lessees have annual production levels from their producing mines but have contracted for higher levels than their current production levels, and requested assurance that the higher post-1979 contracted levels would be used to calculate the recoverable reserves under lease. The regulations do not allow leasing the higher level under these circumstances. The purpose of the emergency leasing program is twofold: to prevent the bypass of Federal coal and to allow operators in Federal coal production regions to maintain productioin levels until an appropriate regional lease sale can be held. The revised language contained in the proposed rulemaking inadvertently allowed lessees to enter into contracts after July 19, 1979, for higher levels than their annual production levels prior to submitting applications for emergency lease sales. This provision had the potential for defeating the purpose of the emergency leasing system. The final rulemaking amends the language of § 3425.1–4 to reflect this purpose.

Four comments objected to the retention of the eight-year reserve ceiling on emergency leases. They cited possible constraints on underground mining. Experience to date has shown the eight-year reserve number to be reasonable. The eight-year reserve ceiling has been retained in the final rulemaking because leasing large numbers of years of reserves under the emergency leasing system could compromise the regional leasing process. By the time eight years of reserves are exhausted, there should have been at least one regional lease sale in which life-of-mine leasing would be contemplated for any such mines.

One of the comments requested that emergency leases' diligence requirements be determined on a case-by-case basis. The final rulemaking has not adopted this request. All leases issued since the effective date of the Federal Coal Leasing Amendments Act are required to meet the diligent development requirements of the Act.

The elimination of paragraph (c) of § 3425.1–4 was opposed by four comments and supported by eight. Those comments that supported the elimination were of the opinion that removing the limitation of only one emergency lease at a time for the same mining operation will reduce the waste of Federal coal resources and provide needed flexibility in the leasing procedures. Those comments that objected to the elimination of paragraph (c) did so on the basis that its elimination will encourage abuses of the emergency leasing process and circumvention of the regional leasing program. The final rulemaking deletes paragraph (c) because there are sufficient safeguards built into the emergency leasing system to prevent the abuses raised in the comments.

A review of the comments indicates some confusion over the difference between emergency leasing and leasing outside coal production regions. Emergency leasing occurs in designated coal production regions where there is a need for coal prior to the next regional coal leasing sale. Outside of designated coal production regions, the existence of an "emergency" is irrelevant because all leasing is done in response to applications. Leasing outside designated coal production regions is accomplished under § 3425.1–5, which has been revised in the final rulemaking to clarify this point.

Section 3425.2 has been amended to clarify that no coal lease may be offered for sale until coal lands have been included in a land use plan or analysis.

Four comments recommended that States or State Governors be notified of the receipt and rejection of applications for coal lease sales and that Governors be consulted prior to the issuance of a

lease under an application. Under § 3425.4(a)(2), Governors are consulted prior to the holding of coal lease sales. Information on the status of lease applications is available upon request from the various State offices of the Bureau of Land Management. Governors may request such information directly or through their participation on the regional coal teams.

Two comments requested clarification of the phrase "compromise the regional leasing process" as it appears in § 3425.1–8(a) of the proposed rulemaking. The regional lease sale process includes a thorough ranking of each tract relative to other tracts. The regional process also allows for leasing enough reserves to provide for the life of the mine. Any extensive use of emergency leasing would adversely affect the regional lease sale process by removing tracts from the regional lease process of subjecting potential lease tracts to careful ranking and selection and more frequent public participation. Therefore, in coal production regions, applications for emergency lease sales would be rejected if the coal lands applied for would be offered for regional leasing at approximately the same time as they would be offered for emergency leasing.

A few comments objected to the changes made by the proposed rulemaking in § 3425.3 because of the view that the elimination of the language containing the detailed content of environmental assessments will dilute the environmental considerations given the coal lands applied for and will eliminate standards for public judgment on the adequacy of the environmental assessment. The final rulemaking makes no change on this point because the regulations reference the regulations of the Council on Environmental Quality which contain standards for environmental assessments and environmental impact statements. This change does not dilute the environmental review given the coal lands under consideration for leasing nor does it affect the Department of the Interior's responsibility under the National Environmental Policy Act. The interested public will be able to obtain and comment on all environmental assessments and be able to judge their adequacy.

The comments indicate some confusion over the difference between the terms "environmental analysis" and "environmental assessment." The product of the process of environmental analysis is either an environmental assessment or an environmental impact statement. In order to eliminate as much confusion as possible, the final rulemaking changes the term "environmental analysis" to either "environmental assessment" or "environmental impact statement," as appropriate.

The final rulemaking adds a new section, § 3425.1–9, which was inadvertently omitted from the proposed rulemaking. The new section clarifies a procedural question which has arisen during the processing of lease applications and allows modification of an application area where required or appropriate.

Several comments raised questions about the changes made by the proposed rulemaking in § 3425.4, principally the elimination of the requirement that all bidders at emergency lease sales meet the qualifications of the applicant. Two comments supported this elimination, while eleven opposed it. The support of the change was based on the premise that opening the emergency lease sale process "to all comers" would make such lease sales truly competitive. Those objecting to the change did so on the basis that the elimination of the special bidder qualifications for emergency lease sales would encourage speculation and could artificially inflate the price of coal or prevent the coal from being mined at all. The Department of the Interior has a statutory responsibility to lease coal competitively, whether or not an operator appears to be the only operator in a position to mine economically the coal covered by the application. The elimination of § 3425.4(b)(2) is an attempt by the Department to eliminate the special protection from competition afforded emergency lease applicants by the restrictive special bidder qualifications in the existing regulations. Therefore, the final rulemaking deletes the special emergency bidder qualifications at emergency sales.

Subpart 3427—Split Estate Leasing

Several of the comments on subpart 3427 stated that the revisions made by the proposed rulemaking reduce the protection afforded the qualified surface owner under the Surface Mining Control and Reclamation Act. The proposed changes are intended to clarify the requirements for surface owner consent. The proposed changes do not diminish the rights of qualified surface owners in any way. Federal coal lands held by surface owners who demonstrate that they are qualified under the Surface Mining Control and Reclamation Act and 43 CFR 3400.0–5(gg) and who refuse to grant consent will not be offered for lease sale.

Two comments objected to the revision made by the proposed rulemaking in § 3425.0–7 that changed the purpose of this subpart from setting out the protection offered qualified surface owners to setting out the requirements for submission of surface owner consents. In response to these comments, the final rulemaking revises the section to include both purposes. The final rulemaking more accurately reflects the content of the subpart.

Three comments were received on the proposed deletion of § 3425.2(d) which gives priority consideration to lands covered by surface owner consents over lands that are not so covered during the regional activity planning process. One comment supported the deletion and the others opposed it. The final rulemaking makes the deletion made by the proposed rulemaking so that tracts would not be required to be unnecessarily and prematurely eliminated during the coal activity planning process just because consents have not been received at that time. The Bureau of Land Management would retain the discretion to consider further or to eliminate such tracts, as appropriate.

Two comments on the changes made by the proposed rulemaking to § 3427.2(d) objected to the deletion of the 15-day period for verification of consents. This time limit constituted unnecessary self-regulation; no useful purpose is served by the Bureau of Land Management requiring itself to act in 15 days where failure to do so would not detrimentally affect the public. A third comment questioned the meaning of the proposed § 3427.2(d)(1) (i) and (ii). A consent that is obtained on or after August 3, 1977, the date of the enactment of the Surface Mining Control and Reclamation Act, must meet the criteria of this section or the consent will not suffice for the Bureau to hold a lease sale for the lands covered by the consent. Consents obtained before August 3, 1977, need not meet these criteria in order for the Bureau to proceed to sell the tracts. Lands covered by consents not meeting the criteria of this section will not be included in a lease sale unless and until transferable consents have been submitted. One comment questioned the meaning of the word "may" in § 3427.2(d)(1). This paragraph is intended to provide that the consent will be considered transferable to the successful bidder only if it provides that the successful bidder assumes the obligation to reimburse the consent holder for all money previously paid by the consent holder to the grantor under the consent

contract. The word "may" has been replaced with the word "shall" in the final rulemaking to clarify the meaning of this section.

Eight comments addressed § 3427.2(j) of the proposed rulemaking which provides that a surface owner would be considered unqualified if he/she refused to provide information regarding qualifications to the authorized officer upon request. All but one comment raised strong objections to this paragraph, considering it a violation of a right granted by statute. The intention of this paragraph in the proposed rulemaking was to suggest that qualified surface owners bear some responsibility to aid the Department of the Interior in establishing whether or not they meet the statutory requirements and thus whether or not the tracts may be offered for lease. If the surface owner does not want his/her lands leased, submitting evidence of qualifications and then refusing to grant consent or submitting a statement of refusal to consent will ensure that his/her lands will not be leased. Refusal to submit evidence of qualifications would benefit only those not qualified for the protection of the Surface Mining Control and Reclamation Act and who may wish to block the United States from leasing coal reserved to it under the privately held surface. The paragraph is intended to prevent such action.

Section 3427.2(j) has been revised in the final rulemaking to indicate that the Bureau of Land Management shares some responsibility for determining surface owner qualifications and will operate under a presumption of nonqualification only after it has failed to obtain evidence of qualifications both from the surface owner and from its own investigations. Also, the Bureau will notify any surface owner who is presumed unqualified under this paragraph of the decision in writing and provide the surface owner with an opportunity to appeal the decision.

Sections 3427.1, 3427.2(a), 3427.2(f), 3427.2(g), 3427(i) and 3427.4 were revised and published as a final rulemaking on March 3, 1982 (47 FR 9008). Those provisions are repeated here only insofar as they have been renumbered or amended to be consistent with this final rulemaking. Comments received on these sections were addressed in the preamble for that final rulemaking and are not repeated here.

Part 3430—Noncompetitive Leases

Subpart 3430—Preference Right Leases

There was a large number of comments on subpart 3430, with strong feelings being expressed about the requirement that a preference right lease applicant meet the standards of statutes passed since the dates his/her preference right lease applications were filed. The preamble to the rulemaking of July 19, 1979 (44 FR 42584), stated in full the background of the decisions concerning the rights of preference right lease applicants and the Department of the Interior's authority and responsibility in imposing terms and conditions in adjudicating and issuing these leases. To summarize the information in the 1979 preamble: preference right lease applicants have "valid existing rights" to have their lease applications adjudicated in reasonable time periods and to obtain leases if, under the Department's regulations, they have discovered coal in commercial quantities within the terms of the prospecting permit and if all other requirements are met. Preference right lease applicants have no rights to any particular set of lease terms or conditions, as decided by the courts in *Utah International, Inc.* v. *Andrus*, 488 F. Supp. 962 (D. Utah 1979); *Natural Resources Defense Council* v. *Berklund*, 609 F. 2d 553 (D.C. Cir. 1979); several Interior decisions; and several phosphate preference right leasing court cases. In *NRDC* v. *Berklund*, the court ruled that preference right lease applicants have a right to a coal lease if they can demonstrate the discovery of coal in commercial quantities. The court also ruled that the National Environmental Policy Act applies to the action of issuing a preference right lease.

There were seven comments on the subject of commercial quantities determinations. Most comments were against the "prudent man marketability" standard. The basis of the "prudent man marketability" standard is explained in the earlier May 7, 1976, final rulemaking (41 FR 18845). This standard and the commercial quantities definition which reflects it are retained in this final rulemaking.

Five comments on § 3430.2–1 expressed concern that the lessened information required from preference right lease applicants would result in inadequate environmental analysis and, consequently, environmental degradation. One comment unequivocally supported the lessened requirements for information and two comments believed that the information required was too burdensome, that no environmental information should be required of the applicant.

The main information requirement deleted from § 3420.2–1 by the proposed rulemaking is the requirement that demonstrated reserves be made by coal bed. The final rulemaking adopts this deletion (as well as other changes made in § 3420.2–1) because the requirement did not appear in the May 1976 rulemaking upheld in *NRDC* v. *Berklund*.

Several comments objected to the changes made by the proposed rulemaking in § 3430.3–2 on the basis that they would lessen or eliminate the environmental protection afforded by the specific provisions of the 1979 rulemaking. The environmental assessments will contain the information deleted from the regulations by the proposed rulemaking, with specific instructions for environmental procedures and format being contained in internal memoranda and manuals. These memoranda and manuals will be available to the public upon request from any appropriate Bureau of Land Management office. As stated earlier, the Department of the Interior fully intends to meet its responsibilities under the National Environmental Policy Act, other environmental legislation and the applicable implementing regulations.

As discussed earlier in this preamble, confusion has arisen over the difference between the terms "environmental analysis" and "environmental assessment" as used in § 3430.3–2. To avoid confusion, the terms "environmental assessment" and "environmental impact statement" have been used in this final rulemaking when applicable.

Three comments suggested that a new paragraph be added to § 3430.3–2 to require consultation with State Governors on environmental procedures. The internal Bureau of Land Management procedures require consultation with State Governors by having environmental assessments or environmental impact statements sent to them for comments. This requirement is not included in the final rulemaking because there is no need to place this internal requirement in regulation form.

Five comments requested that specific reference to the regional coal teams be made in subpart 3430 to correspond to the description of their duties in § 3400.4(c). Specifically, the comments wanted reference to the regional coal team in §§ 3430.1 and 3430.5–4. In an effort to keep the regulations on coal management as streamlined as possible, the duties of the regional coal teams are centralized to the extent possible, in one section, § 3400.4, and are not repeated throughout the regulations. This suggestion was not adopted by the final rulemaking.

The provisions of § 3430.5–4 have been changed in the final rulemaking so

that they correspond to the langauge of subpart 3435. Section 3430.5–4 as set out in the proposed rulemaking imposed more onerous requirements on the applicant than does subpart 3435.

Subpart 3431—Negotiated Sales—Rights-of-Way

A comment requested that § 3420.1–4, General requirements for land use plans, be modified to provide that land use plans provide for the necessary rights-of-way for support facilities. In the coal program, land use planning precedes the activity planning so that land use plans are more general for coal than for some other land uses. Nevertheless, use of the surface for rights-of-way for transportation and utility corridors is considered during the multiple use tradeoff phase of land use planning. The requested change was not made in the final rulemaking.

Another comment suggested that the phrase "if appropriate" be inserted in § 3431.2(b) to allow the Secretary of the Interior discretion as to whether or not to apply health and safety, surface protection and rehabilitation requirements to the removal of coal from a right-of-way. Removal of small amounts of coal should not "trigger extensive regulatory requirements." The language of § 3431.2(b) has been retained in the final rulemaking because its requirements are not excessive, and because the Secretary, under the Mineral Leasing Act, as amended, may subject such sales to such conditions as he/she deems appropriate.

The same comment requested deletion of § 3431.2(c) because the Surface Mining Control and Reclamation Act requirements are not applicable and they should not be imposed by regulation. The language of § 3431.2(c), which remains unchanged in the final rulemaking, allows the authorized officer discretion in determining reasonable terms and conditions for the removal of coal and reflects the Department's judgment that the Surface Mining Control and Reclamation Act is properly applied to the removal of such coal.

Subpart 3432—Lease Modifications

Two comments objected to the 160-acre limitation on coal lease modifications provided in the regulations. Since this limitation is a statutory requirement of the Federal Coal Leasing Amendments Act, the acreage limitation (see 30 U.S.C. 203) cannot be revised upward nor can exceptions be made through rulemaking.

Two comments expressed concern about the provisions of § 3432.3 in which the terms and conditions of the original lease (except the royalty provisions of pre-Federal Coal Leasing Amendments Act leases) are modified to reflect the statutes in effect on the date of application for the modification. The comments cite section 3 of the Mineral Leasing Act, as amended by the 1978 amendments, under which the Secretary is not required to apply certain production or mine plan requirements. These requirements include revised diligence requirements and the submission within three years of a resource recovery and protection plan.

A lease modification does not automatically trigger formation of a logical mining unit. Nothing in the law prevents the Secretary of the Interior from modifying the terms of the original lease, except for the royalty rate on a pre-Federal Coal Leasing Amendments Act lease. The provisions of § 3432.3 are in the public interest and are not being changed in the final rulemaking.

Subpart 3435—Lease Exchange

One comment recommended that the language of §§ 3435.0–1 and 3435.1 be changed to allow portions of leased lands to be exchanged, where such exchanges would serve the public interest. The final rulemaking adopts this recommendation in §§ 3435.0–1 and 3435.1.

Four comments requested that language be added to § 3435.3–1(a) requiring that the Governors be sent a copy of the exchange notice. The final rulemaking does not adopt this suggestion because at the time of the issuance of the exchange notice, the exchange is merely being studied and evaluated. In addition, State Governors have access to information about potential lease exchanges through participation on regional coal teams or upon request from State offices of the Bureau of Land Management.

One comment expressed the view that the qualified exchange proponent might not have any choice in selecting suitable lands for exchange. In lease exchange activities to date, the Department of the Interior has negotiated with the qualified exchange proponent as to suitable lands available for exchange. In addition, § 3435.3–2(a) provides the lessee or preference right lease applicant with an opportunity to inform the Secretary of the Interior of his/or preference for lands to be exchanged. The Secretary, however, retains the final decisionmaking authority on the leases and lands to be exchanged.

The same comment indicated that the method of exchange in the proposed rulemaking differs between lease and fee coal (subpart 3436) exchanges. The methods differ only in the methods of initiation and the authorization for the exchanges. Moreover, fee coal exchanges under subpart 3436 are not discretionary, once the requirements are met. In the case of fee coal in alluvial valley floor exchanges, the procedures reflect the relevant provisions of the Surface Mining Control and Reclamation Act and judicial decisions. In the more general case of lease exchanges under subpart 3435, the procedures reflect the circumstances of specific legislation or of Secretarial authority. No changes have been made in these provisions by the final rulemaking.

Three comments requested that the phrase "in consultation with the regional coal team" be inserted between the words "negotiate" and "an" where they appear in § 3435.3–2(a). The recommendation has not been adopted in the final rulemaking because it is redundant of language found in § 3400.4.

Five comments were concerned with the provisions of § 3435.3–4. Three of the comments requested that the exchanges be made whole, that is, allow costs other than resource values to be considered in determining fair market value. One of the comments recommended that the Department of the Interior develop an equitable method of evaluation, and another comment recommended that, insofar as possible, evaluations made under subparts 3435 and 3436 use the same procedures.

The exchange evaluation methodology is not a subject of this rulemaking but will vary from exchange to exchange based upon all factors relevant to the value determination. In particular, exchange valuation depends upon whether the statute authorizing the exchange allows consideration of factors other than the value of the coal resource. Therefore, the final rulemaking retains the language of the existing regulations for § 3435.3–4.

One comment suggested that the notice for interest in a public hearing described in § 3435.3–5 be published some minimum time before a public hearing would be set up. This suggestion has not been adopted in the final rulemaking because the notice is to solicit public response on whether to hold a public hearing. If a public hearing is held, notice would be given in sufficient time to allow interested parties to participate.

There were three comments on certificates of bidding rights, two of which supported their use, while one opposed them. The comment opposing their use misunderstood that their value is based only on the value of the resource surrendered.

One comment suggested several situations in which certificates of bidding rights might be issued to exchange proponents. To date the Department of the Interior has had no experience in administering certificates of bidding rights. As a detailed policy on the uses of bidding rights develops, the recommendations made in the comments will be considered.

Subpart 3436—Lease Exchanges—Alluvial Valley Floors

There were eight comments on subpart 3436. Four comments generally supported and four objected to several of the changes made by the proposed rulemaking.

Two comments stated that the definition of "substantial financial and legal commitments" given in § 3436.0–5 was contrary to the definition given in the Surface Mining Control and Reclamation Act. Two comments objected on the basis that the definition was too restrictive of the types of expenditures allowed and legal commitments made. The definition of "substantial financial and legal commitments" in § 3436.0–5 is not contrary to § 510(b)(5) of the Surface Mining Control and Reclamation Act, the alluvial valley floor exchange provision. The final rulemaking, in keeping with the practice of the Department of the Interior's having defined these two confusing, but different statutory phrases, differentiates between the two terms. The Office of Surface Mining's definition of the different term "substantial legal and financial commitments" is contained in the definition section of this final rulemaking in § 3400.0–5(11). The term "substantial legal and financial commitments" is used in the context of unsuitability assessments. The definition in § 3436.0–5 clarifies, in general terms, how a determination of substantial financial and legal commitments for alluvial valley floor exchange purposes will be made.

No attempt has been made in this final rulemaking to enumerate the types of financial and legal commitments that would be allowable because of the possibility that some commitments might be inadvertently omitted. Generally, qualifying commitments will be those which are appropriate to a surface coal mining operation.

One comment requested more specific guidance on when financial and legal commitments become substantial, specifically some objective quantitative standard. After careful study of the issue, the Department of the Interior has not found any clearly preferable standard for determining substantiality and no such standard is included in the final rulemaking.

If substantiality were defined in terms of a minimum dollar amount, then some small operators might not qualify, even though those operators had expended a large percentage of the total amount necessary for developing their operations.

If substantiality were defined in terms of percentage expended in relation to the overall development costs that would have been necessary for completion of the development, no absolute figure could be determined. For instance, a very large operation may have financial or legal commitments amounting to only 1 or 2 percent of the projected total development costs. The dollar amount might be several hundred thousand dollars. Such large outlays cannot be called "insubstantial" simply because the amount fails to reach some minimum percentage of total projected outlay required to develop a surface coal mining operation.

There is nothing in the legislative history of the Surface Mining Control and Reclamation Act addressing the Secretary of the Interior's right to compare the substantiality of the financial or legal commitment of the operator to the total projected cost of the development. Because this is the most equitable alternative available, the final rulemaking adopts the standard set forth in § 3436.0–5.

In response to two comments, the words "exclusively" and "solely" have been deleted from § 3436.0–5 in the final rulemaking to remove potential inequities in situations where the qualifying financial or legal commitment was shared by two or more coal properties. If a financial and legal commitment can be shown to be tied to the offered property, the exchange proponents should not be disqualified from making an exchange because the commitment relates to other properties also.

One comment recommended that value determinations on coal lands offered for exchange to the Department of the Interior include consideration of potential future values of those coal lands. Nothing in the Surface Mining Control and Reclamation Act or its legislative history allows the Department to consider anything other than the current value of the coal resource. Therefore, this recommendation has not been adopted by the final rulemaking.

One comment recommended that exchange proponents should have the right to select the lands suitable for exchange and that the Secretary of the Interior should be allowed to reject the proposal only if the selected tract has already been identified for leasing at a planned lease sale or if the value of the selected tract is so large as to preclude its exchange pursuant to § 3436.2–3(e). The Department of the Interior will certainly negotiate with qualified exchange proponents and consider any tracts the exchange proponent may wish to acquire. While exchange is mandatory for qualified exchange proponents, the Secretary must retain the right to determine the lands to be exchanged to assure that the public interest is served.

The options of exchanging fee coal for certificates of bidding rights and of exchanging fee coal for leases acquired at public auction, recommended by one comment, will be considered on a case-by-case basis.

Part 3440—Licenses To Mine

Subpart 3440—Licenses to Mine

The two comments received on this subpart objected to the elimination in § 3440.1–4(c)(3) of the language requiring the licensee to comply with all Federal and State laws for the safety of miners, prevention of waste, etc. Because this language appears in section 2(a) of the License to Mine Coal form, its appearance in the regulation is deemed redundant and no change has been made in the final rulemaking. Moreover, § 3440.1–6 provides that violations of Federal law or regulations can result in cancellation or forfeiture of licenses to mine.

Part 3450—Management of Existing Leases

Subpart 3451—Continuation of Leases—Readjustment of Terms

Three comments objected to the application of Federal Coal Leasing Amendments Act requirements to pre-Federal Coal Leasing Amendments Act leases at readjustment. A recent Solicitor's Opinion, M–36939 (September 17, 1981), concludes that "when the Secretary readjusts a pre-Federal Coal Leasing Amendments Act lease, he must do so in conformity with the Act, as amended." Lease provisions affected by this opinion include royalty rates (section 3451.1(a)(2)) and periods at which leases are subject to readjustment (section 3451.1(a)(1)). These sections are adopted in the final rulemaking in the same form as they appeared in the proposed rulemaking.

Three comments supported and two comments objected to the deferment of the application of unsuitability criteria on existing leases from readjustment to mining permit approval provided in

§ 3451.1(a)(3) of the proposed rulemaking. One comment confused the deferral with the complete elimination of application of the criteria. At the mining permit approval stage, the mandatory criteria contained in section 522(e) of the Surface Mining Control and Reclamation Act would be applied to all existing leases.

The other comment with objections to the revision made by the proposed rulemaking stated that the application of those criteria not mandated by section 522(e) of the Surface Mining Control and Reclamation Act are part of the Secretary's responsibility to conduct a Federal lands review when mining permit applications are being reviewed. The resource values that may be protected under the discretionary criteria based on section 522(a)(3) of the Act would be considered at that time, and could be protected through the regulatory authority's stipulations in the mining permit to afford protection of unique and unusual resource values.

Five comments objected to aspects of the lease readjustment procedures. All comments stated that specific readjustment procedures should be described in the regulations, and three recommended some minimum time—120 days or 6 months—by which the Federal Government must notify the lessees of its intent to readjust or lose the right. One comment stated that more negotiation time should be allowed for bargaining with the Federal Government over readjusted lease terms and conditions. One comment stated that the regulations should clarify the administrative appeal procedures.

The recent decision of the Tenth Circuit Court of Appeals in the *Rosebud Coal Sales Co.* v. *Andrus* (No. 80–1842, Jan. 8, 1982) case is currently being reviewed in the Bureau of Land Management. The United States has decided not to appeal the decision. The court's decision was rendered after publication of the proposed rulemaking. The language of § 3451.1(b) has been amended in the final rulemaking to reflect the court's decision that Federal coal leases may not be readjusted unless actual notice is given of the readjustment, or of the intent to readjust, prior to the twenty-year anniversary date of the lease.

Because changes will be made in readjustment procedures, detailed procedures are not set forth in the regulations. Instead, the procedures will be described in internal Bureau of Land Management memoranda and manuals, which will be available to the public upon request. Under current procedures, the word "decision" in paragraph (d) and (e) means the decision of the authorized officer in response to objections filed by the lessee to the notice of readjusted lease terms. If other procedures are instituted consistent with paragraph (b), the notice of readjusted lease terms will indicate whether or not it is appealable.

Several comments requested that the final rulemaking state that State Governors will be notified of pending lease readjustments. Information about pending lease readjustments is available to the State through participation on the regional coal teams or directly through the appropriate State offices of the Bureau of Land Management. This suggestion has not been adopted in the final rulemaking.

Because of confusion displayed in the comments, § 3451.2(b) has been amended in the final rulemaking to clarify existing procedures relating to the effective date of readjusted terms and conditions. Readjusted terms and conditions are effective 60 days after receipt by the lessee (or 30 days after transmittal of information to the Attorney General in those instances where the authorized officer calls for such information).

Of course, the effective date may not precede the readjustment anniversary date. While the lesse has the right to make objections about the new terms and conditions to the authorized officer, and while that right of objection must be exercised prior to an appeal to the Board of Land Appeals, the taking of such an objection shall not stay the effective date of the readjusted terms and conditions. Paragraph (e) is amended by the final rulemaking to provide that the difference between the existing and readjusted rentals and royalties will accrue and not be due and payable during the pendency of the appeal. If the readjusted financial terms are sustained on appeal, such rents and royalties, plus interest, would be due and payable immediately.

The purpose of the lease readjustment is to bring existing leases into conformity with statutes passed and policy changes made since their issuance. Lease terms are generally, therefore, not open to negotiation. Nothing prevents lessees, of course, from contacting State offices of the Bureau of Land Management around the time of readjustment eligibility of their leases and discussing their situations with the personnel in the appropriate Bureau of Land Management State Office. Under § 3475.1 the authorized officer has the authority to modify any standard lease stipulations not required by law or regulation.

The final rulemaking adds a sentence to § 3451.2 which cites the relevant appeal regulations.

Subpart 3452—Relinquishment, Cancellation, and Termination

One comment objected to the deletion of the phrase "upon a satisfactory showing that the public interest would not be impaired" from § 3452.1–1 by the proposed rulemaking. The comment expressed the view that the deletion would encourage high-grading, the abuse of maximum economic recovery and fair market value and damage diligent development. The Secretary of the Interior has statutory responsibilities with regard to fair market value, maximum economic recovery and diligent development and will ensure that the public interest will not be impaired by lease relinquishment, whether or not so stated in the regulations. This obligation is reflected in § 3452.1–3.

In response to another comment, the term "lease reserves" has been changed to "recoverable coal reserves" in § 3452.1–1 by final rulemaking so that it corresponds with the provisions of 30 CFR Part 211. The same comment queried whether relinquishment applied to logical mining units or the individual leases within them only. Relinquishments refer only to individual leases, not to the logical mining units to which they belong.

Two comments suggested that relinquishment should, if appropriate, be based upon geologic features which do not conform to legal subdivisions. Leases must be issued, modified or relinquished based upon legal descriptions (30 U.S.C. 187) and so the suggestion cannot be adopted.

One comment suggested that the phrase "that the relinquishment would not impair the public interest" be deleted from § 3452.1–3, since relinquishments would never impair the public interest. This suggestion has not been adopted in the final rulemaking since there may be cases where relinquishment would not be in the public interest. It would not be in the public interest to allow manipulation of logical mining unit diligence, high grading and failure to achieve maximum economic recovery. Such practices could theoretically occur if lease relinquishments were automatically granted.

Three comments recommended that State Governors be notified of lease cancellations for reasons previously stated in the discussion of subpart 3451 of this preamble. The recommendation was not adopted in the final rulemaking.

One comment recommended that renumbered § 3452.2–1(b) be deleted because it exceeds the authority granted by the Mineral Leasing Act, as amended. The interpretation suggested in the comment is not correct and the section has been retained in the final rulemaking.

One comment objected to the deletion of the phrase "in force on the date of the lease * * * under the terms of the lease" in § 3452.2–1(a)(2) because the deletion would invalidate the "hereafter in force" clause in the lease. The final rulemaking retains the language of the proposed rulemaking. The change was designed to simplify and shorten § 3452.2–1(a)(2) but does not change the meaning; what rules are "applicable" is determined by examining the lease form and the "hereafter" clause that incorporates some later rules into the lease.

Subpart 3453—Transfers by Assignment, Sublease or Otherwise

Two comments recommended that preference right lease applications and exploration licenses be transferable to those people and entities qualified to hold them. The language of this subpart has been modified in the final rulemaking to make preference right lease applications and exploration licenses transferable.

Four comments requested that State Governor(s) be apprised of lease transfers. This information is available to the States through participation on the regional coal teams or directly through Bureau of Land Management State offices. Therefore, the comment has not been adopted in the final rulemaking.

The largest number of comments on this subpart was concerned with § 3453.3–1(a)(8). These comments stated that section 3 of the Federal Coal Leasing Amendments Act does not prohibit transfers of coal leases to lessees not producing coal in commercial quantities from pre-Federal Coal Leasing Amendments Act coal leases by August 4, 1986. The comments claim that section 3 merely prevents such lessees from being issued new leases.

The Department of the Interior does not interpret section 3 of the Federal Coal Leasing Amendments Act to prohibit lease transfers to such lessees, but the Act appears to weigh against allowing these transfers. Section 30 of the Mineral Leasing Act, as amended (30 U.S.C. 184), gives the Secretary of the Interior discretion to approve or disapprove any transfer and requires his consent for assignment or sublease of leases. This authority was discussed in the July 1979 preamble to the existing regulations (44 FR 42602). The Secretary has decided to exercise this authority to refuse approval of a lease transfer by requiring transferees to comply with section 3 of the Federal Coal Leasing Amendments Act, that is, transferees must be eligible to bid for new leases under that section in order to qualify to receive leases by transfer.

If such lessees are not eligible to receive new leases as a result of the provisions of section 3 of the Federal Coal Leasing Amendments Act, then it follows that these lessees should not be allowed to receive Federal coal leases by transfer. Such transfers would circumvent section 3 because a lessee not eligible for a new coal lease could purchase that lease from the person to whom it was issued by transfer. This rulemaking makes consistent the legislative policy not to put leases into the hands of persons who, after 1986, have held any non-producing leases for more than ten years.

The Department of the Interior recognizes the burden placed on industry by section 3 of the Federal Coal Leasing Amendments Act but suggests that a legislative solution is more appropriate than a rulemaking which allows circumvention of the intent of the Act. Therefore, the final rulemaking adopts the language of the proposed rulemaking.

Part 3460—Environment

Subpart 3461—Federal Lands Review—Unsuitability for Mining

The various provisions of subpart 3461 were the subject of a large number of comments. Sections of the subpart that were not changed in the proposed rulemaking were also the subject of comments. All of these comments were given careful consideration during the decisionmaking process on this final rulemaking, even though only those that had a direct impact on the final rulemaking are discussed.

Nearly all of the comments on subpart 3461 made suggestions concerning § 3461.1. In general, the comments fell into six areas of discussion, all of which were considered prior to issuing the proposed rulemaking. The six issues are: (1) Eliminate all the unsuitability criteria; (2) Eliminate all criteria except those specifically identified in section 522 of the Surface Mining Control and Reclamation Act; (3) Combine criteria 9 through 15; (4) Amend certain criteria (numbers 1, 2, 3, 9, 11, 12, 13, 14, 16 and 17) to conform to the decision in the *Texaco, Inc.* v. *Andrus* case; (5) Eliminate application of criteria on Federal lands in those areas with checkerboard ownership pattern; and (6) Eliminate criterion 4 (Section 3461.1(d)) which applies to lands designated for wilderness study.

After carefully considering all comments made on § 3461.1, the Department of the Interior has determined: (a) Not to eliminate or combine any of the unsuitability criteria; (b) to modify criteria 1, 2, 3, 9, 11, 12, 13, 14, 16 and 17 to conform to the decision in *Texaco, Inc.* v. *Andrus;* and (c) to continue to apply unsuitability criteria on Federal lands regardless of their surface ownership pattern. Criterion 4 (Federal lands designated for wilderness study) is retained to conform with other regulatory provisions concerning such lands. Other changes made to section 3461 by the proposed rulemaking have been retained by the final rulemaking to reflect policy changes and to simplify the existing regulations.

Four of six comments on § 3461.1–3 favored the changes made by the proposed rulemaking. Comments on both sides of the issue suggested that the public should have an opportunity to submit comments to the Bureau of Land Management before the Bureau makes a decision on the results of application of unsuitability criteria. The purpose of the change to this section is to clarify and more explicitly state the process for application of the unsuitability criteria. Provisions for public participation during the planning process are in the regulations on planning—43 CFR Part 1600.

Paragraphs (b) and (c) of § 3461.3–1 were inadvertently deleted by the proposed rulemaking. These paragraphs are, therefore, restored in the final rulemaking.

All of the comments on § 3461.3–3 disagreed with the deletion of the findings requirement from this section by the proposed rulemaking. The comments stated that retention of the findings requirement would allow for consistency to be achieved between the Bureau of Land Management and the Office of Surface Mining. The comments further stated that the public is afforded time to analyze the accuracy of the Office of Surface Mining's application of the unsuitability criteria contained in the Surface Mining Control and Reclamation Act by comparing that agency's application of the criteria with the Bureau of Land Management's application of them. The findings statement is appropriate for inclusion in the Office of Surface Mining's regulations because section 522(d) of the Surface Mining Control and Reclamation Act requires the regulatory authority to prepare the findings statement.

The 1979 regulations assumed that the Bureau of Land Management could facilitate the petition process by making the findings statement during land use planning. This has not turned out to be the case. The petitions that have been filed so far have generally requested that the Office of Surface Mining designate areas unsuitable which had not been assessed as unsuitable by the Bureau of Land Management. Consequently, the Bureau had not prepared any findings statement. The Department of the Interior's experience to date has shown that having the Bureau of Land Management prepare a findings statement for those portions of a planning area which it assesses as unsuitable is generally a waste of time and money because the preparation of the findings statement by the Bureau does not facilitate the work of the Office of Surface Mining. Therefore, the final rulemaking adopts the change made by the proposed rulemaking.

The comments on § 3461.4 were evenly divided in favor of and against the changes made by the proposed rulemaking. Eight comments were of the opinion that preference right lease applications should be included in the category of lands exempt from application of the unsuitability criteria. After analysis of the comments, the Department of the Interior has decided to retain in the final rulemaking those provisions of the proposed rulemaking that exempted all existing leases, but not preference right lease applications, from the unsuitability screening process identified in subpart 3461. However, the new policy does *not* exempt existing Federal coal lease development from the statutory environmental protection requirements which are applied by the Office of Surface Mining or the States at the time of the mine permit application review. Nor does it prevent the regulatory authority from considering any recommendations made by the surface management agency concerning unique or unusual resource values identified during land use planning or mine permit application review that may need protection from the effects of mining.

The mandatory criteria found in section 522(e) of the Surface Mining Control and Reclamation Act, as well as the alluvial valley floor criterion in section 510(b)(5) of the Act, would still be applied to lands covered by existing leases by the regulatory authority when determining whether to issue a mining permit. The resource values may be protected under the discretionary criteria based on section 522(a)(3) of the Act would be considered at that time also, and could be adquately protected through the regulatory authority's stipulations in the mine permit to afford protection of unique and unusual resource values. Application of the unsuitability criteria to unleased lands (including areas of preference right lease applications) during land use planning will continue because it has proven to be an effective mechanism. However, the public interest is not being served by having the surface management agency formally apply the unsuitability criteria of subpart 3461 to lands covered by existing leases. The Department of the Interior is examining different methods of conducting the Federal lands review required by section 522(b) of the Surface Mining Control and Reclamation Act with the intent of establishing unified policies and procedures for the Bureau of Land Management and the Office of Surface Mining that meet the requirements of the Act but are not costly, time-consuming and duplicative.

Part 3470—Coal Management Provisions and Limitations

Subpart 3472—Lease Qualification Requirements

The nine comments on subpart 3472 were confined to § 3472.1–2(e) and § 3472.1–3(b)(1). In the case of § 3472.1–2(e), the comments were concerned that the prohibition against assignments of coal leases to parties holding nonproducing coal leases more than 10 years old on August 4, 1986, exceeded the intent of the Federal Coal Leasing Amendments Act. As discussed in the preamble to subpart 3453, the Department has decided, as a matter of policy, based on the Secretary of the Interior's authority to refuse approval of assignments, to insert this requirement. The final rulemaking, therefore, retains the phrase "and no existing lease shall be assigned to any party" in § 3472.1–2(e) of the proposed rulemaking.

The comments on § 3472.1–3(b)(1) raised questions regarding the filing of qualifications statements of stockholders owning or controlling more than 10 percent of the corporate stock. This requirement is necessary according to Solicitor's Opinion M–36843 (November 12, 1971). The acreage limitation on Federal coal leases was instituted by Congress to prevent a monopoly on Federal coal holdings by a few lessees. Although the paperwork requirements for qualifications statements and the review and analysis of these statements may be time-consuming, the Department of the Interior has the statutory responsibility to compute acreage holdings and prevent Federal coal holding in excess of the statutory limits. Although the final rulemaking makes no change in this section, the Department will continue to review the detail of required qualifications statements for possible reductions of burdens on the public.

One comment inquired whether or not failure by a subsidiary to meet diligence requirements would cause the parent corporation not to be able to qualify for more Federal coal leases. The only relevant provisions is in section 3 of the Federal Coal Leasing Amendments Act, which states that a subsidiary that has held a lease for ten years (for old leases after August 4, 1986) and is not producing coal in commercial quantities, will disqualify the parent company and the subsidiary from acquiring new Federal coal leases. The same comment inquired whether the prohibition against lease issuance in section 3 of the Federal Coal Leasing Amendments Act applied to all leasable minerals or only to coal. This final rulemaking relates only to coal leases and implies nothing about section 3's applicability to other minerals.

Two comments requested information about the meaning of the phrase "any appreciable percentage" in § 3472.1–2 with respect to alien stock ownership. The comments suggested 10 percent as an appreciable percentage. This issue was discussed at length in the July 19, 1979 (44 FR 42606) preamble to that edition of the coal regulations. The only change in that discussion is that the prohibition against nonreciprocal alien stockholding applies to appreciable percentages of stock in the lessee, not the parent corporation of the lessee. Nonreciprocal alien stock ownership in a parent is relevant only if it amounts to control of the stock of the lessee (see *No Oilport!* v. *Carter*, 520 F. Supp. 334 (W.D. Wash. 1980)).

Subpart 3473—Fees, Rentals and Royalties

One comment recommended that rentals on coal leases be credited at lease readjustment against royalties until coal is produced on the lease in commercial quantities. This recommendation cannot be adopted because section 6 of the Federal Coal Leasing Amendments Act requires the Secretary of the Interior to prescribe annual lease rentals by regulation and deletes the requirement to credit rentals against royalties for coal.

Four comments supported and five objected to the removal of the 5 percent floor on royalty rate reductions for underground mined coal made by the proposed rulemaking to § 3473.3–2(d). Supporters state that the elimination of

the 5 percent royalty rate reduction floor will allow difficult but legitimate mining operations to stay in business. The objecting comments stated that eliminating the royalty floor is an industry bailout. However, these comments should recognize that there is an initial royalty rate floor of 12.5 percent for surface mined coal but no floor (except that the rate cannot be reduced to zero) on the minimum to which the royalty rate can be reduced for good cause. Eliminating the floor to which the royalty rate for underground mined coal can be reduced merely brings the practice for underground mined coal into line with the practice for surface mined coal. There is still an initial royalty rate floor of 5 percent for underground mined coal.

The proposal to eliminate the royalty rate reduction floor for underground mined coal is designed to give the Secretary of the Interior maximum discretion in setting royalty rates for specific individual mining operations and so is retained in the final rulemaking. Language has been added to § 3473.3–2(d) by the final rulemaking to make it clear that the royalty may never be waived or suspended.

The comments evidenced some confusion over the language contained in § 3473.3–2(a)(3). This paragraph is intended to mean that leases for underground mined coal will be issued at a royalty rate of not lower than 5 percent, and then only if the conditions warrant. Once the lease issues, however, the royalty rate may be reduced below 5 percent if conditions warrant (section 3473.3–2(d)).

Three comments objected to the method by which the value of the coal was determined for royalty accounting purposes (section 3473.3–2(a)(2) and 30 CFR 211.63). They argue that royalties based on the gross value of coal are a tax upon a tax because various taxes are included in the "value of the coal" determination. These comments are addressed in the final rulemaking for 30 CFR Part 211.

Seven comments were received on the overriding royalty interest provision (section 3473.3–2(c) and 30 CFR 211.63), particularly the language on net profit sharing. In response to these comments, the language in § 3473.3–2(c)(2) on net profit sharing has been eliminated. The language in § 3473.3–2(c)(1) contained in the proposed rulemaking has been revised to agree with the language of 30 CFR 211.63 and has been adopted in the final rulemaking as § 3473.3–2(c). The revision adopts an exception for mine financing and clarifies the types of investments which qualify. These changes are contained in the final rulemaking for 30 CFR Part 211.

Subpart 3474—Bonds

One comment recommended the reinstitution of self-bonding for coal leases and three other comments recommended the reinstitution of nationwide and statewide bonding for coal leases.

Self-bonding was eliminated by the Department of the Interior for coal leases when the 1979 regulations were promulgated. The greatly increased royalty rates for coal mandated by the Federal Coal Leasing Amendments Act, as well as the environmental statutes enacted since the passage of the Mineral Leasing Act in 1920, make self-bonding impractical. The nationwide and statewide bonds previously allowable for coal would not adequately indemnify the United States against default on the payment of rentals, royalties or bonuses or against noncompliance with lease terms and conditions.

In addition, nationwide and statewide bonding discriminates against small leaseholders. Therefore, the final rulemaking does not reinstate self-bonding or nationwide and statewide bonding.

The initial lease bond amount is set by the appropriate authorized officer of the Bureau of Land Management. The Minerals Management Service periodically reviews the lease bond amount and adjusts it to respond to changing conditions. Subpart 3474 provides adequate flexibility to allow for reasonable bonding levels protecting the public interest. Therefore, the final rulemaking adopts the language in the proposed rulemaking for subpart 3474.

In response to two comments, the phrase "interim program authority governing Federal lands" has been changed in § 3474.3(b)(1) by the final rulemaking to "cooperative agreement governing" to more accurately reflect the existence of cooperative agreements under the Surface Mining Control and Reclamation Act.

A new § 3474.3(c)(2) has been added by the final rulemaking to clarify that the logical mining unit bond terminates when a logical mining unit terminates.

Subpart 3475—Lease Terms

One comment agreed that a new standard coal lease form was needed and requested that a revised proposed form be published in the **Federal Register** for comment before being instituted.

A revised lease form, based on this final rulemaking and the numerous comments received on the form published for comment in the **Federal Register** on December 15, 1980 (45 FR 83334), is in preparation. Although the comment period on the draft lease form closes with the publication of this final rulemaking, comments on the lease form may still be submitted. If time permits, the Bureau of Land Management will consider them in preparing the final revision of the lease form.

The lease form has a long history. Comments on the December 1980 draft form were received during the official 30-day comment period on the form, as well as in response to the Department of the Interior's call for identification of "excessive, burdensome and counterproductive" regulations. The comments received as a result of these actions were extensive and covered almost all sections of the proposed lease form. Publication of a revised lease form for comment would not serve any useful purpose, since the changes made to the final lease form will be partially based on a consideration of all comments received to date.

The other comment on this subpart objected to § 3475.1 allowing the authorized officer to modify provisions of the lease form not required by statute or regulations and to add other appropriate stipulations. The comment expressed the view that this exceeded the authorized officer's authority. This language was inserted to allow for special, that is, site specific, stipulations. Such special stipulations are inserted as necessary and have historically been a standard mineral leasing practice of the Department of the Interior. Under section 30 of the Mineral Leasing Act, as amended, the Secretary of the Interior has the authority to insert such lease terms as he/she deems appropriate for the protection of the interests of the United States and for other purposes.

There were three comments on the lease terms provisions in § 3475.5 of the proposed rulemaking. One comment requested that the Federal Coal Leasing Amendments Act be amended to allow exemptions from the continued operation requirement for administrative delay and to eliminate the payment of advance royalties. There are situations in which the payment of advance royalties is in the public interest, and the Department of the Interior will not seek to have the statute amended. Efforts are being made by the Department to increase administrative efficiency through the management by objectives system and this should reduce administrative backlogs and processing time.

Comments addressing the diligence requirements of 30 CFR Part 211

referenced in § 3475.5 are discussed in the final rulemaking on 30 CFR Part 211.

There were three comments on § 3475.6, logical mining units. Two of the comments were concerned about the conditions under which the Mining Supervisor would issue an order creating a logical mining unit and the rights of pre-Federal Coal Leasing Amendments Act lessees with respect to the formation of logical mining units. The proposed deletion of the requirement that all leases are automatically logical mining units has been adopted by the final rulemaking. These concerns and others raised by the comments are considered in the final rulemaking on 30 CFR Part 211.

Editorial and grammatical changes, as needed, have been made.

The primary authors of this final rulemaking are Patrick H. Geehan, Ryan Dudley and Carole Smith, Division of Coal, Tar Sands and Oil Shale, Bureau of Land Management, assisted by Marianne O'Brien and other staff of the Division of Energy and Resources, Office of the Solicitor, Department of the Interior, and other Bureau of Land Management and Department of the Interior staff.

As the result of the changes made in the final rulemaking, another environmental assessment has been prepared on the affects of this final rulemaking. That new assessment also resulted in the finding that no significant impact will result from the publication of this final rulemaking. The second environmental assessment is available upon request from the Division of Coal, Tar Sands and Oil Shale, Bureau of Land Management, Washington, D.C. 20240. Therefore, it is hereby determined that these rules do not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and will not have a significant effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The types of small entities which would be most directly affected by the changes proposed in this rulemaking would be small businesses involved with or considering involvement with the Federal coal leasing program. The existing Federal coal leasing regulations provide that lease tracts can be set aside at lease sales, reserved for bidding only by small business. The Small Business Administration at 13 CFR Part 121 defines those that are members of this class of bidder. Generally, small business will share with all others in the savings associated with the streamlining of the regulations made by this final rulemaking.

The information collection requirements contained in 43 CFR Group 3400, Parts 3400, 3410, 3420, 3430, 3440, 3450, 3460 and 3470 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1004–

List of subjects in 43 CFR Group 3400:

Part 3400

Coal, Intergovernmental relations, Mines, Public lands—classification, Public lands—mineral resources.

Part 3410

Coal, Environmental protection, Mines, Public lands—mineral resources, Surety bonds.

Part 3420

Administrative practice, and procedure, Coal, Environmental protection, Intergovernmental relations, Mines, Public lands—mineral resources.

Part 3430

Administrative practice, and procedure, Coal, Environmental protection, Intergovernmental relations, Mines, Public lands—mineral resources, Public lands—rights-of-way.

Part 3440

Coal, Mines, Public lands—mineral resources.

Part 3450

Coal, Mines, Public lands—mineral resources, Surety bonds.

Part 3460

Coal, Environmental protection, Mines, Public lands—classification, Public lands—mineral resources.

Part 3470

Coal, Mineral royalties, Mines, Public lands—mineral resources, Surety bonds.

Under the authority of the Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.), the Mineral Leasing Act for Acquired Lands, as amended (30 U.S.C. 351—359 et seq.), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), the Surface Mining Control and Reclamation Act (30 U.S.C. 1201 et seq.) and the Multiple Mineral Development Act (30 U.S.C. 521—531) Group 3400, Subchapter C, Chapter II, Title 43 of the Code of Federal Regulations is amended as set forth below.

James G. Watt,

Secretary of the Interior.

July 12, 1982.

GROUP 3400—COAL MANAGEMENT

Note.—The information collection requirements contained in Parts 3400, 3410, 3420, 3430, 3440, 3450, 3460 and 3470 of Group 3400 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1004——. The information is being collected to allow the authorized officer to determine if the applicant to lease, explore for or develop Federal coal is qualified to hold such lease. This information will be used in making those determinations. The obligation to respond is required to obtain a benefit.

PART 3400—COAL MANAGEMENT—GENERAL

§ 3400.0–4 [Removed]

1. Section 3400.0–4 is removed in its entirety.

§ 3400.0–5 [Amended]

2. Section 3400.0–5 is amended by:

(a) Revising paragraph (a) to read:

(a) "Alluvial valley floor" has the meaning set forth in 30 CFR Chapter VII.

(b) Amending paragraph (d) by removing the phrase "logical mining unit" and replacing it with the phrase "mining operation";

(c) Amending paragraph (f) by removing the word "nontransferable";

(d) Removing paragraphs (h), (i), (j) and (k) in their entirety;

(e) Renumbering paragraph (l) as paragraph (h);

(f) Removing paragraph (m) in its entirety;

(g) Renumbering paragraphs (n) and (o) as paragraphs (i) and (j);

(h) Renumbering paragraph (p) as paragraph (k) and revising it to read:

* * * * *

(k) "Exploration" has the meaning set forth in 30 CFR 211.2.

(i) Renumbering paragraph (q) as paragraph (l);

(j) Renumbering paragraph (r) as paragraph (m) and revising it as follows:

* * * * *

(m) "Exploration plan" has the meaning set forth in 30 CFR 211.2.

* * * * *

(k) Renumbering paragraph (s) as paragraph (n);

(l) Renumbering paragraph (t) as paragraph (o) and amending it by removing the phrase "mineral estates or coal estates underlying private surface," and replacing it with the phrase "surface estate, mineral estate and coal estate,";

(m) Renumbering paragraph (u) as paragraph (p);

(n) Renumbering paragraph (v) as paragraph (q) and amending it by adding at the end "Stock ownership or stock control does not constitute an interest in a lease within the meaning of this definition. Attribution of acreage to stock ownership interests in leases is covered by § 3472.1–3(b) of this title.";

(o) Removing paragraphs (w) and (x) in their entirety;

(p) Renumbering paragraph (y) as paragraph (r) and revising it as follows:

* * * * *

(r) "Lease" means a Federal lease, issued under the coal leasing provisions of the mineral leasing laws, which grants the exclusive right to explore for and extract coal. In provisions of this group that also refer to Federal leases for minerals other than coal, the term "Federal coal lease" may apply.

* * * * *

(q) Renumbering paragraph (z) as paragraph (s) and amending it by inserting after the phrase "reclamation operations" the phrase "under a permit";

(r) Renumbering paragraphs (aa) and (bb) as paragraphs (t) and (u);

(s) Renumbering paragraph (cc) as paragraph (v) and revising it as follows:

* * * * *

(v) "Logical Mining Unit" has the meaning set forth in 30 CFR 211.2.

* * * * *

(t) Renumbering paragraph (dd) as paragraph (w) and revising it as follows:

* * * * *

(w) "Logical Mining Unit reserves" has the meaning set forth in the term "logical mining unit recoverable coal reserves" in 30 CFR 211.2.

* * * * *

(u) Renumbering paragraph (ee) as paragraph (x) and revising it as follows:

* * * * *

(x) "Maximum economic recovery" has the meaning set forth in 30 CFR 211.2.

(v) Removing paragraph (ff) in its entirety;

(w) Renumbering paragraph (gg) as paragraph (y);

(x) Renumbering paragraph (hh) as paragraph (z) and revising it as follows:

* * * * *

(z) "Mining plan" means a resource recovery and protection plan as described in 30 CFR 211.2.

* * * * *

(y) Renumbering paragraph (ii) as paragraph (aa) and revising it as follows:

* * * * *

(aa) "Mining Supervisor" means the District Mining Supervisor, Minerals Management Service.

* * * * *

(z) Renumbering paragraph (jj) as paragraph (bb);

(aa) Renumbering paragraph (kk) as paragraph (cc) and amending it by inserting before the word "licensee" in the two places it appears, the word "exploration";

(bb) Removing paragraph (ll) in its entirety;

(cc) Renumbering paragraph (mm) as paragraph (dd) and revising it as follows:

* * * * *

(dd) "Permit" has the meaning set forth in 30 CFR Chapter VII.

* * * * *

(dd) Renumbering paragraphs (nn) as paragraph (ee) and revising it to read:

(ee) "Permit area" has the meaning set forth in 30 CFR Chapter VII.

(ee) Renumbering paragraph (oo) as paragraph (ff);

(ff) Renumbering paragraph (pp) as paragraph (gg) and revising it to read:

(hh) "Reserves" has the meaning set forth in the term "recoverable coal reserves" in 30 CFR 211.2.

(gg) Renumbering paragraph (qq) as paragraph (hh) and amending it by inserting after the word "means" the word "the";

(hh) Renumbering paragraph (rr) as paragraph (ii) and amending it by removing the phrase "or his authorized representative";

(ii) Renumbering paragraphs (ss), (tt), (uu) and (vv) as paragraphs (jj), (kk), (ll) and (mm);

(jj) Renumbering paragraph (ww) as paragraph (nn) and amending it by removing the period at the end and adding the phrase ", and, in the case of private surface over Federal coal, the Bureau of Land Management, except in areas designated as National Grasslands, where it means the Forest Service.";

(kk) Renumbering paragraph (xx) as paragraph (oo) and revising it as follows:

* * * * *

(oo) "Surface Mining Officer" means the regulatory authority as defined in 30 CFR Chapter VII.

* * * * *

(ll) Renumbering paragraphs (yy) and (zz) as paragraphs (pp) and (qq).

§ 3400.1 [Amended]

3. Section 3400.1 is amended by:

(a) Inserting the figure "(a)" before the existing text of the section and removing the word "prospecting" and replacing it with the word "exploration"; and

(b) Adding a new paragraph (b) as follows:

* * * * *

(b) The presence of deposits of other minerals or the issuance of prospecting permits or mineral leases for prospecting, development or production of deposits of other minerals shall not preclude the granting of an exploration license, a license to mine or a lease for the exploration, development or production of coal deposits on the same lands with suitable stipulations for simultaneous operations.

§ 3400.3–4 [Amended]

4. Section 3400.3–4 is amended by removing the figure "(t)" where it appears and replacing it with the figure "(o)".

§ 3400.4 [Amended]

5. Section 3400.4 is amended by:

(a) Amending paragraph (a) by removing the figure "§ 3420.3–1(a)" where it appears in the first sentence and replacing it with the figure "§ 3400.5", by inserting in the second sentence after the phrase "the Governor of each State" the phrase "included in the region", by removing in the third sentence the word "chairman" and replacing it with the word "chairperson", and by removing in the fourth sentence the phrase "on more than" and replacing them with the phrase "of only";

(b) Revising paragraph (b) as follows:

* * * * *

(b) Each regional coal team shall guide all phases of the coal activity planning process described in §§ 3420.3 through 3420.3–4 of this title which relate to competitive leasing in the region.

* * * * *

(c) Removing paragraph (c) in its entirety:

(d) Renumbering paragraph (d) as paragraph (c) and removing the word "concerning" and replacing it with the word "including";

(e) Renumbering paragraph (e) as paragraph (d) and revising it as follows:

* * * * *

(d) Additional representatives of state and Federal agencies may participate directly in team meetings or indirectly in the preparation of material to assist the team at any time at the request of the team chairperson. Participation may be solicited from state and Federal agencies with special expertise in topics considered by the team or with direct surface management responsibilities in areas potentially affected by coal management decisions. However, at

every point in the deliberations, the official team spokespersons for the Bureau of Land Management and for the Governors shall be those designated under paragraph (a) of this section.

* * * * *

(f) Renumbering paragraph (f) as paragraph (e); and

(g) Adding a new paragraph (f) as follows:

* * * * *

(f) The regional coal team shall function under the general provisions of the cooperative procedures of subpart 1784 of this title.

6. A new § 3400.5 is added as follows:

§ 3400.5 Coal production regions.

The Bureau of Land Management shall establish by publication in the **Federal Register** coal production regions. A coal production region may be changed or its boundaries altered by publication of a notice of change in the **Federal Register.** Coal production regions shall be used for establishing regional leasing levels under § 3420.2 of this title. Coal production regions shall be used to establish areas in which leasing shall be conducted under § 3420.3 of this title and for other purposes of the coal management program.

PART 3410—EXPLORATION LICENSES

§ 3410.0–4 [Removed]

7. Section 3410.0–4 is removed in its entirety.

§ 3410.1–2 [Amended]

8. Section 3410.1–2(b) is amended by removing the words "for other than commercial purposes" where they appear.

§ 3410.2–1 [Amended]

9. Section 3410.2–1 is amended by:

(a) Removing paragraph (b) in its entirety;

(b) Renumbering paragraph (c) as paragraph (b);

(c) Renumbering paragraph (d) as paragraph (c) and amending subparagraph (1) of that paragraph by removing the period at the end of the second sentence and adding the phrase "and shall contain the location of the Minerals Management Service and Bureau of Land Management offices in which the application shall be available for inspection."; and

(d) Renumbering paragraph (e) as paragraph (d).

10. Section 3410.2–2 is revised as follows:

§ 3410.2–2 Environmental analysis.

(a) Before an exploration license may be issued, the authorized officer, in coordination with the Minerals Management Service, shall prepare an environmental assessment or environmental impact statement, if necessary, of the potential effects of the proposed exploration on the natural and socio-economic environment of the affected area. No exploration license shall be issued if the exploration would: (1) result in disturbance that would cause significant and lasting degradation to the lands or injury to improvements, or in any disturbance other than that necessary to determine the nature of the overlying strata and the depth, thickness, shape, grade, quantity, quality or hydrologic conditions of the coal deposits; or (2) jeopardize the continued existence of a threatened or endangered species of fauna or flora or destroy or cause adverse modification to its critical habitat. No exploration license shall be issued until after compliance with sections 105 and 106 of the National Historic Preservation Act (16 U.S.C. 470(f)) with respect to any cultural resources which might be affected by any activity under the exploration license.

(b) The authorized officer shall include in each exploration license requirements and stipulations to protect the environment and associated natural resources and to ensure reclamation of the lands disturbed by the exploration.

§§ 3410.2–3 and 3410.2–4 [Removed]

11. Sections 3410.2–3 and 3410.2–4 are removed in their entirety.

§ 3410.2–5 Redesignated as § 3410.2–3.

12. Section 3410.2–5 is renumbered § 3410.2–3.

§ 3410.2–6 [Removed]

13. Section 3410.2–6 is removed in its entirety.

§ 3410.3–1 [Amended]

14. Section 3410.3–1 is amended by:

(a) Amending paragraph (c) by removing the phrase "Geological Survey" and replacing it with the phrase "minerals Management Service";

(b) Amending paragraph (e) by removing the word "revoked" and replacing it with the word "cancelled";

(c) Amending paragraph (f) by removing in the first sentence the phrase ", with the concurrence of the authorized officer, and, where appropriate, the surface management agency," and removing the second and third sentences of the paragraph;

(d) Amending paragraph (g) by revising subparagraphs (1) and (2) as follows:

* * * * *

(g) * * *

(1) The authorized officer may adjust the terms and conditions of the exploration license, or

(2) The Mining Supervisor may direct adjustment in or approve modification of the exploration plan. If the licensee does not concur in the adjustment of the terms and conditions of the exploration license and exploration plan, he/she may, under 43 CFR Part 4, appeal the decision modifying the license, or he/she may relinquish the exploration license.

* * * * *

(e) Amending paragraph (h) by deleting the figure "§ 3410.3–1" and replacing it with the phrase "this section".

§ 3410.3–2 [Amended]

15. Section 3410.3–2 is amended by removing the figure "(a)".

16. Section 3410.3–3 is amended by removing the phrase "Geological Survey" and replacing it with the phrase "Minerals Management Service".

§ 3410.3–4 [Removed]

17. Section 3410.3–4 is removed in its entirety.

§ 3410.3–5 Redesignated as § 3410.3–4 and Amended.

18. Section 3410.3–5 is renumbered 3410.3–4 and is amended by:

(a) Amending paragraph (b) by removing the phrase "and, where appropriate, the surface management agency and the surface owner," by removing the word "insure" and replacing it with the word "ensure", by removing the words "or bonds", by inserting after the word "sufficient" the phrase "; (1)", by removing the phrase "exploration plan and regulations" and replacing it with the phrase "and exploration plan" and by deleting the period at the end of the first sentence and adding the words "; and (2) in the absence of an agreement between the exploration licensee and the surface owner so providing, to assure compensation for damages to surface improvements made by surface owners where an exploration license embraces such lands."; and

(b) Revising paragraph (c) as follows:

* * * * *

(c) Upon completion of exploration and reclamation activities that are in compliance with the terms and conditions of the exploration license, the exploration plan and the regulations, or upon discontinuance of exploration operations and completion of needed reclamation to the satisfaction of the authorized officer, and where

appropriate, the surface management agency, the authorized officer shall, with the concurrence of the Mining Supervisor, terminate the period of liability of the bond.

* * * * *

19. Section 3410.4 is amended by revising paragraph (b) to read:

(b) The licensee shall furnish the Mining Supervisor copies of all data (including, but not limited to, geological, geophysical and core drilling analyses) obtained during exploration in a form requested by the Mining Supervisor. All data shall be considered confidential and not made public until the areas involved have been leased or until the Mining Supervisor determines that public access to the data would not damage the competitive position of the licensee, whichever comes first. (30 CFR 211.6, 43 CFR 2.20)

§ 3410.5 [Amended]

20. Section 3410.5 is amended by:

(a) Removing paragraph (a) in its entirety;

(b) Renumbering paragraph (b) as paragraph (a); and

(c) Renumbering paragraph (c) as paragraph (b) and removing all after the word "regulations".

PART 3420—COMPETITIVE LEASING

21. Section 3420.0–2 is revised as follows:

§ 3420.0–2 Objectives.

The objectives of these regulations are to establish policies and procedures for considering development of coal deposits through a leasing system involving land use planning and environmental assessment or environmental impact statement processes; to promote the timely and orderly development of publicly owned coal resources; to ensure that coal deposits are leased at their fair market value; and to ensure that coal deposits are developed in consultation, cooperation
and coordination with the public, state and local governments, Indian tribes and involved Federal agencies.

§ 3420.0–6 [Removed]

22. Section 3420.0–6 is removed in its entirety.

§ 3420.1–1 [Removed]

23. Section 3420.1–1 is removed in its entirety.

§ 3420.1–2 Redesignated as § 3420.1–1

24. Section 3420.1–2 is renumbered § 3420.1–1.

§ 3420.1–3 Redesignated as § 3420.1–2

25. Section 3420.1–3 is renumbered section 3420.1–2 and is revised as follows:

§ 3420.1–2 Call for coal resource information.

(a) Prior to or as part of the initiation or update of a land use plan or land use analysis, a Call for Coal Resource Information shall be made to formally solicit indications of interest and information on coal resource development potential for lands in the planning unit. Industry, State and local governments and the general public may submit information on lands that should be considered for coal leasing, including statements describing why the lands should be considered for leasing.

(b) Proprietary data marked as confidential may be submitted in response to the Call for Coal Resource Information, however, all such proprietary data shall be submitted to the Minerals Management Service only. Data marked as confidential shall be treated in accordance with the laws and regulations governing the confidentiality of such information.

(c) The Call for Coal Resource Information may be combined with the notice of intent to conduct land use planning published in accordance with § 1601.3(g) of this title or with the issue identification process in accordance with Part 1600 of this title. If the agency conducting land use planning is other than the Bureau of Land Management, that agency may combine the Call for Coal Resource Information with its land use planning process at the appropriate step.

§ 3420.1–4 Redesignated as § 3420.1–3 and Amended

26. Section 3420.1–4 is renumbered section 3420.1–3 and is amended by:

(a) Amending paragraph (a) by removing the figure "§ 3420.4" and replacing it with the figure "§ 3420.3";

(b) Amending paragraph (b)(1)(ii) by removing the phrase "evidence of qualification (43 CFR 3472.2–5(a))" and replacing it with the phrase "the information specified in §§ 3472.2–5(a) (1) and (2) of this title" and by adding the sentence "The information specified in § 3472.2–5(a) (3) and (4) of this title shall be submitted within 60 days after submission of an expression of leasing interest or lease bid if no expression of leasing interest is made."; and

(c) Amending paragraph (b)(1)(iii) by removing the figure "§ 3420.4–2" and replacing it with the figure "§ 3420.3–2".

§ 3420.1–5 Redesignated as § 3420.1–4 and Amended.

27. Section 3420.1–5 is renumbered § 3420.1–4 and is amended by:

(a) Amending paragraph (a) by removing the phrase "The Secretary may not issue a lease for coal development" and replace it with the phrase "The Secretary may not hold a lease sale";

(b) Revising paragraphs (b) (1), (2) and (3) as follows:

* * * * *

(b)(1) The Bureau of Land Management shall prepare comprehensive land use plans and land use analyses for lands it administers in conformance with 43 CFR Part 1600.

(2) The Department of Agriculture or any other Federal agency with surface management authority over lands subject to leasing shall prepare comprehensive land use plans or land use analyses for lands it administers.

(3) The Secretary may lease in any area where it is found either that there is no Federal interest in the surface or that the coal deposits in an area are insufficient to justify the costs of a Federal land use plan upon completion of a land use analysis in accordance with 43 CFR Part 1600.

* * * * *

(c) Removing paragraphs (c), (d) and (e) in their entirety;

(d) Renumbering paragraph (f) as paragraph (c) and amending it by removing the word "petition" and replacing it with the word "request" and by removing the phrase "Office for" and replacing it with the phrase "Office to prepare"; and

(e) Adding new paragraphs (d) and (e) as follows:

* * * * *

(d) A comprehensive land use plan or land use analysis shall contain an estimate of the amount of coal recoverable by either surface or underground mining operations or both.

(e) The major land use planning decision concerning the coal resource shall be the identification of areas acceptable for further consideration for leasing which shall be identified by the screening procedures listed below:

(1) Only those areas that have development potential may be identified as acceptable for further consideration for leasing. The Minerals Management Service shall estimate coal development potential for the surface management agency. Coal companies, State and local governments and the general public are encouraged to submit information to the Minerals Management Service at any time in connection with such

development potential determinations. Coal companies, State and local governments
and members of the general public may also submit nonconfidential coal geology and economic data during the inventory phase of planning to the surface management agency conducting the land use planning. Where such information is determined to indicate development potential for an area, the area may be included in the land use planning for evaluation for coal leasing.

(2) The Bureau of Land Management or the surface managing agency conducting the land use planning shall, using the unsuitability criteria and procedures set out in Subpart 3461 of this title, review Federal lands to assess where there are areas unsuitable for all or certain stipulated methods of mining. The unsuitability assessment shall be consistent with any decision of the Office of Surface Mining Reclamation and Enforcement to designate lands unsuitable or to terminate a designation in response to a petition.

(3) Multiple land use decisions shall be made which may eliminate additional coal deposits from further consideration for leasing to protect other resource values of a locally important or unique nature not included in the unsuitability criteria discussed in paragraph (e) of this section.

(4)(i) While preparing a comprehensive land use plan or land use analysis, the Bureau of Land Management shall consult with all surface owners who meet the criteria in paragraphs (gg) (1) and (2) of § 3400.0–5 of this title, and whose lands overlie coal deposits, to determine preference for or against mining by other than underground mining techniques.

(ii) For the purposes of this paragraph, any surface owner who has previously granted written consent to any party to mine by other than underground mining techniques shall be deemed to have expressed a preference in favor of mining. Where a significant number of surface owners in an area have expressed a preference against mining those deposits by other than underground mining techniques, that area shall be considered acceptable for further consideration only for development by underground mining techniques. In addition, the area may be considered acceptable for further consideration for leasing for development by other than underground techniques if there are no acceptable alternative areas available to meet the regional leasing level.

(iii) An area eliminated from further consideration by this subsection may be considered acceptable for further consideration for leasing for mining by other than underground mining techniques if:

(A) The number of surface owners who have expressed their preference against mining by other than underground techniques is reduced below a significant number because such surface owners have given written consent for such mining or have transferred ownership to unqualified surface owners; and

(B) The land use plan is amended accordingly.

§§ 3420.2, 3420.2–1, 3420.2–2, and 3420.2–3 [Removed]

28. Sections 3420.2, 3420.2–1, 3420.2–2 and 3420.2–3 are removed in their entirety.

§ 3420.2–4 Redesignated as § 3420.1–5

29. Section 3420.2–4 is renumbered 3420.1–5 and is revised as follows:

§ 3420.1–5 Hearing requirements.

After public notice, the Bureau of Land Management or other surface management agency shall conduct a public hearing on the proposed comprehensive land use plan or land use analysis if it involves the potential for coal leasing before it is adopted if such a hearing is requested by any person who is or may be adversely affected by the adoption of the plan. A hearing conducted under part 1600 of this title of this chapter shall fulfill this requirement.

§ 3420.2–5 Redesignated as § 3420.1–6

31. Section 3420.2–5 is renumbered 3420.1–6.

§ 3420.2–6 Redesignated as § 3420.1–7 and Amended

30. Section 3420.2–6 is renumbered 3420.1–7 and is amended by removing in the first sentence the phrase "any formal" and replacing it with the word "an" and by removing from the second sentence the phrase "to obtain its recommendations concerning the unsuitability assessment."

§ 3420.2–7 Redesignated as § 3420.1–8 and Amended

32. Section 3420.2–7 is renumbered 3420.1–8 and is amended by removing the figure "§ 3420.4" and replacing it with the figure "§ 3420.3".

33. A new § 3420.2 is added to read:

§ 3420.2 Regional leasing levels.

This section sets out the process to be followed in establishing regional leasing levels. Regional leasing levels shall be established by the Secretary. The Secretary shall particularly rely upon the advice and assistance of affected State Governors in ensuring that leasing levels have properly considered social, environmental and economic impacts and constraints.

(a) The regional coal teams shall be the forum through which initial leasing level recommendations are transmitted to the Secretary. Initial leasing level recommendations shall be developed as follows:

(1) The appropriate Bureau of Land Management State Director on the regional coal team, as designated by the regional coal team chairperson, shall prepare a broadly stated range of initial leasing levels for the region. This range of initial leasing levels shall be based on information available to the State Director, including land use planning data, the results of the call for coal resource information held under § 3420.1–2 of this title, the results of the call for expressions of leasing interest held under § 3420.3–2 of this title and other pertinent factors;

(2) This initial range of leasing levels shall be made available to the other members of the regional coal team for review and comment. This review shall be designed to ensure consideration of relevant social, environmental and economic factors of which the Secretary should be aware in setting leasing levels;

(3) Governors of affected States shall be requested by the regional coal team chairperson to provide comments and recommendations concerning the leasing levels through the Governor's representatives on the regional coal team. Governors may use any methodologies, systems or procedures available to determine their recommendations;

(4) The regional coal team chairperson shall call upon the team members to present their findings and recommendations on the initial leasing levels. The chairperson shall refer the members' recommendations to an appropriate Bureau State Director serving on the team. The State Director shall: (i) Ensure the recommendations are in an appropriate format; (ii) add any additional information from the Bureau of Land Management and the Minerals Management Service data sources which may be available and pertinent to leasing level decision-making; (iii) address any questions and clarify any issues raised by the members' recommendations; and (iv) outline any additional alternative leasing levels. The regional coal team shall consider the State Director's review and shall transmit to the Secretary alternative leasing levels presented in ranges of tons to be offered for lease. All Governor's comments and

recommendations shall also be transmitted to the Secretary, without change, as a part of the team transmittal; and

(5) The regional coal team transmittal to the Secretary shall be made through the Director, who may provide additional data and recommendations, but only as separate documentation.

(b) The Secretary, upon receipt of the regional coal team transmittal, shall initiate consultations, in writing, with the Secretary of Energy, the Attorney General and affected Indian tribes. The Secretary shall establish leasing levels by region for the purposes of approximating the amount of coal to be offered through proposed lease sale schedules after consideration of potential policy conflicts or problems concerning, but not limited to:

(1) The Department's responsibility for the management, regulation and conservation of natural resources; and

(2) The capabilities of Federal lands and Federal coal resources to meet the proposed leasing levels, and the contributions State and privately owned coal lands can make.

(c) Leasing levels shall be based on the following factors:

(1) Advice from Governors of affected States as expressed through the regional coal team;

(2) The potential economic, social and environmental effects of coal leasing on the region, including recommendations from affected Indian tribes;

(3) Expressed industry interest in coal development in the region and indications of the demand for coal reserves;

(4) Expressed interests for special opportunity sales;

(5) Expected production from existing Federal coal leases and non-Federal coal holdings;

(6) The level of competition within the region and recommendations from the Department of Justice;

(7) U.S. coal production goals and projections of future demand for Federal coal;

(8) Consideration of national energy needs; and

(9) Other pertinent factors.

(d) Prior to determining a final leasing level, the Secretary shall consult with the Governors of affected States to obtain final comments and recommendations. The Secretary shall then establish a final leasing level for the proposed coal lease sale.

(e) The levels shall be established for each coal production region where activity planning is conducted under the provisions of § 3420.3 of this title. The levels shall be developed separately for each region, but levels for 2 or more regions may be developed at the same time as the Secretary deems appropriate. Leasing levels may be stated in terms of a range of values.

(f) The leasing levels established for any given region shall become the basis for the proposed action for study in the regional coal lease sale environmental impact statement prepared pursuant to § 3420.3–4 of this title. The Secretary's final decision on which coal lease tracts, if any, within a region to offer for sale, and the schedule for the offering of such tracts shall not be constrained by the established leasing levels; but rather shall be based on all information at the Secretary's disposal at the time of the decision.

§§ 3420.3, 3420.3–1, 3420.3–2, 3420.3–3, and 3420.3–4 [Removed]

34. Sections 3420.3, 3420.3–1, 3420.3–2, 3420.3–3 and 3420.3–4 are removed in their entirety.

§ 3420.4 Redesignated as § 3420.3

35. Section 3420.4 is renumbered § 3420.3.

§ 3420.4–1 Redesignated as § 3420.3–1 and Amended

36. Section 3420.4–1 is renumbered § 3420.3–1 and is amended by:

(a) Amending paragraph (a) by inserting after the word "ranking," in the first sentence the word "analyzing," and by removing the figure "§ 3420.1–5" in the second sentence and replacing it with the figure "§ 3420.1–4";

(b) Amending paragraph (b) by removing the words "shall, upon verification" and replacing them with the words "shall, upon verification"; and

(c) Adding a new paragraph (c) as follows:

* * * * *

(c) Each regional coal team established under § 3400.4 of this title shall:

(1) Guide tract delineation and preparation of site specific analyses of delineated tracts;

(2) Rank delineated tracts, select tracts that meet the leasing level established by the Secretary, and identify all alternative tract combinations to be analyzed in the regional lease sale environmental impact statement;

(3) Guide the preparation of the regional lease sale environmental impact statement; and

(4) Recommend a regional coal lease sale schedule to the Director.

§ 3420.4–2 Redesignated as § 3420.3–2 and Amended

37. Section 3420.4–2 is renumbered § 3420.3–2 and is amended by:

(a) Amending paragraph (a) by removing in the first sentence the figure "§ 3420.1–5" and replacing it with the figure "§ 3420.1–4" and by removing the last sentence of the paragraph in its entirety;

(b) Amending paragraph (b) by removing the second sentence of the paragraph in its entirety;

(c) Removing paragraphs (c), (d) and (e) in their entirety; and

(d) Renumbering paragraph (f) as paragraph (c) and amending it by adding at the end of the paragraph a new sentence "Data which are considered proprietary shall not be submitted as part of an expression of leasing interest."

§ 3420.4–3 Redesignated as § 3420.3–3 and Amended

38. Section 3420.4–3 is renumbered § 3420.3–3 and is amended by:

(a) Revising paragraph (a) as follows:

* * * * *

(a) Tracts may be delineated in any areas acceptable for further consideration for leasing whether or not expressions of leasing interest have been received for those areas.

* * * * *

(b) Removing paragraphs (b) and (c) in their entirety;

(c) Renumbering paragraph (d) as paragraph (b) and amending it by removing the figure "§ 3420.1–4" and replacing it with the figure "§ 3420.1–3";

(d) Renumbering paragraph (e) as paragraph (c) and amending it by removing the figure "§ 3420.1–4" and replacing it with the figure "§ 3420.1–3";

(e) Renumbering paragraph (f) as paragraph (d) and amending it by removing the phrase "3435, 3436 and 3437" where it appears in the parenthesis and replacing it with the phrase "3435 and 3436";

(f) Renumbering paragraph (g) as paragraph (e) and amending it by removing from the first sentence the word "preliminary"; and

(g) Removing paragraph (h) in its entirety.

§ 3420.4–4 Redesignated as § 3420.3–4.

39. Section 3420.4–4 is renumbered 3420.3–4 and is revised to read:

§ 3420.3–4 Regional tract ranking, selection, environmental analysis and scheduling.

(a)(1) Upon completion of tract delineation and preparation of the tract profiles, the regional coal team shall rank the tracts in classes of high, medium or low desirability for coal leasing. Three major categories of consideration shall be used in tract

ranking: coal economics; impacts on the natural environment; and socioeconomic impacts. The subfactors to be considered under each category shall be those determined by the regional coal team as appropriate for that region, and shall be published in the regional lease sale environmental impact statement required by this section. Tracts may also be ranked for other coal management purposes, such as emergency leasing under subpart 3425 of this title or exchanges under Subparts 3435 and 3436 of this title.

(2) The regional coal team may modify tract boundaries being ranked, if appropriate, to reflect additional information.

(3) In ranking tracts, the regional coal team shall solicit the recommendations of the Federal and State agencies having appropriate expertise, including the Geological Survey, the Fish and Wildlife Service and the Federal surface management agency, if other than the Bureau of Land Management.

(4) Where Federal leasing decisions are likely to have impacts on lands held in trust for an Indian tribe, the regional coal team shall solicit the recommendations of the tribe and the Bureau of Indian Affairs.

(5) A statement that descriptions of the tracts to be ranked are available shall be included with the notice announcing any regional coal team meeting at which those tracts shall be ranked. An opportunity for public comment on the tract rankings shall be provided during the regional coal team meeting.

(b)(1) Upon completion of tract ranking, the regional coal team shall select at least 1 combination of tracts that approximates the regional leasing level. The team shall also select tract combinations representing alternative leasing levels. The team may identify alternative combinations of tracts within a leasing level.

(2) The regional coal team may adjust the tract ranking and select tracts to reflect considerations including: (i) the compatibility of coal quality, coal type and market needs; (ii) environmental and socioeconomic impacts; (iii) the compatibility of reserve size and demand distribution for tracts; (iv) public opinion; (v) avoidance of future emergency lease situations; and (iv) special leasing opportunity requirements.

(c) After tract ranking and selection, a regional lease sale environmental impact statement on all tract combinations selected by the regional coal team for the various leasing levels and all other reasonable alternative leasing levels shall be prepared by the Bureau of Land Management in accordance with the provisions of the National Environmental Policy Act. The statement shall consider both:

(1) The site-specific potential environmental impacts of each tract being considered for lease sale; and

(2) The intraregional cumulative environmental impacts of the proposed leasing action and alternatives, and other coal and noncoal development activities.

(d) The results of the ranking and selection process, including the tract rankings, the tract selected and the list of ranking criteria used shall be published in the regional lease sale environmental impact statement required by paragraph (c) of this section. Detailed information on each of the tracts shall be available for inspection in the Bureau of Land Management State offices that have jurisdiction over lands within the coal production region (See 43 CFR Subpart 1821).

(e) Public hearings shall be held in the region following the release of the draft regional lease sale environmental impact statement to announce and discuss the results of the ranking and selection process and the potential impacts, including proposed mitigation measures.

(f) Upon the close of the comment period on the draft environmental impact statement, the regional coal team shall analyze the comments and make any appropriate revisions in the tract ranking and selection. The final regional lease sale environmental impact statement shall reflect such revisions.

(g) Upon completion and release of the final regional lease sale environmental impact statement, the regional coal team shall recommend specific tracts for lease sale and a lease sale schedule. The chairperson shall submit the recommendations to the Director. Any disagreement as to the recommendation among the team shall be documented and submitted by the chairperson along with the team recommendation. The Director shall submit the final regional environmental impact statement to the Secretary for his/her decision, together with the recommendation of the team and any recommendations the Director may wish to make.

(h) The tract ranking, selection and scheduling process and the regional lease sale environmental impact statement shall be revised or repeated as needed. The Secretary may, in consultation with the Governor(s) of the affected State(s) and surface management agencies, initiate or postpone the process to respond to considerations such as major land use planning updates, new tract delineations or increases or decreases in the leasing levels.

§§ 3420.4–5 and 3420.4–6 [Removed]

40. Sections 3420.4–5 and 3420.4–6 are removed in their entirety.

§ 3420.5 Redesignated as § 3420.4.

41. Section 3420.5 is renumbered § 3420.4.

§ 3420.5–1 Redesignated as § 3420.4–1 and Amended.

42. Section 3420.5–1 is renumberd § 3420.4–1 and is amended by removing the phrase "§§ 3420.5–2 through 3420.5–5" and replacing it with the phrase "§§ 3420.4–2 through 3420.4–5".

§ 3420.5–2 Redesignated as § 3420.4–2

43. Section 3420.5–2 is renumbered § 3420.4–2.

§ 3420.5–3 Redesignated as § 3420.4–3 and Amended

44. Section 3420.5–3 is renumbered § 3420.4–3 and is amended by revising the second sentence of paragraph (a) to read "The Secretary shall give the Governor 30 days to comment before adopting a regional lease sale schedule or, for lease applications, before publishing a notice of sale for any tract within the State."

§ 3420.5–4 Redesignated as § 3420.4–4 and Amended

45. Section 3420.5–4 is renumbered 3420.4–4 and is amended by revising the second sentence to read "The Secretary shall give the tribe 30 days in which to comment prior to adopting a lease sale schedule."

§ 3420.5–5 Redesignated as § 3420.4–5 and Amended

46. Section 3420.5–5 is § 3420.4–5 and is amended by revising the second sentence to read "The Secretary shall provide 30 days in which the Attorney General may advise the Secretary prior to adopting a lease schedule."

§§ 3420.6, 3420.6–1 and 3420.6–2 [Removed]

47. Sections 3420.6, 3420.6–1 and 3420.6–2 are removed in their entirety.

§ 3420.7 Redesignated as § 3420.5

48. Section 3420.7 is renumbered § 3420.5.

§ 3420.7–1 Redesignated as § 3420.5–1 and Amended

49. Section 3420.7–1 is renumbered § 3420.5–1 and is amended by revising the first sentence to read "Following completion of the requirements of §§ 3420.3 and 3420.4 of this title, the

Secretary shall announce the adoption of a final regional lease sale schedule."

§ 3420.7-2 Redesignated as § 3420.5-2 and Amended

50. Section 3420.7-2 is renumbered § 3420.5-2 and is amended by:

(a) Amending the first sentence of paragraph (a) by removing the figure "3420.5" and replacing it with the figure "§ 3420.4" and by removing all after the word "title" where it appears; and

(b) Amending paragraph (b) by removing the figure "§ 3420.4-4" and replacing it with the figure "§ 3420.3-4".

51. Section 3422.1 is revised as follows:

§ 3422.1 Fair market value and maximum economic recovery.

(a) Not less than 30 days prior to the publication of a notice of sale, the Secretary shall solicit public comments on fair market value (FMV) appraisal and the maximum economic recovery (MER) of the tract or tracts proposed to be offered and on factors that may affect these 2 determinations. Proprietary data marked as confidential may be submitted to the Minerals Management Service in response to the solicitation of public comments. Data so marked shall be treated in accordance with the laws and regulations governing the confidentiality of such information.

(b) The authorized officer shall request the Minerals Management Service to submit in writing a report containing information on the mining method evaluation, estimated coal reserves by bed, coal quality assessment, royalty and lease bond recommendations and an evaluation of the public comments on the FMV and MER.

(c)(1) The authorized officer shall not accept any bid that is less than the fair market value as determined by the Department.

(2) Minimum bonus bids shall not be less than $100 per acre.

§ 3422.1-2 [Removed]

52. Section 3422.1-2 is removed in its entirety.

§ 3422.2 [Amended]

53. Section 3422.2 is amended by:

(a) Revising its title as follows: "§ 3422.2 *Notice of sale and detailed statement.*";

(b) Amending paragraph (b)(1) by removing the phrase "(whether by sealed or oral bids)" and by removing all after the phrase "being offered and" and replacing it with the phrase "the minimum bid(s) to be considered";

(c) Revising paragraph (b)(2) as follows:

* * * * *

(b) * * *

(2) Contain a description of the coal resources to be offered; and

* * * * *

(d) Revising paragraph (c) to read:

* * * * *

(c) The detailed statement of the terms and conditions of the lease(s) offered and bidding instructions for sale shall:

(1) Contain an explanation of the manner in which the bids may be submitted;

(2) Contain a warning to all bidders concerning 18 U.S.C. 1860, which prohibits unlawful combination or intimidation of bidders;

(3) Specify that the Secretary reserves the right to reject any and all bids and the right to offer the lease to the next highest qualified bidder if the successful bidder fails to obtain the lease for any reason;

(4) Contain a notice that each bid shall be accompanied by the bidder's qualifications (See 43 CFR 3472.2-2);

(5) Contain a notice to bidders that the winning bidders shall have to submit the information required by the Attorney General for post-sale review (See 43 CFR 3422.3-4);

(6) If appropriate, contain (i) a copy of any written qualified surface owner consent, including purchase price, financial obligations and terms and conditions, filed and verified prior to the posting of the notice of lease sale in the appropriate Bureau of Land Management State office; or (ii) a listing of lands for which qualified surface owner consent is required prior to lease sale but has not yet been filed, along with a statement that any consent for those lands filed prior to the deadline for such filings shall be made a part of the official file and shall be available for inspection by the public;

(7) If appropriate, contain a notice that bidders shall file a statement that all information they hold relevant to written consents affecting any area offered in the sale in which the bid is submitted has been filed with the proper Bureau of Land Management State office (43 CFR Subpart 1821) in accordance with the provisions of Subpart 3427 of this title;

(8) Contain a copy of the proposed lease, including all terms and special stipulations; and

(9) Contain any other information deemed appropriate by the authorized officer.

* * * * *

(e) Revising paragraph (d) to read:

* * * * *

(d) Each successful bidder, if any, shall reimburse the United States for a proportionate share of the cost of publishing the notice of sale as a condition of lease issuance.

54. A new § 3422.3-1 is added to read:

§ 3422.3-1 Bidding systems.

(a) The provisions of 10 CFR Part 378 are not applicable to this part.

(b) The Department may conduct lease sales using cash bonus—fixed royalty bidding systems or any other bidding system adopted through rulemaking procedures.

§ 3422.3-1 Redesignated as § 3422.3-2 and Amended.

55. Section 3422.3-1 is renumbered § 3422.3-2 and is amended by:

(a) Removing paragraph (a)(2) in its entirety and renumbering paragraph (a)(3) as paragraph (a)(2);

(b) Amending paragraph (b)(2) by removing the phrase "fair market value" and replacing it with the figure "FMV";

(c) Amending paragraph (b) by inserting in the second full sentence after the phrase "shall be" the phrase "in writing and" and by inserting after the second full sentence the sentence "The sale panel's recommendation and the authorized officer's written decision shall be entered in the case file for the offered tract;" and

(d) Amending paragraph (c) by removing the last sentence.

§ 3422.3-2 [Removed]

56. Section 3422.3-2 is removed in its entirety.

§ 3422.3-4 [Amended]

57. Section 3422.3-4 is amended by:

(a) Removing paragraph (a) in its entirety;

(b) Renumbering paragraph (b) as paragraph (a) and revising it as follows:

* * * * *

(a) Subsequent to a lease sale, but prior to issuing a lease, the authorized officer shall require the successful bidder to submit on a form or in a format approved by the Attorney General information relating to the bidder's coal holdings to the authorized officer for transmittal to the Attorney General. Upon receipt of the information, the authorized officer shall notify the Attorney General of the proposed lease issuance, the name of the successful bidder and terms of the proposed lease sale and shall transmit the bidder's statement on coal holdings. A description of the information required by the Attorney General and the form or format for submission of the information may be obtained from the authorized officer.

* * * * *

(c) Renumbering paragraph (c) as paragraph (b) and amending it by removing the phrase "a statement of coal holdings in the above form" and replacing it with the phrase "the currently required information";

(d) Renumbering paragraph (d) as paragraph (c) and amending it by removing from the second sentence the phrase "authorized officer" and replacing it with the word "Director";

(e) Renumbering paragraph (e) as paragraph (d) and amending it by removing the phrase "notifies the authorized officer that" and replacing it with the phrase "notifies the Director that" and by removing the figure "(f)" and replacing it with "(e)";

(f) Renumbering paragraph (f) as paragraph (e) and amending it by removing the phrase "notifies the authorized officer that" and replacing it with the phrase "notifies the Director that" and removing in subparagraph (1) the figure "(b)" and replacing it with the figure "(a)";

(g) Renumbering paragraph (g) as paragraph (f) and amending it by removing the figure "(b)" and replacing it with the figure "(a)"; and

(h) Renumbering paragraph (h) as paragraph (g) and revising it as follows:

* * * * *

(g) Information submitted to the authorized officer to comply with this section shall be treated as confidential and proprietary data if marked "confidential" by the reporting company. Confidential information shall be submitted to the authorized officer in a sealed envelope and shall be transmitted in that form to the Attorney General.

58. Section 3422.4 is revised as follows:

§ 3422.4 Award of lease.

(a) After the authorized officer has accepted a high qualified bid, and the Attorney General has not objected to lease issuance or the procedures in § 3422.3–4(e)(2) of this title have been completed, the authorized officer shall send 4 copies of the lease form to the successful bidder. The successful bidder shall complete, sign and return these forms and shall: pay the balance of the bonus bid, if required; pay the first year's rental; pay the proportionate share of the cost of publishing the notice of sale; and file a lease bond. Upon receipt of the above, the authorized officer shall execute the lease.

(b) If the successful bidder dies before the lease is issued, the provisions of § 3472.2–4 of this title shall apply.

(c) At least half of the acreage offered for competitive lease in any 1 year shall be offered on a deferred bonus payment basis. In a deferred bonus payment, the lessee shall pay the bonus in 5 equal installments; the first installment shall be submitted with the bid. The balance shall be paid in equal annual installments due and payable on the next 4 anniversary dates of the lease. If a lease is relinquished or otherwise cancelled or terminated, the unpaid remainder of the bid shall be immediately payable to the United States.

(d) If the successful bidder fails to comply with any requirement of paragraph (a) of this section or of § 3422.3–4 of this title, the deposit on the successful bid shall be forfeited to the United States.

(e) If the lease cannot be awarded for reasons determined by the authorized officer to be beyond the control of the successful bidder, the deposit submitted with the bid shall be refunded.

§ 3425.0–2 [Amended]

59. Section 3425.0–2 is amended by removing the phrase "§§ 3420.4 through 3420.7 of this title" and replacing it with the phrase "§§ 3420.3 through 3420.5–2 of this title."

§ 3425.0–6 [Removed]

60. Section 3425.0–6 is removed in its entirety.

§ 3425.1–4 [Amended]

61. Section 3425.1–4 is amended by:

(a) Revising paragraphs (a)(1) and (2) as follows:

(a) * * *

(1) That the coal reserves applied for shall be mined as part of a mining operation that is producing coal on the date of the application, and either:

(i) The Federal coal is needed within 3 years (A) to maintain an existing mining operation at its current average annual level of production on the date of application or (B) to supply coal for contracts signed prior to July 19, 1979, as substantiated by a complete copy of the supply or delivery contract, or both; or

(ii) If the coal deposits are not leased, they would be bypassed in the reasonably foreseeable future, and if leased, some portion of the tract applied for would be used within 3 years; and

(2) That the need for the coal deposits shall have resulted from circumstances that were either beyond the control of the applicant or could not have been reasonably foreseen and planned for in time to allow for consideration of leasing the tract under the provisions of § 3420.3 of this title.

* * * * *

(b) Revising paragraph (b) to read:

* * * * *

(b) The extent of any lease issued under this section shall not exceed 8 years of recoverable reserves at the rate of production under which the applicant qualified in paragraph (a)(1) of this section. If the applicant qualifies under both subparagraphs (A) and (B) of paragraph (a)(1) of this section, the higher rate applies.

(c) Removing paragraph (c) in its entirety.

62. Section 3425.1–5 is revised to read:

§ 3425.1–5 Leasing outside coal production regions.

A lease sale may be held in response to an application under this subpart if the application covers coal deposits which are outside coal production regions identified under § 3400.5 of this title.

§ 3425.1–7 [Amended]

63. Section 3425.1–7 is amended by:

(a) Amending paragraph (b)(1) by removing the phrase ", (which may be available from state or Federal sources)"; and

(b) Amending paragraph (d) by removing the phrase "(See 43 CFR Subpart 3427)" and replacing it with the phrase "in accordance with subpart 3427 of this title."

§ 3425.1–8 [Amended]

64. Section 3425.1–8 is amended by:

(a) Amending paragraph (a) by removing the word "when" and replacing it with the word "if"; and

(b) Amending paragraph (a)(2) by removing the phrase "violate the integrity of the normal leasing process" and replacing it with the phrase "compromise the regional leasing process described in § 3420.3 of this title".

65. Subpart 3425 is amended by adding a new § 3425.1–9 to read:

§ 3425.1–9 Modification of application area.

The authorized officer may add or delete lands from an area covered by an application for any reason he/she determines to be in the public interest.

§ 3425.2 [Amended]

66. Section 3425.2 is amended by removing from the first sentence the phrase "No lease shall be issued" and replacing it with the phrase "No lease shall be offered for sale" and by removing the figure "§ 3420.1–5" and replacing it with the figure "§ 3420.1–4".

§ 3425.3 [Amended]

67. Section 3425.3 is amended by:

(a) Revising paragraph (a) as follows:

(a) Before a lease sale may be held under this subpart, the authorized officer shall prepare an environmental assessment or environmental impact statement of the proposed lease area in accordance with 40 CFR 1500 through 1508.

* * * * *

(b) Removing paragraphs (a)(1), (a)(2), (a)(3) and (a)(4) in their entirety.

68. Section 3425.4 is revised as follows:

§ 3425.4 Consultation and sale procedures.

(a)(1) Prior to holding any lease sale in response to any application under this subpart, a public hearing shall be held on the environmental assessment or environmental impact statement, the proposed sale and the fair market value and maximum economic recovery on the proposed lease tract.

(2) Prior to holding any lease sale under this subpart, the Secretary shall consult with the entities and individuals listed in §§ 3420.4–2 through 3420.4–5 of this title.

(b) Subpart 3422 of this title applies in full to any sale to be held in response to an application filed under this subpart.

69. Section 3427.0–7 is revised as follows:

§ 3427.0–1 Purpose.

The purpose of this subpart is to set out the protection that shall be afforded qualified surface owners of split estate lands (43 CFR 3400.0–5) and the requirements for submission of evidence of written surface owner consent from qualified surface owners of split estate lands.

70. Section 3427.1 is revised as follows:

§ 3427.1 Deposits subject to consent.

On split estate lands (43 CFR 3400.0–5(kk)) where the surface is owned by a qualified surface owner, coal deposits that will be mined by other than underground mining techniques shall not be included in a lease sale without evidence of written consent from the qualified surface owner (43 CFR 3400.0–5(gg)) allowing entry and commencement of surface mining operations.

§ 3427.2 [Amended]

71. Section 3427.2 is amended by:

(a) Revising paragraph (a)(1) to read:

(a)(1) Each written consent or evidence of written consent shall be filed with the appropriate Bureau of Land Management State office (43 CFR Subpart 1821). For lands offered for lease sale pursuant to subpart 3420 of this title, consents or written evidence thereof shall be filed on or before a date prior to the lease sale specified in a notice published in the **Federal Register.** For lands offered for lease sale pursuant to subpart 3425 of this title, consents or written evidence thereof shall be filed prior to the posting of the lease sale notice.

* * * * *

(b) Removing paragraph (d) in its entirety;

(c) Renumbering paragraph (e) as paragraph (d) and revising it to read:

* * * * *

(d) The authorized officer shall verify that the written consent or evidence of such consent meets all of the following requirements, and that the statement of refusal to consent meets the requirements of paragraphs (d) (2) and (3) of this section:

(1) The right to enter and commence mining is transferable to whoever makes the successful bid in a lease sale for a tract which includes the lands to which the consent applies. A written consent shall be considered transferable only if it provides that after the lease sale for the tract to which the consent applies:

(i) The successful bidder shall assume all rights and obligations of the holder of the consent, including the obligation to make all payments to the grantor of the consent and to reimburse the holder of the consent for all money previously paid to the grantor under the consent contract; and

(ii) Neither the holder nor the grantor of the consent has any right under the consent contract to prevent the successful bidder from assuming the rights and obligations of the holder of the consent by imposing additional costs or conditions or otherwise;

(2) The named surface owner is a qualified surface owner as defined in § 3400.0–5(gg) of this title; and

(3) The title for all split estate lands described in the filing is held by the named qualified surface owners.

* * * * *

(d) Renumbering paragraph (f) as paragraph (e) and amending it by removing the word "transferable";

(e) Renumbering paragraph (g) as paragraph (f) and revising it to read:

(f) The applicable conditions of paragraphs (d) and (e) of this section shall be met prior to the lease sale for lands to which the consents apply.;

(g) Renumbering paragraph (h) as paragraph (g) and amending it by removing the phrase "State Director" and replacing it with the phrase "authorized officer";

(h) Renumbering paragraph (i) as paragraph (h) and revising it to read:

(h) The purchase price of any applicable written consent from a qualified surface owner submitted and verified prior to posting of the notice of lease sale shall be included with the description of the tract(s) in the notice of lease sale, and the other terms of the consent shall be included in the detailed statement of the sale for the tract(s). Any consent filed after posting of the notice of lease sale shall be placed in the official file for the lease tract(s) to which the consent applies and shall be available for inspection by the public in the appropriate Bureau of Land Management State office (43 CFR Subpart 1821);

(i) Renumbering paragraph (j) as paragraph (i) and revising it to read:

(i) Any statement of refusal to consent shall be treated as controlling until the activity planning cycle that includes the area covered by the refusal to consent is repeated or the surface estate is sold. When an activity planning cycle is initiated, the qualified surface owner shall be notified that his/her prior statement of refusal has expired and shall be given the opportunity to submit another statement.

(i) Adding a new paragraph (j) to read:

* * * * *

(j) If the surface owner fails to provide evidence of qualifications in response to surface owner consultation or to a written request for such evidence, and if the authorized officer is unable to independently determine whether or not the surface owner is qualified, the authorized officer shall presume that the surface owner is unqualified. The authorized officer shall notify the surface owner in writing of this determination and shall provide the surface owner an opportunity to appeal the determination.

72. Section 3427.4 is revised to read:

§ 3427.4 Pre-existing consents.

An otherwise valid written consent given by a qualified surface owner prior to August 3, 1977, shall not be required to meet the transferability of § 3427.2(d)(1) of this title.

73. A new § 3427.5 is added to read:

§ 3427.5 Unqualified surface owners.

(a) Lease tracts involving surface owners who are not qualified (see § 3400.0–5(gg)) shall be leased subject to the protections afforded the surface owner by the statute(s) under which the surface was patented and the coal reserved to the United States. No consent from an unqualified surface owner is required under this subpart before the authorized officer may issue a lease for such a tract (see section 9 of

the Stock-Raising Homestead Act (43 U.S.C. 249); the Act of March 3, 1909 (30 U.S.C. 81); section 3 of the Act of June 22, 1910 (30 U.S.C. 85); and section 5 of the Act of June 21, 1949 (30 U.S.C. 54)).

(b) The provisions of §§ 3427.1 through 3427.4 of this title are inapplicable to any lease tract on which a consent has been given by an unqualified surface owner. The high bidder at the sale of such a tract is not required to submit any evidence of written consent before the authorized officer may issue the lease unless the statute establishing the relative rights of the United States (and its lessees) and the surface owner so requires.

PART 3430—NONCOMPETITIVE LEASES

§ 3430.0–3 [Amended]

74. Section 3430.0–3 is amended by removing paragraph (c) in its entirety.

75. Section 3430.0–7 is revised as follows:

§ 3430.0–7 Scope.

Section 4 of the Federal Coal Leasing Amendments Act of 1976, amending 30 U.S.C. 201(b), repealed the Secretary's authority to issue or extend a coal prospecting permit on Federal lands. Therefore, these regulations apply only to preference right lease applications based on prospecting permits issued prior to August 4, 1976. The surface owner consent provisions of section 714 of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1304) do not apply to preference right lease applications.

76. Section 3430.2–1 is amended by:

(a) Revising the first paragraph and paragraph (a) of the section as follows:

§ 3430.2–1 Initial showing.

All preference right coal lease applications shall have contained or shall have been supplemented by the timely submission of:

(a) Information on the quantity and quality of the coal resources discovered within the boundaries of the prospecting permit area, including an average proximate analysis, sulfur content and BTU content of the coal, and all supporting geological and geophysical data used to develop the required information.

* * * * *

(b) Amending paragraph (c)(2) by adding the word "and" after the semicolon at the end;

(c) Amending paragraph (c)(3) by removing the semicolon and replacing it with a period;

(d) Removing paragraphs (c)(4), (c)(5) and (c)(6) in their entirety; and

(e) Adding a new paragraph (d) as follows:

* * * * *

(d) The authorized officer may request from the applicant, or the applicant may submit, any other information necessary to conduct an environmental analysis of the proposed mining operation, formulate mitigating measures and lease terms and determine commercial quantities.

§ 3430.2–2 [Removed]

77. Section 3430.2–2 is removed in its entirety.

§ 3430.2–3 Redesignated as § 3430.2–2 and Amended

78. Section 3430.2–3 is renumbered § 3430.2–2 and is amended by removing the phrase "§§ 3430.2–1 and 3430.2–2" and replacing it with the figure "§ 3430.2–1".

§ 3430.3–1 [Amended]

79. Section 3430.3–1 is amended by adding at the end of the first sentence in paragraph (c)(3) the phrase "in a land use analysis" and by removing the last sentence of paragraph (c)(3).

§ 3430.3–2 [Amended]

80. Section 3430.3–2 is amended by:

(a) Revising paragraph (b) as follows:

* * * * *

(b) The environmental analysis may be conducted in conjunction with and included as part of the environmental impact statement required for coal activity planning under § 3420.3–4 of this title.

* * * * *

(b) Removing paragraphs (c), (d) and (e) in their entirety.

§ 3430.4–1 [Amended]

81. Section 3430.4–1 is amended by:

(a) Amending paragraph (a) by removing the word "promptly" and replacing it with the phrase ", if not previously submitted,";

(b) Amending paragraph (b) by removing the phrase "applicant with the request" and replacing it with the phrase "applicant, separately or with a request";

(c) Amending paragraph (c) by revising subparagraph (3) to read:

* * * * *

(c) * * *

(3) If the applicant intends to mine the deposit in the lands covered by a preference right lease application as part of a logical mining unit, the applicant shall include the estimated costs and revenue of the combined mining venture.

* * * * *

(d) Revising paragraph (d) to read:

* * * * *

(d) The applicant may withdraw any lands from the application and delete them from the final showing if the applicant is no longer interested in leasing such lands or if such lands would be subject to special conditions or protective stipulations and the cost of mining the lands subject to these conditions or protective stipulations would adversely affect the commercial quantities determination.

* * * * *

§ 3430.5–1 [Amended]

82. Section 3430.5–1(a) is amended by:

(a) Revising paragraph (a)(3) to read:

(a) * * *

(3) The applicant otherwise failed to meet statutory or regulatory requirements; or

* * * * *

(b) Adding a new paragraph (a)(4) to read:

(a) * * *

(4) The applicant does not permit declassification of proprietary information within the time period specified in § 3430.2–2(b) of this title.

* * * * *

83. Section 3430.5–3 is revised to read:

§ 3430.5–3 Determination to lease.

A preference right lease shall be issued if, upon review of the application, any available land use plan and the environmental assessment or environmental impact statement, the authorized officer determines that:

(a) Coal has been discovered in commercial quantities on the lands applied for;

(b) The applicant has used reasonable economic assumptions and data to support the showing that coal has been found on the proposed lease in commercial quantities; and

(c) The conditions or protective lease stipulations assure that environmental damage can be avoided or acceptably mitigated.

84. Section 3430.5–4 is revised to read:

§ 3430.5–4 Lease exchange.

(a) Upon the the request of the applicant, the Secretary may initiate lease exchange procedures under Subpart 3435 of this title if the lands under application have been shown to contain coal in commercial quantities.

(b) Upon the request of the authorized officer, the Secretary may initiate lease exchange procedures under Subpart 3435 of this title if:

(1) The lands under application have been shown to contain commercial quantities of coal;

(2) All or a portion of the proposed lease has been assessed as lands which should be unavailable for coal development because of land use or resource conflicts or as lands which are unsuitable for coal mining under the provisions of Subpart 3461 of this title; and

(3) The lands are exempted from the application of any relevant unsuitability criteria or the Secretary lacks the authority to prevent damage to or loss of the land use or resource values threatened by lease operations.

85. Section 3430.6–1 is revised to read:

§ 3430.6–1 Lease terms.

Each preference right lease shall be subject to the terms provided for Federal coal leases established in Part 3470 of this title.

§ 3430.6–3 [Removed]

86. Section 3430.6–3 is removed in its entirety.

§ 3430.6–4 Redesignated as 3430.6–3 and Amended.

87. Section 3430.6–4 is renumbered § 3430.6–3 and is amended by removing the phrase "subpart 3400.0–5 of this title" and replacing it with the phrase "30 CFR 211.2".

§ 3431.2 [Amended]

88. Section 3431.2(c) is amended by removing the word "surface" where it first appears and replacing it with the word "Surface" and by adding immediately after the phrase "authorized officer" the phrase "of the surface management agency".

89. Section 3435.0–1 is amended by inserting after the phrase "leased lands" the phrase "or portions of leased lands".

§ 3435.0–3 [Amended]

90. Section 3435.0–3(b) is amended by:

(a) Removing the word "and" at the end of paragraph (b)(2);

(b) Removing the period at the end of paragraph (b)(3) and replacing it with a semicolon; and

(c) Adding new paragraphs (b) (4) and (5) to read:

* * * * *

(b) * * *

(4) Section 1 of the Act of October 19, 1980 (94 Stat. 2269); and

(5) Section 4 of the Rattlesnake National Recreation Area and Wilderness Act of 1980 (94 Stat. 2272).

§ 3435.1 [Amended]

91. Section 3435.1 is amended by:

(a) Amending the introductory paragraph by inserting after the phrase "preference right lease application" where it first appears the phrase "or portions thereof";

(b) Revising paragraph (c) to read:

* * * * *

(c) A lease for a mineral listed in subpart 3526 of this title by mutual agreement between the applicant and the Secretary; and

* * * * *

(c) Removing the sentence following paragraph (e).

§ 3435.2 [Amended]

92. Section 3435.2 is amended by:

(a) Revising paragraph (b) to read:

* * * * *

(b) Except for leases qualified under Subpart 3436 of this title, the Secretary may issue a new coal lease in exchange for the relinquishment of outstanding leases or lease applications only in those cases where the Congress has specifically authorized such exchanges.

* * * * *

(b) Amending paragraph (c) by removing the word "appropriate" and replacing it with the phrase "in the public interest."; and

(c) Amending paragraph (d) by removing the phrase "and 3432.2(b) of this title" and replacing it with the phrase ", § 3432.2(b) and § 3432.3(a) of this title."

§ 3435.3–1 [Amended]

93. Section 3435.3–1 is amended by:

(a) Amending paragraph (b) by removing the phrase "include a statement of" and replacing it with the word "state";

(b) Revising paragraph (c) to read:

* * * * *

(c) The exchange notice shall contain a description of the leased lands or lands under preference right lease application being considered for exchange. These lands may include all or part of an existing lease or preference right lease application.

* * * * *

(d) Inserting a new paragraph (d) to read:

* * * * *

(d) The exchange notice may contain a description of the lands for which the Secretary would grant an exchange lease or lease interest. If a coal lease modification would be granted by exchange, the lands shall be selected from those lands found acceptable for further consideration for coal leasing under § 3420.1 of this title; and

(d) Renumbering paragraph (d) as paragraph (e).

§ 3435.3–2 [Amended]

94. Section 3435.3–2(a) is revised to read:

(a) The lessee or preference right lease applicant wishing to negotiate an exchange shall so reply in writing. The reply may include a description of the lands on which the lessee or lease applicant would accept an exchange lease or coal lease modification.

* * * * *

§ 3435.3–3 [Amended]

95. Section 3435.3–3 is amended by:

(a) Amending paragraph (a) by removing the colon and adding the phrase "negotiate an exchange consistent with § 3435.1 of this title." and removing subparagraphs (1) through (4) in their entirety; and

(b) Amending paragraph (b) by removing the figure "§ 3420.2–3" and replacing it with the figure "§3420.1".

96. Section 3435.3–5 is revised to read:

§ 3435.3–5 Notice of public hearing.

After the lessee or lease applicant and the Secretary agree on an exchange proposal, notice of the exchange proposal shall be published in the **Federal Register** and in at least 1 newspaper of general circulation in each county or equivalent political subdivision where both the offered and selected lands are located. The notice shall announce that, upon request, at least 1 public hearing shall be held in a city or cities located near each tract involved. The notice shall also contain the Secretary's preliminary findings why the proposed exchange is in the public interest. Any notice of the availability of a draft environmental assessment or environmental impact statement on the exchange may be used to comply with this section.

§ 3435.3–6 [Amended]

97. Section 3435.3–6(a) is amended by removing the phrase "at least 45 days after this notification" and replacing it with the phrase "45 days".

98. Section 3435.4 is revised to read:

§ 3435.4 Issuance of lease, lease modification or bidding rights.

(a) If, after any public hearing(s), the Secretary by written decision concludes that an exchange is in the public interest, the Secretary shall transmit to the lessee or preference right lease applicant:

(1) A statement of the Secretary's findings that lease issuance is in the public interest;

(2) Either (i) copies of the coal or other mineral exchange lease or coal lease modification containing the terms, conditions and special stipulations under which the lease or coal lease modification is to be granted, or (ii) a statement describing the terms and

conditions of the coal lease bidding rights to be granted in exchange; and

(3) A statement for execution by the lessee or preference right lease applicant relinquishing all right or interest in the lease or preference right lease application, or portion thereof, to be exchanged.

(b) The exchange lease, lease modification or coal lease bidding rights shall be issued upon relinquishment of the lease, preference right lease application, or portion thereof.

(c) The exchange lease or lease modification shall be subject to all relevant provisions of group 3400 or 3500 of this title, 30 CFR Chapter VII, Subchapter D and 30 CFR Part 211, as appropriate.

99. Subpart 3436 of Part 3430 is revised to read:

* * * * *

Subpart 3436—Coal Lease and Coal Land Exchanges—Alluvial Valley Floors

Sec.

3436.0–1 Purpose.
3436.0–2 Objective.
3436.0–3 Authority.
3436.0–5 Definitions.
3436.1 Coal lease exchanges.
3436.1–1 Qualified lease proponents.
3436.1–2 Federal coal deposits subject to lease by exchange.
3436.1–3 Exchange procedures.
3436.2 Fee coal exchanges.
3436.2–1 Qualified exchange proponents.
3436.2–2 Federal coal deposits subject to disposal through exchange.
3436.2–3 Exchange procedures.

Subpart 3436—Coal Lease and Coal Land Exchanges—Alluvial Valley Floors

§ 3436.0–1 Purpose.

The purpose of this subpart is to establish criteria and procedures for the exchange of coal leases and for the exchange of fee held coal for unleased Federally-owned coal in cases where surface coal mining operations on the lands that are covered by an existing coal lease or that are fee held would interrupt, discontinue or preclude farming on alluvial valley floors west of the 100th Meridian, west longitude, or materially damage the quantity or quality of water in surface or underground systems that supply those alluvial valley floors.

§ 3436.0–2 Objective.

(a) The objective of this subpart is to provide relief to persons holding leases for Federal coal deposits or fee title to coal deposits which underlie or are near alluvial valley floors and which cannot be mined through surface mining operations under section 510(b)(5) of the Surface Mining Control and Reclamation Act, through the exchange of lands, or interests therein, pursuant to the authority granted by the statutory provision.

(b) The Secretary shall exercise the authority to dispose of Federal coal deposits by lease to meet this objective when he/she determines that the exchange would serve the public interest. In determining whether such an exchange will serve the public interest, the Secretary will consider a wide variety of factors, including better Federal land management and the needs of State and local people, including needs for lands for the economy, community expansion, recreation areas, food, fiber, minerals and fish and wildlife. Unless consideration of the above factors would show otherwise, it will be assumed that an exchange will serve the public interest if substantial financial and legal commitments have been made toward development of the offered coal resource.

§ 3436.0–3 Authority.

(a) These regulations are issued under the authority of the statutes cited in § 3400.0–3 of this title.

(b) These regulations primarily implement section 510(b)(5) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1260(b)(5)).

§ 3436.0–5 Definitions.

As used in this subpart, the term "substantial financial and legal commitments" is a relative one, and the determination whether such commitments have been made, so as to qualify a person for an exchange under this subpart, will be made on a case-by-case basis. In making this determination, the Secretary will consider the level of expenditures made prior to January 1, 1977, that are related to development of the coal resource which is offered in exchange, taken together with the damages for which the person would be liable as a result of any legal commitments made prior to January 1, 1977, in connection with development of said coal resource, and the Secretary will compare that level of expenditure to the estimated total cost of developing the coal resource to the point of establishing a producing surface coal mining operation.

§ 3436.1 Coal lease exchanges.

§ 3436.1–1 Qualified lease proponents.

(a) Coal lease exchanges under this program shall be available only to persons who:

(1) Hold a Federal coal lease or preference right lease application covering lands that include or are near an alluvial valley floor located west of the 100th Meridian, west longitude, where surface coal mining operations are prohibited by section 510(b)(5) of the Surface Mining Control and Reclamation Act because such operations would interrupt farming or materially damage the quantity and quality of the water in surface or underground water systems that would supply the alluvial valley floor;

(2) Have made substantial financial and legal commitments prior to January 1, 1977, in connection with the lease or preference right lease application; and

(3) Are not entitled to continue any existing surface coal mining operations pursuant to the first proviso of section 510(b)(5) of the Surface Mining Control and Reclamation Act.

(b) Persons seeking an exchange bear the burden of establishing that they are qualified pursuant to paragraph (a) of this section. The Secretary shall accept a determination made pursuant to 30 CFR 785.19(c) as conclusive evidence of the existence of an alluvial valley floor.

§ 3436.1–2 Federal coal deposits subject to lease by exchange.

The lease offered by the Secretary in exchange for existing coal leases shall be for Federal coal deposits determined to be acceptable for further consideration for coal leasing pursuant to § 3420.1–5 or § 3420.2–3 of this title.

(a) Any person meeting the requirements of § 3436.1–1(a) of this title may apply for a lease exchange. No special form of application is required.

(b) The Secretary shall evaluate each exchange request to determine whether the proponent is qualified and whether the exchange serves the public interest. The exchange shall be processed in accordance with the procedures in subpart 3435 of this title for other lease and lease interest exchanges.

(c) After the Secretary and the exchange proponent have agreed to terms pursuant to § 3435.3–3 of this title, the Secretary may elect to consider the exchange proposal in conjunction with the activity planning process for the coal production region in which the lands proposed to be leased are located pursuant to § 3420.3 of this title. If the Secretary elects to process the exchange proposal in this manner, the tracts identified for use in the lease exchange shall be:

(1) Delineated for analysis pursuant to § 3420.3–3 of this title;

(2) Ranked as having high desirability pursuant to § 3420.3–4(a) of this title; and

(3) Selected for inclusion for analysis purposes in alternative proposed lease sale schedules pursuant to § 3420.3–4(c) of this title. Such tracts shall then be the subject of environmental analysis, public comment and consultation pursuant to §§ 3420.3 and 3420.4 of this title.

(d) If the Secretary elects to process the exchange proposal independently of the activity planning process, the Secretary shall consider the environmental and resource information acquired during the land use planning process and found in the most recent regional environmental impact statement completed under the Federal coal management program. An environmental assessment or environmental impact statement shall be prepared on the proposed exchange prior to the public hearings and consultation required by §§ 3435.3–5 through 3435.3–7 of this title.

(e) In determining under § 3435.3–4 of this title the estimated value of the lease or preference right lease application to be relinquished, the Secretary shall proceed as though there were no prohibitions on surface mining operations on the lands covered by the lease or preference right lease application.

(f) The exchange proponent shall bear all administrative costs of the exchange, including the cost of establishing the value of each lease involved in the exchange.

§ 3436.2 Fee coal exchanges.

§ 3436.2–1 Qualified exchange proponents.

(a) Fee coal exchanges under this program shall only be available to persons who:

(1) Own coal west of the 100th Meridan, west longitude, underlying or near an alluvial valley floor where surface coal mining operations are prohibited by section 510(b)(5) of the Surface Mining Control and Reclamation Act because such operations would interrupt farming or materially damage the quantity and quality of the water in surface or underground water systems that would supply the alluvial valley floor; and

(2) Are not entitled to continue any existing surface coal mining operation pursuant to the first proviso to section 510(b)(5) of the Surface Mining Control and Reclamation Act.

(b) Exchange proponents bear the burden of establishing their qualifications pursuant to paragraph (a) of this section. The Secretary shall accept a determination made pursuant to 30 CFR 785.19(c) as conclusive evidence of the existence of an alluvial valley floor.

§ 3436.2–2 Federal coal deposits subject to disposal by exchange.

The coal deposits offered in exchange by the Secretary shall be determined to be acceptable for further consideration for coal leasing pursuant to § 3420.1 of this title and shall be in the same State as the coal deposit offered in exchange by the proponent.

§ 3436.2–3 Exchange procedures.

(a) Any person meeting the requirements of § 3436.2–1(a) of this title may apply for an exchange. No special form of application is required. Any exchange proposal should be directed to the District Manager for the Bureau of Land Management district in which the Federal coal deposits are located.

(b) The Secretary shall evaluate each exchange request to determine whether the proponent is qualified.

(c) After the authorized officer and the owner of the coal deposit underlying an alluvial valley floor identify Federal coal deposits that are suitable for consideration for disposition through exchange, the exchange shall be processed in accordance with Part 2200 of this title, except as provided in this section.

(d) The Secretary may consolidate the environmental analysis for the proposed exchange with the regional environmental impact statement prepared on alternative leasing schedules for the coal production region in which the Federal coal deposits are located pursuant to § 3420.3–4 of this title. If the environmental analysis is not so consolidated, the Secretary shall consider environmental and other resource information obtained during the land use planning process or at other stages of the coal management program in preparing an appropriate environmental analysis or environmental impact statement on the proposed exchange.

(e) Exchanges shall be made on an equal value basis, provided that values of the lands exchanged may be equalized by the payment of money to the grantor or the Secretary so long as the payment does not exceed 25 percent of the total value of the lands or interests transferred out of Federal ownership. In determining the value of the coal deposit underlying or near an alluvial valley floor, the Secretary shall proceed as though there were no prohibition on surface coal mining operations on the property.

(f) The owner of the coal deposits underlying or near an alluvial valley floor shall bear all administrative costs of the exchange, including the cost of establishing the value of each deposit involved in the exchange.

§§ 3437.0–1 through 3437.2 (Subpart 3437) [Removed]

100. Subpart 3437 of Part 3430 is removed in its entirety.

PART 3440—LICENSES TO MINE

§ 3440.1–4 [Amended]

101. Section 3440.1–4 is amended by amending paragraph (c)(3) by removing the third and fourth sentences.

§ 3440.1–5 [Removed]

102. Section 3440.1–5 is removed in its entirety.

§ 3440.1–6 Redesignated § 3440.1–5 and Amended

103. Section 3440.1–6 is renumbered § 3440.1–5 and is amended by removing the phrase "regulatory authority" and replacing it with the phrase "Surface Mining Officer".

104. A new § 3440.1–6 is added to read:

§ 3440.1–6 Cancellation or forfeiture.

Any license to mine may be canceled or forfeited for violation of the Act under which the license to mine was issued, applicable Federal laws and regulations, or the terms and conditions of the license to mine.

PART 3450—MANAGEMENT OF EXISTING LEASES

§ 3451.1 [Amended]

105. Section 3451.1 is amended by:

(a) Amending paragraph (a) by removing subparagraph (3) in its entirety;

(b) Removing paragraph (b) in its entirety;

(c) Renumbering paragraph (c) as paragraph (b) and amending it by removing the phrase "lease shall be readjusted" and replacing it with the phrase "lease shall not be readjusted retroactively", and by removing all after the phrase "Act of 1976"; and

(d) Renumbering paragraphs (d) and (e) as paragraphs (c) and (d).

§ 3451.2 [Amended]

106. Section 3451.2 is amended by:

(a) Removing paragraph (b) in its entirety;

(b) Renumbering paragraph (c) as paragraph (b) and amending it by adding at the end thereof the sentence "The effective date of the readjusted lease shall not be affected by the filing of objections to any of the readjusted terms and conditions.";

(c) Renumbering paragraph (d) as paragraph (c) and amending it by inserting between the words "or" and "30 days" the phrase, "if the Attorney General desires to review the readjustment,";

(d) Inserting a new paragraph (d) to read:

"(d) The lessee may appeal the decision of the authorized officer in accordance with the procedure set out in 43 CFR Part 4."; and

(e) Revising paragraph (e) to read:

"(e) The readjusted lease terms and conditions shall be effective pending the outcome of the appeal, unless the authorized officer provides otherwise. Upon the filing of an appeal, the obligation to pay royalties and rentals when due under the readjusted lease shall be suspended pending the outcome of the appeal. However, during the pendency of the appeal, royalties and rentals shall accrue under the readjusted lease terms and shall be payable if the decision is upheld on appeal, plus interest at the rate specified for late payments in 30 CFR Part 211."

107. Section 3452.1–1 is revised to read:

§ 3452.1–1 General.

The lessee may surrender the entire lease, a legal subdivision thereof, an aliquot part thereof (not less than 10 acres) or any bed of the coal deposit therein. A partial relinquishment shall describe clearly the surrendered parcel or coal deposits and give the exact acreage relinquished. If the authorized officer accepts the relinquishment of any coal deposits in a lease, the coal reserves shall be adjusted in accordance with 30 CFR Part 211.

108. Section 3452.1–3 is revised to read:

§ 3452.1–3 Acceptance.

The effective date of the lease relinquishment shall, upon approval by an authorized officer, be the date on which the lessee filed the lease relinquishment. No relinquishment shall be approved until the authorized officer determines that the relinquishment will not impair the public interest, that the accrued rentals and royalties have been paid and that all the obligations of the lessee under the regulations and terms of the lease have been met.

§ 3452.2–1 [Amended]

109. Section 3452.2–1 is amended by:

(a) Revising paragraph (a)(2) to read:

(a) * * *

(2) fails to comply with any applicable general regulations; or

* * * * *

(b) Removing paragraph (b) in its entirety; and

(c) Renumbering paragraph (c) as paragraph (b).

§ 3452.3 [Amended]

110. Section 3452.3 is amended by:

(a) Amending paragraph (a) by inserting after the word "issued" the phrase "or readjusted"; and

(b) Amending paragraph (b) by inserting before the word "cancelled" the word "relinquished,".

111. Section 3453.1 is revised to read:

§ 3453.1 Qualifications.

(a) Leases may be transferred in whole or in part to any person, association or corporation qualified under Subpart 3472 of this title to hold such leases, except as provided by §§ 3420.1–4(b)(1)(iv) and 3420.1–4(b)(2)(ii) of this title.

(b) Preference right lease applications may be transferred as a whole only to a person, association or corporation qualified under subpart 3472 of this title to hold a lease.

(c) Exploration licenses may be transferred in whole or in part subject to § 3453.3(b) of this title.

§§ 3453.1–1, 3453.1–2, 3453.1–3, 3453.1–4 and 3453.1–5 [Removed]

112. Sections 3453.1–1, 3453.1–2, 3453.1–3, 3453.1–4 and 3453.1–5 are removed in their entirety.

113. Section 3452.2–1 is amended by removing the phrase "lease or any interest in a lease," and replacing it with the phrase "lease, preference right lease application or exploration license or any interest in a lease or license,".

§ 3453.2–2 [Amended]

114. Section 3453.2–2 is amended by:

(a) Revising paragraphs (a) and (b) to read:

(a) Transfers of any record title interest shall be filed in triplicate and shall be accompanied by a request for approval from the transferee.

(b) No specific form need be used for requests for approval of transfers. The request for approval shall contain evidence of the transferee's qualifications, including a statement of Federal coal lease acreage holdings. This evidence shall consist of the same showing of qualifications required of a lease applicant by Subpart 3472 of this title. A single signed copy of the qualifications statement is sufficient.

* * * * *

(b) Amending paragraph (e) by inserting after the word "lease" the phrase ", license or application";

(c) Amending paragraph (g) by removing the phrase "so treated, consistent with the Freedom of Information Act." and replacing it with the phrase "treated in accordance with the laws and regulations governing the confidentiality of such information."

115. Section 3453.2–3 is revised to read:

§ 3453.2–3 Filing location and fee.

Instruments of transfer and requests for approval shall be filed in the Bureau of Land Management office having jurisdiction over the leased lands proposed for transfer (see 43 CFR Subpart 1821). Each instrument of transfer shall be accompanied by a nonrefundable filing fee (see 43 CFR 3473.2).

116. Section 3453.2–4 is revised to read:

§ 3453.2–4 Bonds.

(a) If a bond is required, it shall be furnished before a lease, preference right lease application or exploration license may be approved for transfer. If the original lease, preference right lease application or exploration license required the maintenance of a bond, the transferee shall submit either a written consent from the surety to the substitution of the transferee as principal or a new bond with the transferee as principal. Transfers of any part of the lease or licensed lands shall be described by legal subdivisions. Before any transfer of part of a lease or license is approved, the transferee shall submit: (1) A written statement from the surety that it agrees to the transfer and that it agrees to remain bound as to the interest retained by the lessee or licensee; and (2) a new bond with the tranferee as a principal covering the portion transferred.

(b) The transferor and the surety shall continue to be responsible for the performance of any obligation under the lease, preference right lease application or exploration license until the effective date of the approval of the transfer. If the transfer is not approved, the obligation to the United States shall continue as though no such transfer had been filed for approval. After the effective date of approval, the transferee, including any sublessee, applicant or licensee, and the transferee's surety shall be responsible for all lease, application or license obligations, notwithstanding any terms of the transfer to the contrary.

§ 3453.2–5 [Removed]

117. Section 3453.2–5 is removed in its entirety.

§ 3453.2-6 Redesignated as § 3453.2-5

118. Section 3453.2-6 is renumbered 3453.2-5 and is revised to read:

§ 3453.2-5 Effect of partial assignment.

A transfer of full record-title to only part of the lands, or any bed of the coal deposits therein, shall segregate the transferred and retained portions into separate and distinct leases or licenses, with the retained portion keeping the original serial number. The newly segregated lease or license shall be assigned a new serial number and shall contain the same terms and conditions as the original lease or license.

§ 3453.3-1 [Amended]

119. Section 3453.3-1 is revised to read:

§ 3453.3-1 Conditions for approval.

(a) No transfer of a lease shall be approved if:

(1) The transferee is not qualified to hold a lease or an interest in a lease under subpart 3472 of this title or under §§ 3420.1-3(b)(1)(iv) and 3420.1-3(b)(2)(ii) of this title;

(2) The lease bond is insufficient;

(3) The filing fee has not been submitted;

(4) The transferee would hold the lease in violation of the acreage requirements set out in subpart 3472 of this title;

(5) The transfer would create an overriding royalty or other interest in violation of § 3473.3-2 of this title;

(6) The lease account is not in good standing;

(7) The information required under § 3453.2-2(e) of this title has not been submitted; or

(8) The transferee is subject to the prohibition in § 3472.1-2(e) of this title.

(b) When the licensee proposes to transfer an exploration license, any other participating parties in the license shall be given the right of first refusal. If none of the participating parties wishes to assume the license, the license may be transferred if:

(1) The exploration bond is sufficient;

(2) The filing fee has been submitted; and

(3) The license account is in good standing.)

(c) A preference right lease application may be transferred as a whole only to any party qualified to hold a lease under subpart 3472 of this title.

§ 3453.3-2 [Amended]

120. Section 3453.3-2 is amended by:

(a) Amending paragraph (a) by removing the phrase "an application for"; and

(b) Revising paragraph (b) to read:

* * * * *

(b) The authorized officer shall not approve a transfer of a lease until 30 days after the requirements of §3422.3-4 of this title have been met.

§ 3453.3-3 [Amended]

121. Section 3453.3-3 is amended by inserting after the word "requests" the phrase "in writing,".

122. Section 3453.3-4 is amended by inserting the figure "(a)" in front of the existing paragraph and adding a new paragraph (b) to read:

(b) The filing of or approval of a transfer of an exploration or license shall not extend the term of the license beyond the statutory 2-year maximum.

PART 3460—ENVIRONMENT

§ 3461.0-7 [Amended]

123. Section 3461.0-7 is amended by removing the figure "§ 3400.0-5(vv)" and replacing it with the figure "§ 3400.0-5(mm)" and removing the last sentence of the section in its entirety.

§ 3461.1 [Amended]

124. Section 3461.1 is amended by:

(a) Amending paragraph (a)(1) by removing the last sentence;

(b) Amending paragraph (b)(1) by removing the phrase ", or for agricultural crop production";

(c) Amending paragraph (c)(2) by inserting a new subparagraph (iii) to read:

* * * * *

(c) * * *

(2) * * *

(iii) If, after public notice and opportunity for public hearing in the locality, a written finding is made by the authorized officer that the interests of the public and the landowners affected by mining within 100 feet of a public road will be protected.

* * * * *

(d) Further amending paragraph (c)(2) by renumbering the existing subparagraph (iii) as subparagraph (iv) and removing from that subparagraph the word "buildings" and replacing it with the word "dwellings";

(e) Amending paragraph (i) by adding a new subparagraph (3) to read:

* * * * *

(i) * * *

(3) *Exemptions.* This criterion does not apply to lands: to which the operator made substantial legal and financial commitments prior to January 4, 1977; on which surface coal mining operations were being conducted on August 3, 1977; or which include operations on which a permit has been issued.

* * * * *

(f) Amending paragraph (k) by adding a new subparagraph (3) to read:

* * * * *

(k) * * *

(3) *Exemptions.* This criterion does not apply to lands: to which the operator made substantial legal and financial commitments prior to January 4, 1977; on which surface coal mining operations were being conducted on August 3, 1977; or which include operations on which a permit has been issued.

* * * * *

(g) Amending paragraph (l) by adding a new subparagraph (3) to read:

* * * * *

(l) * * *

(3) *Exemptions.* This criterion does not apply to lands: to which the operator made substantial legal and financial commitments prior to January 4, 1977; on which surface coal mining operations were being conducted on August 3, 1977; or which include operations on which a permit has been issued.

* * * * *

(h) Amending paragraph (m) by adding a new subparagraph (3) to read:

* * * * *

(m) * * *

(3) *Exemptions.* This criterion does not apply to lands: to which the operator made substantial legal and financial commitments prior to January 4, 1977; on which surface coal mining operations were being conducted on August 3, 1977; or which include operations on which a permit has been issued.

* * * * *

(i) Amending paragraph (n) by adding a new subparagraph (3) to read:

* * * * *

(n) * * *

(3) *Exemption.* This criterion does not apply to lands: to which the operator made substantial legal and financial commitments prior to January 4, 1977; on which surface coal mining operations were being conducted on August 3, 1977; or which include operations on which a permit has been issued.

* * * * *

(j) Amending paragraph (p) by revising subparagraph (1) to read:

* * * * *

(p)(1) *Criterion Number 16.* Federal lands in riverine, coastal and special floodplains (100-year recurrence interval) on which the surface management agency determines that mining could not be undertaken without substantial threat of loss of life or property shall be considered unsuitable for all or certain stipulated methods of coal mining."; and

* * * * *

(k) Amending paragraph (q) by revising subparagraph (2) to read:

* * * * *

(q) * * *

(2) *Exception.* A lease may be issued where the surface management agency in consultation with the municipality (incorporated entity) or the responsible governmental unit determines, as a result of studies, that all or certain stipulated methods of coal mining will not adversely affect the watershed to any significant degree.

§ 3461.2 [Amended]

125. Section 3461.2(b) is amended by removing the last sentence of the paragraph.

126. Section 3461.3–1(a) is revised to read:

§ 3461.3–1 Assessment and land use planning.

(a)(1) Each of the unsuitability criteria shall be applied to all coal lands with development potential identified in the comprehensive land use plan or land use analysis. For areas where 1 or more unsuitability conditions are found and for which the authorized officer of the surface management agency could otherwise regard coal mining as a likely use, the exceptions and exemptions for each criterion may be applied.

(2) The authorized officer of the surface management agency shall describe in the comprehensive land use plan or land use analysis the results of the application of each unsuitability criterion, exception and exemption. The authorized officer of the surface management agency shall state in the plan or analysis those areas which could be leased only subject to conditions or stipulations to conform to the application of the criteria or exceptions. Such areas may ultimately be leased provided that these conditions or stipulations are contained in the lease.

§ 3461.3–2 [Amended]

127. Section 3461.3–2 is amended by:

(a) Amending paragraph (a) by removing the figure "§ 3420.2–6" and replacing it with the phrase "§§ 3420.1–6 and 3420.1–7";

(b) Amending paragraph (b) by removing the last sentence of that paragraph; and

(c) Amending paragraph (c) by removing the last sentence of that paragraph.

§ 3461.3–3 [Removed]

128. Section 3461.3–3 is removed in its entirety.

129. Section 3461.4–1 is revised to read:

§ 3461.4–1 Application of criteria on unleased lands.

(a) The unsuitability criteria shall only be applied, prior to lease issuance, to all lands leased after July 19, 1979.

(b) The unsuitability criteria shall be initially applied either:

(1) During land use planning or the environmental assessment conducted for a specific lease application; or

(2) During land use planning under the provisions of § 3420.1–4 of this title.

130. Section 3461.4–2 is revised to read:

§ 3461.4–2 Application of criteria on leased lands.

The unsuitability criteria shall not be applied to leased lands.

§ 3461.5 [Removed]

131. Section 3461.5 is removed in its entirety.

§ 3461.6 Redesignated as § 3461.5 and Amended

132. Section 3461.6 is renumbered § 3461.5 and is amended by inserting after the word "mining", where it first appears in paragraph (a), the word "operations" and by adding at the end of paragraph (a) the phrase "and under 30 CFR 211.2(a)."

§ 3465.0–2 [Removed]

133. Section 3465.0–2 is removed in its entirety.

§ 3465.1 [Amended]

134. Section 3465.1(a) is amended by removing the phrase "permit (30 CFR Part 741)" and replacing it with the phrase "resource recovery and protection plan and mining permit (30 CFR Parts 211 and 741)".

§ 3465.2 [Removed]

135. Section 3465.2 is removed in its entirety.

§ 3465.3 Redesignated as § 3465.2

136. Section 3465.3 is renumbered § 3465.2.

§ 3465.3–1 Redesignated as § 3465.2–1 and Amended

137. Section 3465.3–1 is renumbered § 3465.2–1 and is amended by removing the phrase "inspectors from the Surface Mining Officer" and replacing it with the phrase "their authorized representatives".

§ 3465.3–2 Redesignated as § 3465.2–2

138. Section 3465.3–2 is renumbered § 3465.2–2.

§ 3465.3–3 Redesignated as § 3465.2–3 and Amended

139. Section 3465.3–3 is renumbered § 3465.2–3 and is amended by removing the phrase "30 CFR Part 211 or 30 CFR Chapter VII, Subchapter D" and replacing it with the phrase "30 CFR Chapter VII, Subchapter D, or by the Mining Supervisor in accordance with 30 CFR Part 211,".

§§ 3465.4, 3465.5, and 3465.6 [Removed]

140. Sections 3465.4, 3465.5 and 3465.6 are removed in their entirety.

PART 3470—COAL MANAGEMENT PROVISIONS AND LIMITATIONS

§ 3471.2–1 [Amended]

141. Section 3471.2–1 is amended by:

(a) Revising paragraph (b) to read:

* * * * *

(b) Any sale or conveyance of acquired lands by the agency having jurisdiction shall be subject to any lease or license to mine previously issued under the Mineral Leasing Act for Acquired Lands.

* * * * *

(b) Amending paragraph (c) by removing the phrase "act subject in each case to such appropriate conditions as may be prescribed" and replacing it with the word "Act."; and

(c) Amending paragraph (d) by removing the phrase "(43 CFR 3420.6)" at the end of the paragraph.

§ 3471.2–2 [Amended]

142. Section 3471.2–2(b) is amended by removing the first sentence of that paragraph.

§ 3471.3–1 [Removed]

143. Section 3471.3–1 is removed in its entirety.

§ 3471.3–2 Redesignated as § 3471.3–1 and Amended

144. Section 3471.3–2 is renumbered § 3471.3–1 and is amended by:

(a) Revising paragraph (b) to read:

* * * * *

(b) Any party to any proceedings with respect to a violation of any provision of the mineral leasing laws may be dismissed promptly as a party by showing that he/she holds and acquired his/her interest as a bona fide purchaser without having violated any provisions of the mineral leasing laws.

* * * * *

(b) Amending paragraph (c) by removing the phrase ", during any such proceeding,".

§ 3471.3–3 Redesignated as § 3471.2–3

145. Section 3471.3–3 is renumbered § 3471.3–2.

§ 3471.4 [Amended]

146. Section 3471.4 is amended by removing the phrase "(See 43 CFR

3472.1–1(g))" and replacing it with the phrase "(See 43 CFR 3472.1–2(g))".

§ 3472.1–2 [Amended]

147. Section 3472.1–2 is amended by:

(a) Amending paragraph (a) by removing the figure "§ 3472.1–2" and replacing it with the figure "§ 3472.1–3"; and

(b) Revising paragraph (e) to read:

* * * * *

(e) After August 4, 1986, no lease shall be issued to any applicant or bidder and no existing lease shall be transferred to any party that holds and has held for 10 years any lease from which coal is not being produced, except as authorized under the advance royalty payment provisions of 30 CFR Part 211, in commercial quantities as that term is defined in 30 CFR Part 211.

* * * * *

§ 3472.1–3 [Amended]

148. Section 3472.1–3 is amended by revising paragraph (b)(1) to read:

* * * * *

(b)(1) In computing acreage held, owned or controlled, the accountable acreage of a party holding, owning or controlling an undivided interest in a lease shall be the party's proportionate part of the total lease acreage. Any subsidiary, affiliate or person controlled by or under common control with any corporation, person or association holding, owning or controlling a Federal coal lease shall be charged with lease acreage to the same extent as such corporation, person or association. The accountable acreage of a party holding, owning or controlling an interest in a corporation or association shall be that party's proportionate part of the acreage held, owned or controlled by such corporation or association. However, no party shall be charged with its pro rata share of any acreage held, owned or controlled by any corporation or association unless that party is the beneficial owner of more than 10 percent of the stock or other instruments of ownership or control of such corporation or association.

* * * * *

§ 3472.2–2 [Amended]

149. Section 3472.2–2 is amended by:

(a) Revising paragraph (c) to read:

* * * * *

(c) If the applicant or bidder for a lease or license to mine is a corporation, it shall submit statements showing:

(1) The state of incorporation;

(2) That the corporation is authorized to hold leases or licenses to mine;

(3) The names of the officers authorized to act on behalf of the corporation;

(4) The percentage of the corporation's voting stock and all of the stock owned by aliens or those having addresses outside of the United States; and

(5) The name, address, citizenship and acreage holdings of any stockholder owning or controlling 10 percent or more of the corporate stock of any class. If more than 10 percent of the stock is owned or controlled by or on behalf of aliens, or persons who have addresses outside of the United States, the corporation shall provide their names and addresses, the amount of stock held by each such person, and to the extent known to the corporation or which can be reasonably ascertained by it, the facts as to the citizenship of each such person. Applications on behalf of a corporation executed by other than an officer named under paragraph (c)(3) of this section shall be accompanied by proof of the signatory's authority to execute the instrument. The applicant shall submit the same information as is required in the preceding paragraph for any of its corporate stockholders holding, owning or controlling 10 percent or more of its stock of any class.

* * * * *

(b) Adding new paragraphs (f) and (g) to read:

* * * * *

(f) The Department reserves the right to request any supplementary information that is needed to accredit acreage under § 3472.1–3 of this title.

(g) Any applicant or bidder who has previously filed a qualification statement may, if it certifies that the prior statement remains complete, current and accurate, submit a serial number reference to the record and office where the prior statement is filed.

§ 3472.2–5 [Amended]

150. Section 3472.2–5(a) is amended by removing the figure "§ 3420.1–4" and replacing it with the figure "§ 3420.1–3" in the two places where it appears.

151. Section 3473.1–1 is amended by removing the phrase "Geological Survey" and replacing it with the phrase "Minerals Management Service".

§ 3473.1–2 [Amended]

152. Section 3473.1–2(b) is amended by removing the phrase "Payments of all rentals" and replacing it with the word "Rentals" and by adding at the end of the paragraph the phrase ", unless terms of the lease provide otherwise."

§ 3473.2–1 [Amended]

153. Section 3473.2–1(a) is amended by revising subparagraph (3) to read:

(a) * * *

(3) A filing of fee of $50 per lease shall accompany each instrument of transfer of a lease or an interest therein.

* * * * *

154. * * *

§ 3473.3–1 is amended by:

(a) Amending paragraph (b) by removing the phrase "production or advance"; and

(b) Adding a new paragraph (d) to read:

* * * * *

(d) Rentals paid for any lease year commencing prior to the effective date of the first lease readjustment occurring after August 4, 1976, shall be credited against royalties for that year. Rentals due and payable for any lease year commencing on or after the effective date of the readjustment shall not be credited against royalties.

* * * * *

§ 3473.3–2 [Amended]

155. Section 3473.3–2 is amended by:

(a) Revising paragraph (a)(3) to read:

(a) * * *

(3) A lease shall require payment of a royalty of not less than 8 percent of the value of the coal removed from an underground mine, except that the Minerals Management Service may determine a lesser amount, but in no case less than 5 percent if conditions warrant.

* * * * *

(b) Revising paragraph (b) to read:

* * * * *

(b) The Mining Supervisor shall have the discretion, upon the request of the lessee, to authorize the payment of an advance royalty in lieu of continued operation for any particular year in accordance with 30 CFR Part 211.

* * * * *

(c) Revising paragraph (c) to read:

* * * * *

(c) An overriding royalty interest, production payment or similar interest that exceeds 50 percent of royalty first payable to the United States under the Federal lease, or when added to any other overriding royalty interest exceeds that precentage, except those created in order to finance a mine, shall not be created by a Federal lease transfer or surface owner consent. However, when an interest in a Federal lease or operating agreement is transferred, the transferor may retain an overriding royalty in excess of the above limitation if he/she shows that he/she has made substantial investments for improvements directly related to exploration, development and mining on

the lands covered by the transfer that would justify a higher payment.

* * * * *

(d) Revising paragraph (d) to read:

* * * * *

(d) The Secretary, whenever he/she determines it necessary to promote development or finds that the lease cannot be successfully operated under its terms, may waive, suspend or reduce the rental, or reduce the royalty but not advance royalty, on an entire leasehold, or on any deposit, tract or portion thereof, except that in no case shall the royalty be reduced to zero percent. An application for any of these benefits shall be filed with the Mining Supervisor in accordance with 30 CFR Part 211.

§ 3473.4 [Amended]

156. Section 3473.4 is amended by:

(a) Amending paragraph (a) by adding at the end of the first sentence of the paragraph the phrase "in accordance with 30 CFR Part 211" and by removing the second sentence of the paragraph in its entirety; and

(b) Removing paragraphs (c), (d) and (e) in their entirety.

§ 3474.1 [Amended]

157. Section 3474.1 is amended by:

(a) Revising paragraph (a)(2) to read:

(a) * * *

(2) Cash bond; or

* * * * *

(b) Revising paragraph (c) to read:

* * * * *

(c) The bonding obligation for a new lease may be met by an adjustment to an existing LMU bond covering the other leases within the same LMU.

§ 3474.2 [Amended]

158. Section 3474.2 is amended by:

(a) Revising paragraph (a) to read:

(a) A lease bond for each lease, conditioned upon compliance with all terms and conditions of the lease, shall be furnished in the amount determined by the authorized officer. Except as provided in § 3474.3(b) of this title, that bond shall not cover reclamation within a permit area.

* * * * *

(b) Amend paragraph (b) by removing the figure "§ 3410.3–5" and replacing it with the figure "3410.3–4"; and

(c) Adding a new paragraph (c) to read:

* * * * *

(c)(1) Upon approval of an LMU including more than 1 Federal lease, the lessee may, in lieu of individual lease bonds, furnish and maintain an LMU bond covering all of the terms and conditions of every Federal lease within the LMU, except for reclamation within the mining permit area unless the condition in § 3474.3(b) of this title applies. All LMU bonds shall be furnished in the amount recommended by the Mining Supervisor.

(2) When an LMU is terminated, the LMU bond shall terminate. Individual leases remaining from the LMU shall be covered by lease bonds in the manner prescribed by the Mining Supervisor.

§ 3474.3 [Amended]

159. Section 3474.3 is amended by:

(a) Revising paragraph (b) to read:

* * * * *

(b)(1) In setting or adjusting individual lease bond amounts, the authorized officer shall assure that the lease bond covers reclamation within a permit area where the Surface Mining Officer, because of the absence of a cooperative agreement governing Federal lands within that state, notifies the authorized officer that the lease bond should cover that reclamation.

(2) After consultation with the Surface Mining Officer, the authorized officer may release the amount of any outstanding bond which is related to, and is not necessary to secure, the performance of reclamation within a permit area.

(c) Removing paragraph (c) in its entirety.

160. Subpart 3475 is amended by inserting a new § 3475.1 to read:

§ 3475.1 Lease form.

Leases shall be issued on a standard form approved by the Director. The authorized officer may modify those provisions of the standard form which are not required by statute or regulations and may add such additional stipulations and conditions as he/she deems appropriate.

§§ 3475.1, 3475.2 and 3474.3 Redesignated as §§ 3475.2, 3475.3 and 3475.4

161. Sections 3475.1, 3475.2, and 3474.3 are renumbered sections 3475.2, 3475.3, and 3475.4 respectively.

§ 3475.4 Redesignated as § 3475.5

162. Section 3475.4 is renumbered § 3475.5 and is revised to read:

§ 3475.5 Diligent development and continued operation.

In accordance with 30 CFR Part 211, each lease shall require:

(a) Diligent development; and

(b) Either (1) continued operation except when operations under the lease are interrupted by strikes, the elements or casualties not attributable to the lessee, or (2) in lieu thereof, when the Secretary determines that the public interest will be served, payment of an advanced royalty."

§ 3475.5 Redesignated as § 3475.6

163. Section 3475.5 is renumbered § 3475.6 and is revised to read:

§ 3475.6 Logical mining unit.

(a) Criteria for approving or directing establishment of an LMU shall be developed and applied by the Minerals Management Service in accordance with 30 CFR 211.80.

(b) When a lease is included in an LMU with other Federal leases or with interests in non-Federal coal deposits, the terms and conditions of the Federal lease or leases shall be amended so that they are consistent with or are superseded by the requirements imposed on the LMU of which it has become a part.

(c) The holder of any lease issued or readjusted between May 7, 1976, and the effective date of this regulation, whose lease provides by its own terms that it is considered to be an LMU, may request removal of this provision from any such lease. Such request shall be submitted to the authorized officer.

[FR Doc. 82–20681 Filed 7–29–82; 8:45 am]

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Friday
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Part VI

Department of the Interior

Minerals Management Service

Coal Exploration and Mining Operations; Delineation of Functions and Responsibilities

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 211

Coal Exploration and Mining Operations

AGENCY: Minerals Management Service, Interior.

ACTION: Final rulemaking.

SUMMARY: The rules of this Part delineate the functions and responsibilities of the Minerals Management Service (MMS) for regulating both exploration for Federal coal and mining operations on Federal coal regarding production, development, resource recovery and protection, royalties, diligent development, continued operations, advance royalty, and maximum economic recovery (MER) under the Mineral Leasing Act of 1920, as amended (MLA). These rules streamline and consolidate in this Part regulations previously promulgated by the Bureau of Land Management (BLM) and the Office of Surface Mining Reclamation and Enforcement (OSM) regarding MMS responsibilities under MLA for management of operations on Federal coal.

EFFECTIVE DATE: August 30, 1982.

ADDRESS: Acting Chief, Onshore Solid Minerals Division, Minerals Management Service, Mail Stop 653, 12203 Sunrise Valley Drive, Reston, Virginia 22091.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas V. Leshendok, (703) 860–7506, (FTS) 928–7506, or Mr. Harold W. Moritz, (703) 860–7136, (FTS) 928–7136.

SUPPLEMENTARY INFORMATION: The principal authors of this final rulemaking are Mr. Harold W. Moritz, Chief, Energy Section, Branch of Operations, MMS; and Mr. Allen B. Agnew, Mr. Ralph J. Blumer, and Mr. Herbert B. Wincentsen, all of the Energy Section, Branch of Operations, MMS; assisted by other MMS field and headquarters personnel and the Office of the Solicitor, Department of the Interior (DOI).

The predecessor of MMS, Conservation Division of the U.S. Geological Survey, published the 30 CFR Part 211 proposed rulemaking on December 16, 1981 (46 FR 61424). The Department of Energy (DOE) published the 10 CFR Part 378 proposed rulemaking related to Diligence on Federal Coal Leases on December 22, 1981 (46 FR 62226). Comments for both sets of proposed rulemakings were invited for 60 days ending February 16 and 22, 1982, respectively. Upon enactment of Pub. L. 97–100 on December 23, 1981, authority for promulgating rules related to diligence requirements for Federal coal reverted to DOI. Notice of this fact was published in the **Federal Register** on January 7, 1982 (47 FR 819). The MMS subsequently adopted and received all public comments on DOE's proposed rulemaking. As a result of the MMS and DOE 1981 proposed rulemaking, more than 150 comments were received. In addition, more than 25 comments were received on an earlier 30 CFR Part 211 proposed rulemaking on May 19, 1980 (45 FR 32715). All comments are addressed in the **SUPPLEMENTARY INFORMATION** of this final rulemaking and the text of the 30 CFR Part 211 rules has been changed as appropriate.

Responsibilities under MLA

The MLA has been amended numerous times, most recently by the Federal Coal Leasing Amendments Act of 1976 (FCLAA) (Pub. L. 94–377) and by Pub. L. 95–554. The DOI is responsible for management of mining operations on Federal coal pursuant to the requirements of MLA. The MMS exercises the Secretary of the Interior's (Secretary's) authority to regulate Federal coal mining operations in compliance with MLA requirements concerning production, development, resource recovery and protection, MER, diligent development, continued operation, and rentals and royalties on producing Federal coal leases.

This final rulemaking for 30 CFR Part 211: (1) Separates responsibilities of OSM under the Surface Mining Control and Reclamation Act of 1977 (SMCRA) for mining on Federal coal (30 CFR Chapter VII, Subchapter D) from responsibilities of MMS under MLA; (2) retains and clarifies MMS responsibilities under requirements of MLA and the 30 CFR Part 211 regulations of May 17, 1976, and August 22, 1978, for exploration, production, development, resource recovery and protection, and royalties; and (3) revises and clarifies the existing regulations and requirements of FCLAA, for exploration, MER, resource recovery and protection plans, and logical mining units (LMU's).

One general change which has been included in this final rulemaking is the revision of responsible officials' titles to reflect the creation of MMS on January 19, 1982 (47 FR 4751). These title changes do not change or alter the basic responsibility of these officials except for those detailed in the definitions section.

Relation to OSM's Federal Lands Program

These final rules no longer contain the regulations in the 1981 30 CFR Part 211 rules relating to the initial Federal Lands Program under Section 523 of SMCRA. Until final rulemaking is promulgated and implemented by OSM regarding the initial Federal Lands Program, the existing (1981 30 CFR Part 211) rules regarding OSM's initial Federal Lands Program shall remain in effect to the same extent they are now. These final rules are intended to eliminate any duplication of effort by MMS, OSM, and States regarding management of exploration and mining operations that involve Federal coal lands.

Exploration on Federal Lands

These final rules contain provisions under which MMS will have primary responsibility for exploration activities on unleased Federal lands, on leased Federal lands not in an approved permit area, and within an approved permit area prior to the commencement of mining operations. Until mining operations commence within an approved permit area, both MMS and BLM share responsibilities regarding exploration.

As a result of the public comments, MMS is considering entering into MMS/State agreements, under the authority of MLA, to allow States to assume a more active role in regulating exploration for leased Federal coal. When these rules are effective, MMS will initiate consultations with individual States to effect the preparation of such MMS/State agreements.

Comments Received on Proposed 30 CFR Part 211 and 10 CFR Part 378

General Comments

One comment concerned modification of a lease issued prior to August 4, 1976, under the provisions of Section 3 of MLA, as amended. The comment questioned whether such a modification after August 4, 1976, and prior to the lease readjustment date would be considered to be a lease readjustment, thus initiating new diligence requirements. A Section 3 modification is not a lease readjustment; the modified lease is not subject to the production requirements imposed by FCLAA.

Several comments stated that the proposed rules contained sufficiently different interpretations of concepts like LMU, MER, and diligent development to require a new environmental impact statement (EIS) or a supplemental EIS to the existing coal programmatic EIS before issuing these rules in final form.

The DOI considers the existing programmatic EIS to have evaluated a "worst case" situation under the alternatives to the perferred program. The preexisting diligence provisions under 43 CFR Group 3400 were built into the preferred alternative of the final programmatic EIS on the Federal Coal Management Program; however, the diligence provisions contained in this final rulemaking were considered under the alternatives to the preferred alternative. Thus, DOI has determined that the environmental assessment prepared on the final 43 CFR Part 3400 and 30 CFR Part 211 rules satisfies DOI's National Environmental Policy Act of 1969 (NEPA) obligations on these rules; no formal supplement to the final programmatic EIS is required.

Several comments requested that DOI extend the comment deadline for the proposed 30 CFR Part 211 rules in order to review those rules simultaneously with OSM rules. The DOI has set priorities for the final promulgation of this rulemaking which do not allow for any extensions of the comment period.

Two comments stated that the requirements regarding plans and maps in the proposed rules exceed both the reasonable planning expectations of a coal operation and the current industry standard for information. One comment stated further that the proposed rules reflect an underlying distrust and suspicion of the motives and integrity of the coal industry. The DOI disagrees with these conclusions. The DOI has determined that the requirements at 30 CFR Part 211 are necessary to enforce the provisions of MLA. In addition, most of the informational requirements at 30 CFR Part 211 do not place an additional burden on the coal industry since industry currently collects the data for its individual operations.

One comment stated that the effect of the proposed diligent development rules would be two large increases of production, one increase occurring around 1994 and the other occurring from 1994 to 2000. It is the position of DOI, if diligence rules generate production, that the current rules would cause a much larger increase in production by 1986. These final rules extend the period during which new operations may be initiated on leases issued prior to August 4, 1976.

One comment questioned whether failure to mine out the LMU recoverable coal reserves within the 40-year limit would preclude an operator/lessee from obtaining additional Federal leases under MLA. The answer is no; this is not prohibited under Section 2(a)(2)(A) of MLA.

Specific Comments

30 CFR 211.1 Scope, Purpose, and Responsibilities.

30 CFR 211.1(a)

Several comments addressed the relationship between OSM and MMS. Two comments were concerned that the rules apply only to Federal coal. These comments are discussed in the preamble discussion of comments received on 30 CFR 211.10 (b) and (c).

Several comments suggested that 30 CFR Part 211 and DOE's diligence rules be promulgated simultaneously. The proposed 10 CFR Part 378 diligence rules are incorporated in this final rulemaking.

One comment reflected confusion regarding the reorganization of royalty management functions. Ultimate responsibilities will be clarified upon full implementation of the new royalty management system. The 30 CFR 211.100, et seq., consolidates certain royalty management functions that were proposed at 30 CFR Part 211 on December 16, 1981. Future rules related to royalty management for Federal coal will also be consolidated at 30 CFR 211.100, et seq.

30 CFR 211.1(b)

Several comments stated that the purpose paragraphs should be dropped or streamlined. The MMS believes that the purpose paragraphs concisely state its responsibilities. These comments were rejected.

One comment stated that the rules contained redundancies and contradicting directives. The MMS believes that the rules do not contain any contradictions or needless redundancies. A major focus of this rulemaking has been the elimination of redundancies and contradictions, both within these rules and between these rules and those of other agencies. The MMS believes that this streamlining has been accomplished.

One comment approved of the discussion of the Federal and State roles regarding the coal operating rules. The MMS believes that Federal and State roles in the rules of this Part are clearly explained. As a result of specific comments on the text of the rules, these roles have been further clarified. See also the discussion of comments received on 30 CFR 211.10(b) and (c).

One comment questioned the meaning of the term "unnecessary damage" as used at 30 CFR 211.1(b) and whether mining constitutes a significant damage. Unnecessary damage, as used at 30 CFR 211.1(b), means damage to the coal-bearing or mineral-bearing formations which has affected or may affect other minerals due to practices or operations performed by the operator/lessee that may have been avoidable. Mining, itself, does not constitute unnecessary damage to the coal-bearing or mineral-bearing formations; however, improper mining sequences or techniques may produce an undesirable and unnecessary waste of the resource.

30 CFR 211.1(c)(3)

Several comments suggested that "licenses to mine" be restricted to MLA responsibilities. The BLM is responsible for the promulgation of rules regarding the issuance of licenses to mine (43 CFR 3400). The 30 CFR 211.1(c)(3) reiterates that responsibility.

30 CFR 211.1(c)(4)

One comment stated that DOE rules for diligent coal development must not conflict with the revised 30 CFR Part 211 or with the State's authority to regulate coal mining on Federal lands. By incorporation of DOE diligence rules at 30 CFR Part 211, any conflicts have been eliminated. States cannot exercise the Secretary's responsibility to set diligence standards for Federal coal leases.

Due to incorporation of 10 CFR Part 378 at 30 CFR Part 211, and the revision of 30 CFR Part 211 to consolidate royalty management provisions, the sequencing at 30 CFR Part 211 has been changed as follows:

Proposed at 10 CFR 378	Proposed at 30 CFR 211	Codified at final 30 CFR 211
378.102		Deleted.
.002	211.2(a)(18)	211.2(a)(22).
.301(a)		211.20(b).
.301(b)		211.20(c)(1) and (2).
.301(c)		211.20(d).
.302 "Advance Royalty".		211.2(a)(1).
	211.2(a)(2)	211.2(a)(2).
	211.2(a)(3)	211.2(a)(4).
"Commercial Quantities".		211.2(a)(5).
"Continued Operation".		211.2(a)(7).
"Continued Operation Year".		211.2(a)(8).
	211.2(a)(8)	211.2(a)(9).
	211.2(a)(9)	211.2(a)(12).
"Diligent Development".		211.2(a)(13).
"Diligent Development Period".		211.2(a)(14).
	211.2(a)(10)	211.2(a)(15).
	211.2(a)(11)	211.2(a)(16).
	211.2(a)(12)	Deleted.
	211.2(a)(13)	211.2(a)(17).
	211.2(a)(14)	211.2(a)(18).
	211.2(a)(15)	211.2(a)(19).
	211.2(a)(16)	211.2(a)(20).
	211.2(a)(17)	211.2(a)(21).
"LMU Recoverable Coal Reserves".		211.2(a)(23).
	211.2(a)(20)	211.2(a)(24).
	211.2(a)(21)	211.2(a)(25).
	211.2(a)(22)	211.2(a)(26).
	211.2(a)(23)	211.2(a)(27).
	211.2(a)(5)	211.2(a)(29).

Proposed at 10 CFR 378	Proposed at 30 CFR 211	Codified at final 30 CFR 211
	211.2(a)(24)	211.2(a)(30).
	211.2(a)(25)	211.2(a)(31).
"Lessee"	211.2(a)(26)	211.2(a)(32).
	211.2(a)(27)	211.2(a)(33).
	211.2(a)(28)	211.2(a)(34).
	211.2(a)(29)	211.2(a)(35).
	211.2(a)(30)	211.2(a)(36).
"Recoverable Coal Reserves".	211.2(a)(4)	211.2(a)(37).
	211.2(a)(31)	211.2(a)(38).
	211.2(a)(32)	211.2(a)(39).
"Royalty Reporting Period".		211.2(a)(40).
	211.2(a)(33)	211.2(a)(41).
	211.2(a)(34)	211.2(a)(42).
.303(a)		211.10(b).
	211.10(b)	211.10(b) and (c).
	211.10(c), (d), and (e).	211.11(a), (b), and (c).
.303(b)		211.80(e)(1).
.303(c)		211.80(g)(2).
.304(a)	211.40(b)(2)	211.20(a)(1).
.304(b)	211.40(b)(2)	211.20(a)(2).
	211.40(b)(4)	211.20(a)(2).
.305(a)		211.21(a).
.305(b)		211.21(b).
.305(c)		211.21(c).
	211.40(b)(3)	211.22(a).
.306(a)		211.22(a)(1).
.306(b)		211.22(a)(2).
.306(c)		211.22(b).
.306(d)	211.40(b)(4)(iii)	211.22(b).
.306(e)		211.22(b).
	211.63(1), (m), (n), (o), and (p).	211.22(b).
.307(a)		211.23(a).
.307(b)		211.23(b).
.307(c)	211.40(b)(4)(ii) and 211.80(h)(4)(ii).	211.23(c).
.307(d)		211.23(d).
.307(e)		211.23(e).
.307(f)		211.23(f).
	211.40(b)(4)(i) and 211.80(h)(4)(i).	211.23(g).
.308(a)		211.24(a).
.308(b)		211.24(b).
.308(c)		211.24(c).
.308(d)		211.24(e).
.308(e)		211.24(f).
.309(a)		211.25(a).
.306(b)		211.25(b).
.310		Deleted.
	211.40(b)(9)	211.40(b)(1)
	211.40(c)(6)	211.40(c)(7).
	211.62(b)(7)	211.62(c).
	211.62(c)	211.62(d).
	211.80(h)(1)	211.80(e)(1) and (6).
	211.80(h)(4)(iii)	211.80(g).
	211.80(h)(2)	211.80(h)(1).
	211.80(h)(3)	Deleted.
	211.65	211.101.
	211.67	211.102.

Note.—Several definitions have been revised to reflect the formation of MMS or as a result of incorporation of comments.

30 CFR 211.2 Definitions.

Many comments stated that the definitions in 43 CFR Part 3400, 10 CFR Part 378, and 30 CFR Part 211 are inconsistent and that cross-references could eliminate this confusion. The proposed 10 CFR Part 378 is eliminated as a separate rulemaking; further coordination with BLM has eliminated other discrepancies.

30 CFR 211.2(a)(1) Advance Royalty.

One comment stated that payment of advance royalty should be allowed in lieu of diligent development, as well as continued operation. The advance royalty provisions in Section 7(b) of MLA state, in part, that the "Secretary of the Interior * * * may suspend the condition of continued operation upon the payment of advance royalties." The Section states further that "[n]othing in this subsection shall be construed to affect the requirement * * * relating to commencement of production at the end of ten years." Section 7(b) thus allows the Secretary to accept advance royalty in lieu of continued operation, but not in lieu of diligent development. Further, Section 7(a) of MLA, second sentence, states in part, that any Federal lease "not producing in commercial quantities at the end of ten years shall be terminated." This comment was rejected.

Two comments stated that it was not clear if advance royalty could be paid after production is achieved. Advance royalty can only be paid in lieu of continued operation. Continued operation commences with the first royalty reporting period following the production of 1 percent of the recoverable coal reserves. Therefore, until an operation has produced 1 percent of the recoverable coal reserves, advance royalty cannot be accepted. The language contained at 30 CFR 211.23 further clarifies MMS's implementation of this provision of MLA.

Two comments stated that the advance royalty provisions should be established so that Federal leases could be retained for a longer period without production. Section 7(b) of MLA prohibits the payment of advance royalty in the aggregate for a period greater than 10 years. These comments were rejected.

30 CFR 211.2(a)(4) Coal Reserve Base.

Two comments stated that coal reserve base calculations should be based upon existing published information, new unpublished information, or any combination thereof. These rules are not intended to require any additional data acquisition (drilling) to satisfy this requirement. The rules have been modified to reflect this position more clearly.

One comment suggested that the terms "coal reserve base" and "coal resources" appear to represent a generally reasonable and workable standard.

Several comments suggested that the term "coal reserve base" should be deleted from the rule, or modified to read "coal resource base." The MMS believes that coal reserve base is adequately defined and is an integral part of the determination of minable reserve base and recoverable coal reserves. These factors are, in turn, critical elements used in the determination of diligent development, continued operation, and MER. These comments were rejected.

Two comments stated that the depth criterion used for the inclusion of coal in the coal reserve base should be standardized for all coal grades (30 CFR 211.2(a)(4)(ii)). The depth criterion applies to all coal grades and is standardized in the definition of coal reserve base. These comments were rejected.

One comment questioned the economics of recovering coal beds lying at a depth greater than 3,000 feet. The 30 CFR 211.2(a)(4)(iv) adequately addresses this situation. This comment was rejected.

One comment stated that DOI should refrain from imposing its own profitability determination, in lieu of the lessee's analysis. It is not the intent of DOI to impose its own determination of profitability in lieu of an analysis conducted by an operator/lessee. See discussion of comments received on 30 CFR 211.2(a)(24).

One comment suggested the deletion of the terms "measured, indicated, and inferred" as the terms were considered to be confusing and overly inclusive. The MMS agrees and has deleted these terms from the definitions of "coal reserve base" and "coal reserves," the latter of which has been redefined as "recoverable coal reserves."

30 CFR 211.2(a) (4), (27), and (36) Coal Reserve Base, Minable Reserve Base, and Recoverable Coal Reserves.

The following discussion is presented to further clarify these terms.

A hypothetical federally leased 640-acre tract contains a single flat-lying uniform bed, 40-feet thick, of subbituminous coal at an average depth of 60 feet. Using the criteria at 30 CFR 211.2(a)(4), and assuming an average coal density of 1,770 tons per acre-foot, the *coal reserve base* is estimated to be 45.3 million tons ($640 \times 40 \times 1{,}770 = 45.312$, rounded to 45.3 million tons). All of the coal in the coal reserve base is commercially minable using standard industry surface mining techniques. However, one-third of the tract consists of an area classified as unsuitable for coal mining operations in accordance with SMCRA. This SMCRA classification results in a reduction of one-third from the coal reserve base. Therefore, the *minable reserve base* is 30.2 million tons (45.3 − 15.1 million tons). In conducting mining operations on this tract, it is estimated that 10 percent of the minable reserve base will be left in fenders and property barriers.

thus yielding 90 percent recovery. The *recoverable coal reserves* for this tract would be estimated to be 27.2 million tons (30.2×0.9=27.18, rounded to 27.2 million tons).

30 CFR 211.2(a) (5), (7), (13), and (14) Commercial Quantities, Continued Operation, Diligent Development, and Diligent Development Period.

One comment stated that the definition of commercial quantities should be revised to reflect more accurately the wording of MLA which does not specify a rate of production. Additionally, several comments stated that no rate should be set for commercial quantities and that diligent development should be based on development costs, or any other significant financial undertakings which would serve as valid indicators of attempts to develop a Federal lease. Although MLA does not specify a rate of production to be the definition of diligent development, it does require that coal be produced in commercial quantities from new and readjusted leases. In order to implement this provision and, at the same time, to accommodate regional diversity in meeting the requirement, MMS believes that production of 1 percent of the recoverable coal reserves by the end of 10 years and 1 percent every year thereafter on a 3-year average does not impose an onerous burden on an operator/lessee. These comments were rejected.

Several comments stated that the applicability of the definition of commercial quantities, as that term is used in Section 2(a)(2)(A) of MLA, should be clarified. The DOI has determined that the use of commercial quantities in Section 2(a)(2)(A) and Section 7(b) of MLA should be synonymous. Neither DOI's analysis nor any comment has presented any reason why the two uses of the same term should have different definitions.

Two comments stated that the definition of commercial quantities does not state a *timeframe* by which commercial quantities must be produced. The MMS agrees. Commercial quantities is the *amount* of recoverable coal reserves that must be produced. Section 7(a) of MLA states that any Federal lease not producing (implying continuing production) this amount at the end of 10 years from lease issuance or readjustment, whichever occurs first after August 4, 1976, shall be terminated.

Several comments supported the change of the commercial quantities requirement for Federal leases issued prior to August 4, 1976, from 2½ percent to 1 percent. Several comments stated that the commercial quantities requirement for Federal leases issued prior to *and* after August 4, 1976, should be identical and be 1 percent. Several comments stated that the commercial quantities requirement for Federal leases issued prior to August 4, 1976, should remain at production of 2½ percent of the recoverable coal reserves. The DOI believes that reducing the requirement from 2½ percent to 1 percent will allow for more orderly, environmentally sound development of Federal coal. The DOI believes that production of 1 percent as implemented in the 1979 rules for leases issued after August 4, 1976, indicates a significant undertaking on the part of an operator/lessee that is accomplished only after significant financial expenditure for the development of the property. The DOI believes that this 1 percent standard is appropriate for the diligence requirements for all leases, regardless of issue date.

Many comments supported the proposed application of the 10-year diligent development period requirement to Federal leases issued prior to August 4, 1976, only upon the first lease readjustment after August 4, 1976. Many comments were opposed to this concept. One comment stated that the 10-year period for diligent development for Federal leases issued prior to August 4, 1976, should begin on the effective date of this final rulemaking. One comment stated that the 10-year period for Federal leases issued prior to August 4, 1976, should begin on a date determined from the Federal lease issuance, disregarding the first lease readjustment date after August 4, 1976. One comment stated that diligence requirements cannot be applied to Federal leases issued prior to August 4, 1976, even upon the first lease readjustment after August 4, 1976. The DOI has determined that the congressional intent in mandating this 10-year period was prospective. The statutory period cannot be applied retroactively to Federal leases issued prior to August 4, 1976. Upon the first lease readjustment after August 4, 1976, this 10-year mandate must, however, be imposed as a readjusted Federal lease term (see Solicitor's Opinion M–36939 dated September 17, 1981). It should be noted that if an operator/lessee elects to be subject to the rules of this Part prior to Federal lease readjustment, he may apply to the District Mining Supervisor in accordance with 30 CFR 211.20 and 30 CFR 211.24.

Several comments opposed the 10-year deadline for achievement of diligent development because the deadline is set without consideration of market conditions or amount of recoverable coal reserves. This deadline is based upon the explicit requirements of MLA which, in Section 7(a), specifies that any Federal lease "not producing in commercial quantities at the end of ten years shall be terminated." By defining "diligent development" in terms of "commercial quantities," DOI thus allows operators/lessees the maximum flexibility to tailor the timing of the operations while still complying with the statutory mandate. Another alternative considered by DOI to implement this statutory requirement was to establish uniform, nationwide milestones for every operation to meet in ensuring that an operation would be producing commercial quantities at the end of 10 years. However, DOI believes that the methods for development of operations should be left to the individual operators/lessees under an approved permit and should not be mandated by DOI. For this reason, DOI decided that the 10-year requirement for producing commercial quantities was equated with the definition of diligent development, leaving the method for achieving this amount of production to the individual operators/lessees. It should be noted that in the second sentence of Section 7(a) of MLA, the term "producing" implies a continuing obligation; therefore, this final rulemaking defines the statutory production requirement of "continued operation" as 1 percent every year thereafter based on a 3-year average. This will allow the operator/lessee additional flexibility in meeting this production requirement.

One comment stated that the 10-year mandate was too long and not in the interest of environmental protection. The MLA allows an operator/lessee 3 years within which to submit a resource recovery and protection plan. Allowing an additional 2 to 3 years for compliance with NEPA and SMCRA, and an additional 2 to 3 years for development of an operation only leaves 1 to 3 years for the operation to have produced an amount of 1 percent of the recoverable coal reserves and be capable of maintaining production at a rate of 1 percent of the recoverable coal reserves every continued operation year thereafter. Thus, DOI believes that the 10-year period is realistic. This comment was rejected.

The following hypothetical examples illustrate the concept of the diligent development period for LMU's.

(1) For an LMU containing a Federal lease issued prior to August 4, 1976, but not readjusted after August 4, 1976, prior to LMU approval:

Date	Event
Apr. 15, 1974	Federal lease "A" issued.
Mar. 30, 1978	Federal lease "B" issued.
May 30, 1980	Federal lease "C" issued.
Apr. 1, 1983	LMU approved containing Federal leases "A," "B," and "C."
Do.	Diligent development period begins.
Apr. 1, 1993	Latest date that diligent development period can end.

(2) For all other LMU's, i.e., those which do not contain a unreadjusted Federal lease issued prior to August 4, 1976:

Date	Event
Mar. 20, 1957	Federal lease "A" issued.
Mar. 20, 1977	Federal lease "A" readjusted.
May 27, 1980	Federal lease "B" issued.
Apr. 1, 1983	LMU approved containing Federal leases "A" and "B."
May 27, 1980	Diligent development period begins.
May 27, 1990	Latest date that diligent development period can end.

NOTE.—The two key dates in this second example are the readjustment date of Federal lease "A" (3–20–1977) and the issuance date of Federal lease "B" (5–27–1980). The most recent of these dates, hence the date upon which the diligent development period begins, is the issuance date of Federal lease "B" (5–27–1980).

Several comments stated that the diligent development requirement should be modified to provide reasonable flexibility because of the lengthy development time required for *in situ* operations. The DOI is currently reviewing the mineral leasing laws (see 46 FR 40588, August 1, 1981) to determine their applicability to, and implementation of regulations for, synthetic fuel production methods. Regulations related to synthetic fuel production will be promulgated at a later date. These comments will be considered in that rulemaking effort.

One comment suggested that the termination of the diligent development period upon achievement of production of coal in commercial quantities should coincide with commencement of the continued operation year, which begins the first royalty reporting period after achievement of production in commercial quantities. The 30 CFR 211.2(a)(14) has been revised to allow for this continuity.

30 CFR 211.2(a)(6) Contiguous.

Several comments supported the change to the definition of contiguous. One comment stated that the definition is unduly restrictive because an LMU could consist of noncontiguous segments. However, the LMU definition expressly states that "all lands in an LMU shall * * * be contiguous." The requirement of contiguity is mandated by MLA. Therefore, this comment was rejected.

Two comments stated that the definition should be redefined to replace the one-point-in-common requirement with the concepts of "close proximity," "common facilities," or "nearby." The MMS has determined that the primary definition of "contiguous," i.e., at least one point in common, most accurately reflects the congressional intent of Section 2(d)(1) of MLA. This definition will, therefore, be used in implementing the LMU concept. These comments were rejected.

30 CFR 211.2(a)(12) Development.

One comment requested that "after approval of a permit application package" be deleted from the definition of "development." However, Section 506 of SMCRA, 30 U.S.C. 1256, states that "no person shall engage in * * * any surface coal mining operations unless such person has *first* obtained a permit * * *. (emphasis added) Therefore, this comment was rejected.

30 CFR 211.2(a)(17) Exploration.

One comment requested that "taking of bulk samples" should be included in the definition of exploration. The MMS believes that the definition, in conjuction with 30 CFR 211.10(a)(3)(vi), encompasses this concern. Thus, this comment was rejected.

One comment requested that "soil samples [taken] for reclamation purposes" should be included in the definition of exploration. The MMS agrees and 30 CFR 211.2(a)(17) has been revised accordingly.

30 CFR 211.2(a)(18) Exploration Plan.

One comment requested that the definition of exploration plan be restricted to "leased Federal lands." Since MMS is responsible for *all* exploration for Federal coal prior to commencement of mining operations within an approved permit area, this comment was rejected. Prelease exploration for Federal coal must comply with the performance standards at 30 CFR 211.40(a) *and* the provisions at 43 CFR Part 3410. In addition, all exploration plans for Federal coal must comply with the requirements at 30 CFR 211.10(a).

Two comments requested modification of the definition of exploration plan to include "applicable State laws." The MMS believes that 30 CFR 211.10(a)(1)(vii) and 30 CFR 211.40(a)(3) encompass this concern. Thus, the comment was rejected.

30 CFR 211.2(a)(20) Gross Value.

Many comments requested the exclusion of reimbursed and nonreimbursed Federal royalties and Federal fees when determining the gross value, for Federal royalty assessment, of the Federal recoverable coal produced. Two comments stated that the proposed method for determining gross value not only artificially inflates the price of coal but that those making the comments would pass such costs on to the consumers, whether the costs were direct or indirect. Several comments also requested exclusion of reimbursed and nonreimbursed State and local royalties and fees. The Secretary has concluded that the current method for computing royalties will be retained.

One comment suggested that the unit sale or contract price for synthetic fuel production from coal should be made at the well head (for *in situ* coal gasification). A notice published in the **Federal Register** on August 10, 1981, reguested public comments regarding the royalty base for *in situ* coal gasification. From comments received, the royalty valuation procedures have been narrowed to two methods, which will soon be published in the **Federal Register** for public comment. No determination has been made on royalty calculation for *in situ* coal gasification.

One comment suggested that if DOI investigated current leasing that not only should the definition remain the same, but that all "surface-mined coal [should] be at a 16 percent or greater royalty rate." The current Federal Coal Management Program has investigated coal leasing in the private sector and has not found a royalty rate above the 12½ percent minimum statutory rate for surface-mined Federal coal to be warranted.

One comment requested that gross value should be established at "approximately the same place in the production stream for all coal properties." Another comment requested that this point be the "point of severance after primary crushing." The MMS believes that the language contained at 30 CFR 211.63 (f) and (h) addresses this concern; i.e. "gross value at the point of sale, [which is] normally the mine."

One comment requested that the definition be left as proposed because historically, "[t]he only real indication of the market value of coal is the unit sale or contract price."

One comment requested that gross value be determined on an annual basis versus a spot-price basis. The present definition of gross value does not use a spot-price basis in its language. In actual practice, gross value is the weighted average selling price for the reporting period. Royalty based on an annual gross value calculation would represent the loss of use of funds to the royalty owner for the period of 1 year. Conversely, the operator/lessee would have the use of the royalty owner's money for the period of 1 year. This

comment was rejected as being contrary to the policy of DOI.

30 CFR 211.2(a)(22) Logical Mining Unit (LMU).

One comment stated that all Federal leases should automatically be designated as LMU's because this would give operators/lessees incentives to produce coal. The designation of LMU's under Section 2(d) of MLA is discretionary. It is not DOI policy to automatically designate any lease as an LMU. The MMS believes that the diligent development and continued operation provisions already provide the incentives to produce coal.

Supplemental resource recovery and protection plan requirements and conditions for approval are addressed in the preamble discussion of comments received on 30 CFR 211.80.

Several comments suggested that BLM and MMS definitions for LMU's should be consistent. The definitions have been made consistent in this final rulemaking.

Several comments addressed the 40-year mine-out requirement beginning with the date that coal is first produced after LMU approval. Two comments favored and two comments opposed this interpretation of the statute. Based on a review of the legislative history, DOI has determined that this implementation of the 40-year mine-out period is correct. Therefore, the requirement has not been changed.

Several comments suggested additional wording for the LMU definition to clarify DOI's position that Federal leases are not automatically LMU's. The designation of LMU's is discretionary under Section 2(d) of MLA. With these final rules, it is *not* DOI policy automatically to designate *any* Federal lease to be an LMU. The former rules designating each lease an LMU are repealed with this final rulemaking and BLM's final rulemaking for 43 CFR 3400. Therefore, these comments were rejected.

Several comments favored the proposed removal of the restriction that all lands included in the LMU be underlain by coal. This removal more correctly reflects the provisions of MLA and has been retained in this final rulemaking.

One comment suggested that lands underlain by Federal coal could be set aside for ancillary facilities, thus rendering some Federal coal unminable. The addition of these words to the definition is not appropriate. Such provisions, if proposed in a resource recovery and protection plan submittal, will be reviewed and a decision made by the District Mining Supervisor prior to approval of the permit application package.

Several comments requested clarification of any penalties levied at the end of 40 years if production were not completed. The rules of this Part provide that an LMU shall be terminated at the end of the 40-year statutory production period. Upon termination of the LMU, each Federal coal lease contained in the LMU shall revert to its origainal Federal lease diligence requirements, including the governing regulations related to diligent development and continued operation.

Several comments stated that the cost of environmental compliance (SMCRA and NEPA) and the requirement for meeting MER should be part of the LMU definition. Such wording is not consistent with the statutory requirement of MLA. Environmental costs are an integral part of the MER determination and is a factor considered in any resource recovery and protection plan approval. This concern is addressed in the preamble discussion of comments received on 30 CFR 211.11(a)(2) for both Federal leases and LMU's.

Several comments stated that the term "contiguous" and the 25,000-acre limitation are unduly restrictive. These restrictions are required by MLA, which cannot be amended by rulemaking. Therefore, these comments were rejected. However, the 25,000-acre limitation is not part of the LMU definition and has been codified at 30 CFR 211.80(f)(6).

Two comments supported the inclusion of the concept that a single operation may include a series of excavations. This concept remains unchanged in this final rulemaking. However, it is not part of the LMU definition and has been codified at 30 CFR 211.80(f)(2).

Two comments requested clarification of the contiguous concept as related to unsuitable lands and mixed ownership (i.e., Federal and non-Federal lands included in an LMU). Contiguous is defined as having at least one point in common including cornering tracts. Intervening physical or legal separations do not destroy the concept of contiguity as long as legal subdivisions have at least one point in common. Therefore, neither mixed ownerships nor lands declared unsuitable after LMU formation necessarily destroy the concept of contiguity.

One comment questioned the procedure for modifying LMU boundaries and LMU recoverable coal reserves. Such procedures are not part of the LMU definition. These procedures are addressed at 30 CFR 211.11(a)(3) and 30 CFR 211.80(a) and (g). The LMU acreage and boundaries may be modified as long as the statutory maximum of 25,000 acres is not exceeded.

One comment questioned whether the 40-year mine-out period would be altered upon LMU modifications. Any revised resource recovery and protection plan shall provide for the mining of all LMU recoverable coal reserves not later than the end of the original 40-year period, in accordance with MLA (see 30 CFR 211.80(g)(2) through (4)).

Two comments questioned the authority and criteria under which MMS would require any operator/lessee to form an LMU. While MLA authorizes DOI to order the establishment of an LMU involving leases issued after August 4, 1976, it is not DOI policy to exercise this option. Criteria for requiring LMU formation will be established on a case-by-case basis.

One comment requested clarification that an LMU which includes non-Federal recoverable coal reserves does not mandate Federal jurisdiction over mining of non-Federal recoverable coal reserves. Federal jurisdiction under MLA is limited to the Federal recoverable coal reserves contained in the LMU; whether Federal permitting under SMCRA remains applicable is a matter treated in OSM rules and State programs under SMCRA and those rules. Non-Federal recoverable coal reserves are only considered for the diligence requirements of the LMU and the determination of MER for the Federal LMU recoverable coal reserves. The 30 CFR 211.80(e)(5) has been revised to reflect this intent.

30 CFR 211.2(a)(23) and (36) Logical Mining Unit (LMU) Recoverable Coal Reserves and Recoverable Coal Reserves.

Two comments stated that the term "reserves" is inconsistent with industry practice. The MMS believes that the redefinition of the term "coal reserves" as "recoverable coal reserves" clarifies the intent of the definition.

Several comments stated that LMU recoverable coal reserves *must be* adjusted upon receipt of new information. One comment stated that reserves should only be adjusted upon request of an operator/lessee. Two comments stated that reserve estimates, once established, should not be revised.

If reserve estimates are revised upward, MER may be adjusted accordingly in order to ensure fair return to the Federal Government and the public. By the same logic, an operator/

lessee should not be penalized if, during operations, fewer recoverable coal reserves are discovered than originally estimated. In order to ensure that an operation is in compliance with MLA, the District Mining Supervisor must be able to adjust the recoverable coal reserves figures as new information becomes available. The 30 CFR 211.11(a)(3) has been inserted and 30 CFR 211.80(e)(5) has been modified to reflect this requirement.

One comment stated that reserves should be adjusted based on the periodic submittals of data required under General Mining Order Number 1 (GMO #1). The GMO #1 is currently under review for revision or replacement. If GMO #1 is continued, it will be utilized as one source of new information in determining whether recoverable coal reserves or LMU recoverable coal reserves should be adjusted.

Two comments requested that environmental constraints be considered in the determination of recoverable coal reserves. This suggestion was rejected because environmental constraints are encompassed in the wording of "other areas where mining is not permissible."

Several comments requested adding words concerning mining or economic constraints. These comments were rejected because such constraints are encompassed in the wording of "coal that can be *mined commerically* under *existing technology and economics.*" (emphasis added)

One comment concerned overlapping definitions. The BLM and MMS have resolved the inconsistencies.

30 CFR 211.2(a)(24) Maximum Economic Recovery (MER).

Many comments were received concerning the definitions of MER. These comments fall into three broad categories: favoring the proposed definition with modification; favoring the preamble definition with modification; and, favoring retention of the existing (1981 43 CFR 3400) definition. In the first two categories, suggested modifications addressed not the definition but the actual method of determination of MER. Therefore, the suggestions are addressed in the preamble discussions of comments received on 30 CFR 211.11(a)(2). Factors contained in both the proposed and preamble definition that related to the method of MER determination have been combined and revised, as appropriate, based on comments received.

One comment states that the definition of MER "violates Section 3(C) [sic]" of FCLAA. The MMS believes that this concern is already covered by provisions at 30 CFR 211.10(c)(3)(ii) which require the operator/lessee to submit data on the "methods of mining and/or variation of methods * * *" The District Mining Supervisor has discretionary authority to approve or require modifications, such as alternative methods of mining, to resource recovery and protection plans.

Two comments stated that the proposed definition is inconsistent with both MLA and SMCRA. In addition, one comment stated that the revised definition of MER would result in "high-grading of [sic] 'cream skimming!'" The comment also requested the deletion of the term "or equal to." The MMS believes that the definition is not inconsistent with either MLA or Section 515(b)(1) of SMCRA (30 U.S.C. 1265(b)(1)). The MSS will not force an operator/lessee to operate continuously at the "break even" point of the operation. The MMS is responsible for ensuring conservation of the "coal reserves and other resources." Thus, the definition, used in conjunction with the provisions at 30 CFR 211.11(a)(2), meets the statutory requirements of both MLA and SMCRA.

30 CFR 211.2(a)(26) Mine

One comment suggested that the word "commercial" be inserted before the word "mining" in order to clarify that "extraction of coal for bulk sampling purposes does not constitute mining in the context of this definition * * *" The 30 CFR 211.10(a)(3)(vi) covers bulk sampling as exploration, under the provision that states "a description of the methods to be used to determine those amounts * * *" Thus, this comment was rejected.

30 CFR 211.2(a)(27) Minable Reserve Base.

Several comments requested that coal which is not recoverable due to legal or regulatory constraints (including, but not limited to, coal in land classified unsuitable for coal mining operations) should be excluded from the definition. The MMS agrees and the definition has been changed accordingly. Also, since comparison of the recoverable coal reserves with the minable reserve base is important in determining the efficiency of a proposed operation and to determine that a proposed operation will achieve MER, the definition of recoverable coal reserves has been redefined in terms of the minable reserve base. By the samr reasonsing, minable reserve base has been redefined in terms of the coal reserve base.

30 CFR 211.2(a)(30) Notice of Availability.

Two comments suggested that "adequate newspaper publication is required" for notices of availability of LMU applications and decisions on LMU's. The MMS believes that the definition is an inappropriate place for a publication requirement. However, MMS agrees with the comment. Publication in newspapers was proposed at 30 CFR 211.5 (b)(1) and (2) and has been retained in the final rulemaking.

One comment requested public participation on exploration plans and resource recovery and protection plans. Public participation procedures for postlease exploration plans are provided by the posting of the exploration plans at the office of the District Mining Supervisor. See also the discussion of comments received on 30 CFR 211.5(b). Public participation in prelease exploration is the responsibility of BLM. Public participation in the approval of permit application packages, which contain the resource recovery and protection plan required by MLA and the permit application required by SMCRA, is the responsibility of OSM or the State regulatory authority.

30 CFR 211.2(a)(33) Permanent Abandonment of Mining Operations.

One comment questioned whether "permanent abandonment of mining operations" applies only to MLA requirements, or also to reclamation requirements of SMCRA. The intent of the definition is to satisfy only MLA requirements. The OSM or State regulatory authority is responsible for completion and permanent abandonment of reclamation operations under SMCRA.

30 CFR 211.2(a)(38) Resource Recovery and Protection Plan.

Two comments stated that the purpose of the resource recovery and protection plan was to address only MLA requirements and was to be submitted within the 3-year period required by MLA. The comments further stated that submittal of a resource recovery and protection plan was not sufficient to allow mining. The MMS agrees with these comments as discussed at 30 CFR 211.10(b) in the proposed rulemaking. That discussion has been retained in this final rulemaking.

One comment requested that the resource recovery and protection plan be "a detailed plan" to satisfy MLA requirements. The MMS believes that the resource recovery and protection

plan fully complies with the requirements of MLA. It is more reasonable to allow a company to submit the detailed information at the time it submits a permit application to the regulatory authority. Therefore, this comment was rejected.

One comment stated that the resource recovery and protection plan should not be for the life-of-the-mine but for the entire Federal lease or LMU. The MMS believes that this comment reflects confusion between MMS responsibilities under MLA and regulatory authority responsibilities under SMCRA. The MMS use of "life-of-the-mine" in these rules pertains to the life-of-the-mine on Federal coal leases and, for LMU's, non-Federal coal only if that non-Federal coal is used by the operator/lessee to satisfy MLA requirements for the Federal coal lease(s) contained in the LMU. The MMS requires the resource recovery and protection plan to contain the total Federal lease or LMU recoverable coal reserves estimates so that the District Mining Supervisor can determine that MER of the Federal coal will be achieved. Therefore, this comment was rejected.

30 CFR 211.2(a)(41) Subsidence.

Two comments stated that the definition of subsidence should include offsite impacts caused by subsidence. The MMS disagrees. Although offsite impacts may occur as a result of subsidence, they are not part of the definition of subsidence. Offsite impacts resulting from subsidence fall under the purview of the regulatory authority, not MMS. The proposed 30 CFR 211.40(c)(2) entitled "Subsidence" inadvertently omitted a cross-reference to 30 CFR 784.20. This omission has been corrected in this final rulemaking.

30 CFR 211.2(c)

One comment stated that cross-referencing definitions was appropriate but that some of the cross-referenced definitions were being revised. The MMS is aware that the cross-referenced definitions are being revised; however, the cross-referenced definitions are those that deal with 30 CFR Chapter VII requirements, not those at 30 CFR Part 211. Therefore, by cross-referencing the definitions, as they are changed by OSM, the change will be made simultaneously in their use at 30 CFR Part 211.

One comment suggested that the definition of "approved State program" be cross-referenced to 30 CFR Chapter VII. Since neither "approved State program" nor "State program" are specifically defined at 30 CFR Chapter VII, this comment was rejected.

One comment suggested that the definition of "Indian lands" be cross-referenced to 30 CFR Chapter VII. The MMS agrees and the definition of "Indian lands" has been cross-referenced to 30 CFR Chapter VII.

30 CFR 211.3 General Responsibilities.

One comment stated that the District Mining Supervisors have "too much discretionary authority" and that there are "no apparent checks and balances * * * [to] * * * prevent interference by a District Mining Supervisor in the economic viability of a mine." The MMS disagrees. The District Mining Supervisor is the most knowledgeable professional familiar with the operations under his supervision. Regarding checks and balances, 30 CFR 211.3(b) already addresses the supervisory authority and "line of command." This comment was rejected.

One comment stated that this section should be clarified regarding the responisbilities of MMS, BLM, and OSM. These responsibilities are stated at 30 CFR 211.1(c) and no further clarification is needed. In general, the 30 CFR Part 211 rules are a statement of the responsibilities of MMS, 30 CFR Chapter VII is a statement of the responsibilities of OSM, and 43 CFR Part 3400 is a statement of the responsibilities of BLM.

30 CFR 211.3 (c) and (d)

Several comments stated that these two paragraphs were overly broad in the authority to "determine whether there is compliance with all provisions of applicable laws, rules, and orders * * *" The MMS interprets the term "applicable" in the above sentence to mean those laws, rules, and orders for which MMS is responsible pursuant to MLA. It should be noted that the "District Mining Supervisor shall enforce requirements of SMCRA *only if* he finds a violation, condition, or practice regarding emergency situations for which an authorized representative of the Secretary is required to act pursuant to 30 CFR 843.11 and 843.12." (emphasis added) The provisions at 30 CFR 843.11 state in part that "[a]n authorized representative of the Secretary shall immediately order a cessation of * * * operations or of the relevant portion thereof, if he finds, on the basis of *any* Federal inspection, *any* condition or practice, or *any* violation of the Act [SMCRA], * * * *any* applicable program, or *any* condition of * * * [a] permit imposed under *any* such program, the Act [SCMRA], or this chapter (30 CFR Chapter VII), which" creates imminent danger to the health and safety of the public or "is causing or *can reasonably be expected to* cause significant, imminent environmental harm to land, air, or water resources." (emphasis added) Thus, in *emergency* situations discovered during normal inspection of operations by MMS personnel, the inspecting person is authorized to enforce laws, rules, and orders beyond those for which MMS is responsible pursuant to MLA. Thus, these comments were rejected.

30 CFR 211.3(c)(1)

One comment stated that "the Department illegally proposes giving [MMS] sole regulatory jurisdiction over coal exploration activities on Federal leases." The comment further asserts that "Section 201(b) [of SMCRA] bars agencies with coal development responsibilities, like [MMS], from exercising any functions under [SMCRA]." Also, the comment states that "[u]nder Section 523 of SMCRA, * * * OSM, is the regulatory authority on Federal lands unless there is a cooperative agreement," in which case "OSM shares regulatory jurisdiction with the state regulatory authority." These final rules implement MLA, not SMCRA. The OSM has no authority to implement MLA requirements and thus neither OSM nor the State regulatory authority have authority for exploration for *Federal* coal until mining operations have commenced within an approved permit area. Until this point, BLM and MMS share responsibility for exploration. This comment was rejected.

One comment stated that "state activities must be constrained so as not to intrude * * * with the sovereignty and roles of Tribal governments" or Bureau of Indian Affairs (BIA) and tribes. The MMS agrees and will continue to work closely with BIA in effecting the Indian trust responsibilities of DOI.

30 CFR 211.3(c)(2)

One comment suggested that the final rules should be clarified to state that the Secretary has the approval authority only with respect to the resource recovery and protection plan, but that "ultimate approval for operations on federal [sic] lands rests with the State regulatory authority where an approved cooperative agreement is in existence." Section 523(c) of SMCRA states that "[n]othing in this subsection shall be construed as authorizing the Secretary to delegate to the States his duty to approve mining plans on Federal lands * * * or to regulate other activities taking place on Federal lands." The State regulatory authority under a cooperative agreement has the responsibility for ensuring that the

permit application submitted pursuant to SMCRA meets the requirements of the approved State program and the Permanent Federal Lands Program rules at 30 CFR Part 740. The ultimate responsibility for ensuring that MLA requirements are met rests with the Secretary and *cannot* be delegated to a State under a cooperative agreement. Therefore, this comment was rejected.

One comment suggested that the Secretary develop a "threshold warning system" enabling the Secretary to know in advance when an operator/lessee will not meet the statutory 40-year mine-out deadline. The comment also suggested that this warning system "coupled with tough penalties" would provide "sufficient incentives to assure that the 40-year deadline is met * * *" The MMS agrees with the concept of a threshold warning system. The provisions at 30 CFR 211.3(c)(4) require inspections of all operations to determine whether there is compliance with all provisions of "applicable laws, rules, and orders, all terms and conditions of Federal leases * * * and all requirements of approved * * * resource recovery and protection plans." These inspections must be performed "as frequently as necessary, *but at least quarterly.*" (emphasis added) The MMS believes that such inspections will provide the Secretary with a "threshold warning system." With respect to penalties, 30 CFR 211.21(b) states that any "Federal coal lease included in an LMU which has been terminated * * * shall then be subject to the diligent development and continued operation requirements that would have been imposed on that Federal lease * * * if the Federal lease had not been included in the LMU." If the conditions of diligent development and continued operation are not met on a Federal lease-by-lease basis, the Secretary "may cancel any Federal coal lease" in accordance with 30 CFR 211.21. Thus, such Federal leases would revert "to the Department for reissuance" as the comment requested. The MMS agrees with the entire comment and believes it is adequately addressed in this final rulemaking.

30 CFR 211.3(c)(8)

Several comments requested that the provision at 30 CFR 211.3(c)(7) concerning the regulatory authority be repeated at 30 CFR 211.3(c)(8). The MMS agrees and the addition has been made in this final rulemaking. It should be noted that the final term "and the rules of this Part" has been deleted at both 30 CFR 211.3(c) (7) and (8) because the regulatory authority cannot enforce the provisions at 30 CFR 211.

One comment stated that the concept of abandonment or relinquishment of a Federal lease or license should encompass the possibility of relinquishing only portions of Federal leases or licenses. The MMS agrees. Since 43 CFR 3452.1–1 for Federal leases, and 43 CFR 3410.3–1(d) for Federal licenses, already incorporate this concept, appropriate cross-references to these provisions have been inserted at 30 CFR 211.3(c)(8).

30 CFR 211.3(c)(11)

One comment asked what authority MMS had to enforce this provision. This concern has been previously addressed in the preamble discussion of comments received on 30 CFR 211.3(c) (4) and (5). This comment was rejected.

One comment questioned whether the Federal Government can inspect and enforce State law requirements. It is the intention of MMS to enforce only Federal requirements, and the language of this paragraph has been revised to reflect this intent.

30 CFR 211.3(c)(12)

One comment questioned issuance of oral orders and when they would become effective. The 30 CFR 211.72(c) reflects the concern stated in the comment that such oral orders "probably would be of an emergency nature." The paragraph, in part, states that under emergency conditions, "the District Mining Supervisor shall order the *immediate cessation* of such activities without prior notice of noncompliance." (emphasis added) The provisions at 30 CFR 211.3(c)(12) require prompt confirmation in writing of such oral orders. Thus, the provisions at 30 CFR 211.73 concerning appeals would be effective immediately. The MMS believes these provisions address the concerns expressed in the comment.

30 CFR 211.3(c)(13)

Several comments expressed concern regarding duplicate bonding requirements by States and MMS concerning MLA responsibilities. Lease bonds are required in order to ensure that the dollar obligations of the operator/lessee are adequately covered. Reclamation bonds under SMCRA cover the reclamation of operations upon completion of mining operations. The reclamation bonds are a requirement implemented by the regulatory authority, not MMS. Therefore, these comments were rejected.

30 CFR 211.4 General Obligations of the Operator/Lessee.

30 CFR 211.4(c) and (d)

Several comments requested a definition of "other resources" that must be conserved under Section 2(d)(1) of MLA. Other resources include, but are not limited to, leasable minerals under MLA and other subsurface resources. Conservation of "other resources" will be addressed on a case-by-case basis by appropriate State and Federal Agencies. Such consultations are procedural, not regulatory. Therefore, these comments were rejected.

One comment stated that it was "difficult to ascertain what the phrase 'related to the resource recovery and protection plan' modifies." The intent of the paragraph was to ensure that the District Mining Supervisor would be advised if severe injury or loss of life would affect MLA requirements of the resource recovery and protection plan. The wording has been clarified to reflect this intent. The comment further stated that MMS "does not possess the authority over mine safety implied * * *" The MMS agrees and believes that the revisions to this paragraph in conjunction with 30 CFR 211.1(c)(2) clarify this situation.

30 CFR 211.5 Procedures and Public Participation.

One comment requested that a procedure be adopted "whereby logical mining units may be terminated while retaining one or more of the underlying federal [sic] leases previously subject to the logical mining unit." The provisions at 30 CFR 211.21(a) allow for such termination of LMU's and the provisions at 30 CFR 211.21(b) allow for the retention of the Federal leases.

One comment stated that the public participation procedures at 30 CFR 211.5 should be expanded to address termination or cancellation of an LMU. Under Section 7 of MLA, terminations are mandatory. Termination or cancellation of an LMU is an administrative procedure (see discussion of comments received on 30 CFR 211.5(b) and 30 CFR 211.21(c)). This comment was rejected.

30 CFR 211.5(b)

Two comments stated that publication of a notice in a newspaper of general circulation "is made discretionary with the Supervisor." The MMS disagrees. The final sentence at 30 CFR 211.5(b)(1) and the first sentence at 30 CFR 211.5(b)(2) require the notice *to be submitted* "to a local newspaper of general circulation" by the District Mining Supervisor. The comment was rejected.

One comment stated that a notice of availability of a proposed LMU or modification should *not* be provided to "surface owners of areas to be underground mined and which would not be disturbed by the placement of surface support facilities." Depending on the contemplated underground mining method, subsidence could result that could adversely affect the surface owner's use of the land. Based on a continuing DOI commitment to public participation, it is logical that the surface owner be informed of any action taken subsequent to Federal lease issuance. This comment was rejected.

One comment "object[ed] strenuously to the elimination of all public participation from the mine plan [sic] and exploration plan approval process." With respect to public participation in the permit application package review process, the provisions at 30 CFR Chapter VII apply to the permit application package, which contains the MLA resource recovery and protection plan and the SMCRA permit application. Public participation in the exploration plan approval process has historically been covered by the "written findings" at 30 CFR 211.5(a) which provides that all major decisions and determinations, including approval of an exploration plan, shall be in writing and "shall be available for public inspection * * * during normal business hours at the appropriate office." The MMS has not been presented with any arguments justifying a change in the current procedure, nor is MMS aware of any instances where public participation was not served by the current procedures. This comment was rejected.

30 CFR 211.6 Confidentiality.

Two comments requested that proprietary data be provided to States. Several comments were opposed to this concept. Several comments suggested that proprietary data should not be provided to States unless the States had enacted laws as strict as the restrictions imposed by the Freedom of Information Act (FOIA) (5 U.S.C. 552). Two comments stated that the operators/lessees should be notified prior to release of proprietary data. The 30 CFR 211.6(a)(2) provisions state that proprietary data shall not be made available to the public "without the consent of the operator/lessee."

Proprietary data *cannot* be disseminated publicly because release of such data would compromise the competitiveness of the coal industry. The proprietary data provided to MMS are used by MMS to enforce MLA requirements, not those of SMCRA. It should be noted that Section 507(b)(17) of SMCRA provides for confidentiality of analysis of chemical and physical properties of coal, except information regarding mineral or elemental content which is potentially toxic in the environment. Also, it should be noted that Section 512(b) of SMCRA mandates confidentiality of trade secrets or commerical or financial information which relate to the competitive rights of the person or entity to explore a described area. With regard to MLA, Section 2(b)(3) requires the Secretary to maintain the confidentiality of all data obtained under an exploration license until after Federal lease issuance or until a determination by the Secretary that releasing the data to the public would not damage the competitive position of the licensee. However, no copies of such proprietary data can be released to the States. Therefore, 30 CFR 211.6 has not been revised. Two comments stated that FOIA (5 U.S.C. 552(b)) does not cover coal. The comments stated that confidentiality of geologic and geophysical data and maps pertains only to oil wells. The FOIA specifies "wells" and does not tie them to a specific mineral commodity. It is DOI's position that "wells" includes exploration holes for leasable minerals. Thus, these comments were rejected.

Several comments stated that 30 CFR 211.6(a)(2) is contrary to SMCRA provisions at Sections 507(b) and 508(a)(12). The 30 CFR 211.6 provisions implement MLA requirements and do not affect data submitted to the regulatory authority in compliance with SMCRA. Thus, these comments were rejected.

One comment stated that requests for economic and financial data should only be related to royalty calculations and should be held confidential. Profitability is a function of coal conservation and mining techniques and, in order to ensure the conservation of the coal, financial and economic data may be required. The 30 CFR 211.6 ensures the confidentiality of any such submitted material. This comment was rejected.

One comment stated that trade secrets and financial information should be kept confidential even after Federal lease termination. The 30 CFR 211.6(a)(3) only provides for the release of geologic and geophysical data and maps. Trade secrets and financial information can only be released to the public after *consent* of the operator/lessee in accordance with 30 CFR 211.6(a)(2). The 30 CFR 211.6(a) (2) and (3) have not been revised, since they adequately address the concerns stated in the comment.

One comment stated that proprietary data should not be released upon termination of a Federal lease when the termination is being appealed. As long as a termination is under appeal, DOI does not consider a Federal lease to be terminated. Thus, the proprietary data are protected by the provisions at 30 CFR 211.6(a)(2).

Two comments objected to the release of recoverable coal reserves estimates at the time of Federal lease issuance or Federal lease readjustment even if such release was required by a Federal lease term. The provisions at 30 CFR 211.6(a)(4) recognize that a Federal coal lease is a binding legal document. Therefore, if the Federal lease contains a provision requiring data release, the condition is binding on the operator/lessee. If a Federal lease does not contain such a term, release of data at the time of Federal lease issuance is at the Secretary's discretion pursuant to Section 2(b)(3) of MLA.

One comment stated that 30 CFR 211.6(a)(3) does not distinguish between data from exploration and from resource recovery and protection plans. The provisions at 30 CFR 211.6(b) in concert with 30 CFR 211.6(a) adequately cover both data obtained from licensees and from operators/lessees (see definition of "operator/lessee" at 30 CFR 211.2(a)(32)).

Several comments requested that MMS not provide proprietary data to other Federal Agencies unless they had controls for the proprietary data as strict as those developed by MMS. One comment also suggested that MMS develop procedures for the handling of proprietary data by DOI Bureaus and other Federal Agencies. Within DOI, data is released only to those Bureaus that agree to become a "secondary office of control." Approved secondary offices of control must comply with MMS requirements for the handling and dissemination of proprietary data. Secondary offices of control are strictly prohibited from disseminating data maintained as proprietary by MMS. The secondary office of control requirements also apply to Federal Agencies other than DOI Bureaus. Prior to the release of proprietary data to any Federal Agency or Bureau, that Federal Agency or Bureau must demonstrate a need for the proprietary data. Thus, MMS standards are adhered to prior to release of proprietary data to any other Federal entity.

30 CFR 211.10 Exploration and Resource Recovery and Protection Plans.

30 CFR 211.10(a)

One comment stated that it is "clear on its ace [sic]" that authority under Section 523 of SMCRA could only be "exercised by the [MMS] to the degree necessary to * * * perform * * * duties under" MLA. The MMS agrees.

Several comments requested MMS to give regulatory control of exploration activities to the States. Two comments requested that State laws should govern exploration where State laws are at least as stringent as Federal standards. One comment stated that MMS supervision of exploration is contrary to the Federal Lands Program pursuant to SMCRA. Section 2(b)(3) of MLA prohibits delegation by the Secretary of responsibilities for prelease exploration for Federal coal. Release of data obtained from such exploration is also prohibited. Sections 512(e) and 701(28) of SMCRA do not include exploration in the term "surface coal mining and reclamation operations." Currently, MMS has approval authority for exploration for all postlease Federal coal outside a permit area, and inside a permit area prior to commencement of mining operations. The suggestion that the States be given responsibilities for postlease exploration for Federal coal under State-specific MMS/State Memoranda of Understanding or MMS/State Cooperative Agreements may be a viable alternative. The MMS is considering such action subsequent to this final rulemaking.

One comment stated that MMS should "delete references to the OSM regulations on coal exploration (30 CFR Part 815) and to state programs when promulgating its final regulations on coal exploration on Federal lands." This has also been of great concern to individual coal States. The States have stated that wherever the 30 CFR Part 211 rules cross-reference *applicable* provisions at 30 CFR 815.15 and approved State programs, MMS is attempting to compromise authorities given to the State regulatory authority under either approved State programs or OSM/State Cooperative Agreements. The performance standards at 30 CFR 815.15 are "applicable to coal exploration which substantially disturbs land surface." The MLA, however, specifically prohibits the taking of any action which might cause "substantial disturbance to the natural land surface" (Section 2(b)(2)), or which might cause "a significant disturbance of the environment" (Section 7(c)) prior to the Secretary's approval of a resource recovery and protection plan. Therefore, some of the provisions at 30 CFR 815.15 cannot be applied to federally leased or licensed lands because of MLA's specific prohibitions. The MMS is responsible for exploration for Federal coal within an approved permit area prior to commencement of mining operations. Upon commencement of mining operations, the regulatory authority assumes this responsibility in accordance with SMCRA. Under MLA, once the MLA resource recovery and protection plan and the SMCRA permit application which constitute part of the permit application package have been approved and the first 5-year permit has been issued, an exploration plan could be submitted for lands within the life-of-the-mine area covered by the resource recovery and protection plan that could result in significant/substantial disturbance. In order to avoid duplication of enforcement of the performance standards at 30 CFR 815.15, 30 CFR 211.10(a)(3)(vii) cross-references the *applicable* performance standards at 30 CFR 815.15. Therefore, this comment was rejected.

One comment stated that an exploration plan should not be required within the area encompassed in the resource recovery and protection plan or within an approved permit area. If the drilling would constitute development drilling immediately preceding mining operations, such drilling would have to take place within the 5-year permit area. However, in line with the preamble discussion immediately above, this comment was rejected for any exploration within the area encompassed by the resource recovery and protection plan, other than that occurring within an approved permit area following commencement of mining operations (i.e., development drilling).

One comment stated that the data requirements for exploration plans are excessive. The MMS has determined that the requirements at 30 CFR 211.10(a) are necessary in order to enforce the provisions of MLA. This comment was rejected.

One comment requested that cross-references to 43 CFR 3410 regarding exploration licenses be deleted. A cross-reference to 43 CFR 3410 was included at 30 CFR 211.10(a) to avoid confusion as to the processing of exploration licenses. This comment was rejected.

30 CFR 211.10(a)(1)

One comment suggested removal of the term "leased or licensed lands." This comment was rejected because MMS responsibilities under MLA concern both federally leased and licensed lands.

One comment suggested that 30 CFR 211.10(a)(1) should cross-reference the 43 CFR 3400.0–5 definition of casual use. Casual use as defined at 30 CFR 211.10(a)(1) more accurately defines the concept required for exploration under MLA. It should be noted that the words "as used in this paragraph" sufficiently reduce the applicability of the term, which is why it is not defined at 30 CFR 211.2(a). This comment was rejected.

Two comments stated that off-road travel and use of explosives should be considered as casual use. This comment was rejected because such activities may result in disturbance to surface resources. Under MLA, MMS in conjunction with the surface management agency is responsible for the protection of surface resources during exploration activities for Federal coal. These comments were rejected.

30 CFR 211.10(a)(2)

One comment requested that relocation or addition of exploration drill holes under an approved exploration plan should not require a modification of the plan. This comment was rejected. Such modifications of plans do not impose an onerous burden on operators/lessees. They must be approved to ensure protection of surface resources.

Several comments suggested that the requirement to submit the name, address, and phone number of the person who will be present during the conducting of the exploration should be deleted. Two of these comments also requested deletion of the requirement of providing the same information for the person responsible for the exploration. These comments were rejected because notices of noncompliance must be delivered to an operator/lessee in a timely manner to prevent undue environmental damage.

30 CFR 211.10(a)(3)(iii)

Two comments requested deletion of "districts, sites, buildings, structures, or objects [listed on or] eligible for inclusion on the National Register of Historic Places." In addition, these two comments requested that the phrase "identified by the State Historic Preservation Officer" be inserted in the provision for known cultural and archeological resources located within the proposed exploration area. The requirement of reporting eligible properties is mandated by an amendment to the National Historic Preservation Act of 1966. The requirement to report known cultural or archeological resources in the plan does not require an operator/lessee to determine eligibility for listing on the National Register. The requirement is intended merely to enable the State

Historic Preservation Officer and/or the District Mining Supervisor to request a determination of eligibility from the Keeper of the National Register, if necessary. Under the National Historic Preservation Act of 1966, as amended, a cultural resource clearance must be obtained from the surface management agency or, where applicable, State Historic Preservation Officer prior to undertaking any such operations on Federal lands. Therefore, these comments were rejected. It should be noted that protection of cultural resources is mandated by SMCRA and implemented by the regulatory authority at the time of permit application package review.

One comment requested deletion of "critical habitats of endangered or threatened species" as not being the responsibility of MMS. This comment was accepted in part. The MMS as the approval agency is responsible for ensuring that the operation is in compliance with certain Federal laws other than MLA. Endangered and threatened species must be protected under the provisions of Section 7 of the Endangered Species Act of 1973, as amended. However, publication of critical habitats of endangered and threatened species could prove detrimental to such species by encouraging increased unauthorized collection or destruction of the species. Therefore, the words "critical habitats of" have been deleted from the information submittal requirements.

30 CFR 211.10(a)(3)(iv)(E)

One comment stated that submission of plans for transfer and modification of exploration drill holes for use as surveillance, monitoring, or water wells is unnecessary and that this is a reclamation issue beyond the scope of an exploration plan. The MMS disagrees that this is a reclamation issue. The stipulation is included specifically to aid the operator/lessee since transfer and modification of exploration drill holes to surveillance, monitoring, or water wells can be used to fulfill SMCRA requirements to gather baseline data for modeling ground-water hydrology for proposed mining operations. Also, the conversion of exploration drill holes to water wells utilized for domestic or livestock purposes transfers liability from the operator/lessee (transferor) to the transferee.

30 CFR 211.10(a)(3)(viii)

One comment requested that the word "known" be inserted in identifying critical habitats of endangered and/or threatened species. For the reasons stated in the preamble discussion of comments received on 30 CFR 211.10(a)(3)(iii), the requirement that critical habitats be contained on the maps submitted has been deleted. This requirement has not been inserted at 30 CFR 211.12 for these same reasons.

30 CFR 211.10(a)(3)(ix)

Two comments requested that the word "enter" be inserted in the second sentence prior to "that land for the purpose of conducting exploration and reclamation." The MMS agrees with this comment and the change has been made to this paragraph.

Two other comments requested that the provision of the second sentence in this paragraph be deleted in its entirety. These comments were rejected since MMS will not approve an exploration plan for an area where permission to enter the area has not been obtained. Since the necessary permission to enter may vary with the statutory source of the private surface title (e.g., 30 U.S.C. 81 and 85), this requirement is intended to notify MMS of potential problems.

30 CFR 211.10(a)(3)(x)

Several comments requested deletion of this paragraph as being "openended." These comments were rejected. The District Mining Supervisor, based on his professional judgment and expertise, may find the information submitted in a proposed plan to be inadequate. In addition, a situation may arise during operations that could require additional data or adjustments to the approved plan. The District Mining Supervisor under MLA has discretionary authority to request such additional data.

30 CFR 211.10 (b) and (c) and 30 CFR 211.80(e) (1) and (5)

One comment stated that the resource recovery and protection plan should be submitted within 3 years from the effective date of the rules of this Part for all undeveloped Federal leases and LMU's. One comment stated that the 3-year resource recovery and protection plan submittal is inadequate for compliance with MLA. Two comments stated that the resource recovery and protection plan should not be required within 3 years. One comment stated that the 3-year submittal deadline for a resource recovery and protection plan is a burdensome requirement. The DOI has determined that the information to be submitted within the 3-year period mandated by Section 7(c) of MLA is necessary in order to enable MMS to determine whether the operator/lessee is in compliance with MLA. No provisions of this final rulemaking prohibit submittal of a resource recovery and protection plan prior to the end of the 3-year period. The DOI has determined that the 1976 amendments to MLA are prospective and therefore the 3-year resource recovery and protection plan submission requirement does not apply to leases issued prior to August 4, 1976, prior to the effective date of the first lease readjustment after August 4, 1976. This has been DOI's policy since the first revision to 30 CFR 211 after August 4, 1976. Since Section 7(c) of MLA mandates the 3-year period, that requirement for leases issued or readjusted after August 4, 1976, cannot be modified by rulemaking. These comments were rejected.

One comment stated that resource recovery and protection plan content requirements are excessive. The MMS believes that the requirements at 30 CFR 211.10 (b) and (c) are necessary to enforce the provisions of MLA. This comment was rejected.

Several comments stated that MMS should have a specified time period within which to act on a resource recovery and protection plan. One comment stated it would be "absurd for the operator/lessee to discover that his plan was found to be incomplete years later after the permit application package has been submitted * * *" The MMS disagrees with these comments. The 3-year timeframe for resource recovery and protection plan submittal does not apply to SMCRA permit application submittal. During the time, if any, between the two submittals, additional information may be obtained by the operator/lessee and incorporated in the permit application package. Since the resource recovery and protection plan cannot be approved until the permit application is in an approvable form, any deviations from the original resource recovery and protection plan that are reflected in the permit application must be submitted to MMS in order to ensure that the resource recovery and protection plan and the permit application address the same proposed operation at the time of approval of commencement of mining operations.

Many comments reflected a misunderstanding of the process for approval of proposed mining operations and issuance of a permit. The MMS is responsible for determining that a resource recovery and protection plan is in an approvable form. Under revisions that OSM will soon propose to its Federal lands program [30 CFR Chapter VII, Subchapter D], the regulatory authority would be responsible for determining that a permit application is approvable. The mining plan that the Secretary must approve under Section

523(c) of SMCRA would be the plan for mining leased Federal coal required by MLA. The permit application package submitted to the regulatory authority would consist of the resource recovery and protection plan, the permit application, and other information required by applicable laws and regulations. The regulatory authority's review and approval of the permit application would be independent of the Secretary's approval of the mining plan. The regulatory authority could issue the permit prior to mining plan approval, though commencement of mining operations could not occur prior to mining plan approval. The approved permit would have to conform, however, to the mining plan approved by the Secretary.

The OSM will be responsible for the Secretarial decision document for the approval of mining operations, including preparation of NEPA-compliance documentation. The Secretary in evaluating the proposed mining within the "full spectrum" of requirements, such as NEPA, MLA, and other Federal laws, would not be obligated to accept the recommendations of the regulatory authority or MMS. The Secretary's decision to allow or not allow mining on Federal lands must be based on his independent analysis. Thus, after the Secretary approves or authorizes approval of the mining plan, *and* after the regulatory authority concludes that mining could be conducted satisfactorily on Federal lands within the requirements of SMCRA and issues a permit, mining operations may commence.

Several comments stated that the life-of-the-mine information to be submitted in a resource and protection plan exceeds State-approved regulations. The resource recovery and protection plan is submitted to satisfy MLA requirements. As noted previously, enforcement of MLA requirements cannot be delegated to States. Diligent development and continued operation, as well as the MER requirement, cannot be determined on the basis of the information submitted the SMCRA permit applications. These provisions of MLA require life-of-the-mine data. Thus, these comments were rejected.

One comment stated that the reclamation portion of the resource recovery and protection plan compromises SMCRA reclamation responsibilities. Several comments stated that the data to be submitted in a resource recovery and protection plan were insufficient. Two comments stated that there is a lack of baseline data for a detailed resource recovery and protection plan. Several comments stated that too much detail is required in a resource recovery and protection plan. Section 7(c) of MLA requires the resource recovery and protection plan to address reclamation. The MLA does not, however, specify the level of detail required. Enforcement of MLA, however, requires only sufficient general reclamation information to enable the District Mining Supervisor to determine that MER will be achieved for the life-of-the-mine. As stated previously, MMS has determined that the requirements at 30 CFR 211.10 (b) and (c) are necessary to enforce the provisions of MLA. Several comments agreed with this MMS position. One comment stated that a general description of reclamation procedures and practices would be more appropriate than a general reclamation schedule. An LMU operation may last for 40 years. If an operator/lessee were to operate a mine on a Federal lease at the minimum production level to meet diligent development, maintain continued operation, and exercise his full option of paying advance royalty in lieu of continued operation, a Federal lease operation could be in existence for a much longer period of time. During the 40 years or more, reclamation procedures and practices are likely to become more efficient and more cost-effective; they are likely to change in any event. The requirement of a general reclamation schedule allows projections for the life-of-the-mine for associated costs based on today's technology. This information is used to determine that MER will be achieved. It should be noted that as more information becomes available during the life-of-the-mine, the recoverable coal reserves estimate may be adjusted up or down; additional information may also affect the determination that MER will be achieved. Thus, these comments were rejected.

Two comments stated that approved permits should satisfy the 3-year resource recovery and protection plan submittal. The 30 CFR 211.10(b) states that a resource recovery and protection plan is not required if a current mining plan or resource recovery and protection plan has previously been submitted, in accordance with the existing (1981 30 CFR Part 211 and 30 CFR Part 740) rules and contains the information required at 30 CFR Part 211. For a permit to have been approved, the operation must have been in compliance with 30 CFR Part 211. Therefore, existing approved permits satisfy the 3-year resource and protection plan submittal. Several comments requested that MMS coordinate with OSM prior to approval of a resource recovery and protection plan. This coordination is addressed in the BLM–MMS–OSM Memorandum of Understanding on Federal coal. It is also absolutely necessary as is addressed in the preamble discussion of the interrelationships between MMS and the regulatory authority. However, such coordination is procedural, not regulatory and therefore is not addressed in this final rulemaking.

Two comments expressed concern that the regulatory authority would retain approval authority of the resource recovery and protection plan. These concerns have been addressed previously in this preamble.

One comment supported the elimination of the duplicative review process on submitted resource recovery and protection plans and permit applications. One comment stated that it was clear that duplication would be avoided if the resource recovery and protection plan and permit application were submitted concurrently. This provision is covered at 30 CFR 211.10(c)(6) which allows for cross-referencing information submitted concurrently in a permit application.

Two comments requested clarification of the amount of data on non-Federal recoverable coal reserves required in a resource recovery and protection plan for an LMU. The detail must be sufficient to determine the non-Federal recoverable coal reserves in the LMU for the purposes of diligent development and continued operation and to determine that MER of Federal LMU recoverable coal reserves will be achieved. Otherwise these regulations do not apply to lands that do not contain Federal coal. This requirement is addressed at 30 CFR 211.80 (c)(4), (e), and (f)(2).

One comment stated that GMO #1 should not be revised until 30 CFR Part 211 is promulgated as final rulemaking. The MMS agrees. Action on GMO #1 will take place after the effective date of this final rulemaking.

One comment stated that MMS neglected to state what constitutes production from an LMU. Production is deemed to have commenced on the date of the first mining of coal from the LMU recoverable coal reserves. This provision has been inserted at 30 CFR 211.80(e)(6) for clarification.

30 CFR 211.10(c)(3)(i)

One comment stated that the quality data required should not be limited to the list provided since other factors such as sodium content could significantly affect marketing opportunities and therefore affect mine economics and

MER. The MMS agrees that the list is not all-inclusive and the paragraph has been revised accordingly.

30 CFR 211.10(c)(3)(ii)

One comment stated that this paragraph and 30 CFR 211.10(c)(4)(iv)(A) have extended reporting timetables for mining sequence, production rate, and planned sequence of mining in 5-year increments. The MMS disagrees. The information is required by MMS in order to enforce the requirements of MLA. If these data have changed by the time that the SMCRA permit application is submitted, the changes must be supplied to MMS so that both the resource recovery and protection plan and the permit application cover the same proposed operation.

30 CFR 211.10(c)(4)(iii)

One comment stated that "technically" should be deleted from this paragraph. The MMS agrees with this comment in part. The paragraph has been revised to request typical structure cross sections of all coal contained in the operator/lessee's coal reserve base estimate which is the first integral step in the determination of MER.

30 CFR 211.10(c)(4)(iv)(B)

One comment stated that "all fenders" should be changed to "major fenders," and that negligible amounts of coal should not be considered. The MMS disagrees. In making MER determinations, the District Mining Supervisor must know how much coal is to be left in any fender.

30 CFR 211.10(c)(5)

One comment stated that "30 U.S.C. 207(c) and 30 U.S.C. 1258 should be read in *pari materia* [sic]" since the "permit application * * * must contain * * * much more than a reclamation schedule * * *" The MMS agrees. Only the resource recovery and protection plan under MLA contains the reclamation schedule. The permit application under SMCRA will contain the detailed reclamation data for the approved permit area. See also the preamble discussion on the interrelationships of MMS and OSM regarding the resource recovery and protection plan and the permit application package.

One comment stated that because MLA and SMCRA "inherently include overlapping features, the elements of a statute primarily administered by one agency which are more extensively covered in a statute administered by another agency should be delegated to that second agency." The MMS believes that to the maximum extent possible under both statutes this has been accomplished. See also the preamble discussion on the interrelationships of MMS and OSM regarding the resource recovery and protection plan and permit application package.

One comment stated that "for the life-of-the-mine" should be deleted. The MMS disagrees for reasons stated previously. The comment further requested that the "specific contents [should be] listed to show that [the general reclamation schedule] is nonduplicative of the [permit application] * * *" It is not the intent of MMS to dictate nationwide general standards for reclamation. The operators/lessees are aware at the time of permit application submittal that the provisions at 30 CFR Chapter VII must be complied with and, based on this knowledge, the operator/lessee should be able to develop a generalized reclamation schedule when the resource recovery and protection plan is submitted.

One comment requested that a provision similar to the cross-reference to SMCRA for the permit application should be inserted regarding "mining plans." The MMS disagrees. The data submitted to the regulatory authority in permit applications are not sufficient to enable MMS to determine that a proposed operation will be in compliance with the requirements of MLA for the life-of-the-mine. The MMS has determined that the requirements at 30 CFR 211.10 (b) and (c) are necessary to enforce the provisions of MLA.

30 CFR 211.10(c)(6)

To clarify the provisions at 30 CFR 211.10(c)(5) as used in conjunction with 30 CFR 211.10(c)(6), it should be noted that a cross-reference to the data contained in the permit application is inappropriate if submittal of a resource recovery and protection plan precedes submittal of the permit application. The 30 CFR 211.10(c)(6) specifically states that when cross-references are used "a copy of the relevant portion of [the cross-referenced submittal] must be included in" the resource recovery and protection plan.

30 CFR 211.11 Action on Plans.

30 CFR. 211.11(a)(1)

Several comments requested that action on proposed exploration plans should be taken by the District Mining Supervisor "within 60 days from filing" rather than promptly. Due to the interagency coordination required prior to action on plans, the fact that plans as received may not contain sufficient detail thus requiring additional data, and other factors (e.g., inclement weather delaying preoperation inspections), specification of a time period for action on a proposed plan is inappropriate. The MMS will act on plans in a timely manner, i.e., promptly. These comments were rejected.

Several comments stated that the regulation of exploration plans should be delegated to the regulatory authority. These concerns are addressed in the preamble discussion of comments received on 30 CFR 211.10(a). Several comments addressed the interaction of MMS, OSM, and regulatory authority regarding the resource recovery and protection plan, permit application, and permit application package. The preamble discussion of comments received on 30 CFR 211.10 (b) and (c) details these interrelationships.

One comment further stated that in States with approved State programs under SMCRA, approval or denial of a resource recovery and protection plan shall be completed within the permit application package review and approval time period specified under State program requirements. The MMS disagrees. The State cannot impose a time limit on DOI for completing its review process under mandates that cannot be delegated to States. The preamble discussion of comments received on 30 CFR 211.10(b) further clarifies the Federal/State relationship regarding permit issuance.

30 CFR 211.11(a)(2)

Due to the many comments received related to MER, DOI policy from the proposed rulemaking and its preamble is revised and restated below.

In choosing the methodology for determining MER, MMS considered approaches based on economic data and standard industry operating practices. The MMS has decided to determine MER primarily on the basis of standard industry operating practices, supplemented by economic data as necessary. This approach is less burdensome to the mining industry and more administratively efficient; it also provides a satisfactory basis from which the District Mining Supervisor can ensure that the resource recovery and protection plan will achieve MER. Under this approach, MMS will make the MER determination based primarily on the mine design submitted in the resource recovery and protection plan. The DOI believes that this approach will work equally well for captive and noncaptive operations. Where a resource recovery and protection plan shows total mining of all coal beds, the plan itself shows MER will be achieved and no additional data for MER will be required. Where a resource recovery and protection plan

does not show total mining of all coal beds or portions thereof, the resource recovery and protection plan will be analyzed by MMS for its conformance with standard industry operating practices, many of which are dependent on economic conditions for similar operations. The MER determinations will be made giving consideration to existing proven technology; commercially available and economically feasible equipment; coal quality, quantity, and marketability; exploration, planning, and reclamation costs; and operating, processing, and transportation costs.

Where the analysis indicates that the operator/lessee's mine design does not conform to standard industry operating practices in the region, MMS may require the operator/lessee to submit additional data to justify specific parts of the mine design. Such requests, as warranted, would be on a case-specific basis.

The MMS does not intend to require every operator/lessee to submit additional data to justify MER. Additional data for MER will be requested only where some condition in the resource recovery and protection plan appears not to conform to standard industry operating practices. Standard industry operating practices will be used as the primary basis for determining MER; but it must be stressed that conformity with standard industry operating practices is not dispositive of MER and variances from the practices may be required where case-specific conditions warrant such a variance. The DOI does not intend to use MER to force any operator/lessee to produce coal at the exact "break-even" point. The MMS does not intend to use MER to force a company to mine Federal coal at a loss or to mine Federal coal that cannot be sold under existing market conditions. The burden of establishing MER is on the operator/lessee.

In general, several comments favored the MER definition proposed in the rules and many comments favored the MER definition stated in the preamble. In each instance, comments suggested minor changes in the wording of the definition which they supported. Additionally, several comments rejected both versions for various reasons. The details of these comments are discussed below.

The MLA requires that MMS make an MER determination prior to approval of a resource recovery and protection plan for either a Federal lease or LMU. The statute does not detail the procedures to be used. Although it is inappropriate to include MMS procedures in a definition, a clarifying second sentence has been added at 30 CFR 211.2(a)(24) because of the wide interest in this issue. This second sentence includes those terms which several comments suggested were necessary for consideration in an MER determination. Those terms which are not included in this new second sentence are considered under those which are included. This is further discussed below.

Several comments stated that the costs of compliance with environmental and reclamation laws and regulations need to be included in the MER determination. The definition of MER (30 CFR 211.2(a)(24)) states that "compliance with applicable laws and regulations" will be considered. Additionally, standard industry operating practices include the costs of compliance with environmental and reclamation laws and regulations. The MMS agrees with these comments and has determined that associated costs are included in the term "compliance with applicable laws and regulations."

Several comments suggested that inclusion of a reasonable rate of return should be included in the MER definition. As noted, MMS analysis of an operator/lessee's mine design will include conformance with standard industry operating practices. This analysis assumes that other operators/lessees include a rate of return in their mine design. Rather than set an arbitrary rate of return by rulemaking, which may become obsolete in the dynamic financial market, MMS believes that comparison with standard industry operating practices provides an appropriate method for MER determinations including a rate of return. By the same reasoning, MMS believes that detailed financial analyses, such as a discounted cash flow analysis, are not an appropriate tool for use in the MER determination.

Several comments expressed concern that MMS would use an interpretation of MER which could force an operator/lessee to mine portions of a Federal coal deposit that were either unprofitable or unmarketable. While an operator/lessee may propose to mine coal which is unprofitable if he believes it is in his best interest to do so, it is not MMS policy to use MER to force an operator/lessee to mine Federal coal at a loss or to mine Federal coal that cannot be sold under existing market conditions. This policy is clearly stated in the definition (30 CFR 211.2(a)(24)) and previously discussed in this preamble. These comments were rejected.

Several comments suggested that necessary land use should be included in the MER determination. Specifically mentioned was the siting of mine support facilities over Federal coal, thus rendering a portion of the recoverable coal reserves unrecoverable. The siting of any facility which would render Federal recoverable coal reserves unrecoverable must be justified in a resource recovery and protection plan submittal. Any resource recovery and protection plan that proposes such a siting will be examined to determine whether MER would be adversely affected by the approval. These comments were rejected.

Several comments suggested that the proposed definitions of MER could lead to less coal being mined from Federal leases and high-grading of the deposits. In the comparison of any proposed operation with standard industry operating practices, MMS believes that the assumption can be made that operators/lessees on non-Federal lands, Federal leases, or a combination of both will mine as much coal as is profitable. The District Mining Supervisor is able to determine if high-grading is taking place or if less coal is being mined on a Federal lease than from non-Federal lands. If such a condition is noted, the District Mining Supervisor has authority to request justification for such action under the provisions at 30 CFR 211.10 (b) and (c) and 30 CFR 211.72(a). These comments were rejected.

Several comments suggested that a "prudent man concept" be incorporated in the MER determination as a measure of profitability. Standard industry operating practices indicate what a "prudent man" would do when faced with mining operation decisions which affect profitability. These comments were rejected.

Several comments suggested that standard industry operating practices be determined on a "local or regional" basis. As previously stated in this preamble, "[w]here the analysis indicates that the operator/lessee's mine design does not conform to standard industry operating practices in the region, MMS may require * * * additional data." Thus, MMS agrees with these comments but does not believe that such elaboration is required in the rules of this Part.

Several comments suggested that the MER definition in 43 CFR 3400.0–5 be the same as the definition at 30 CFR 211.2(a)(24). The definition of MER which appears at 43 CFR 3400.0–5 applies only to prelease, that is lease sale, activities and therefore is not binding on any operator/lessee after a lease has been issued. The MER determinations made at the time of approval of a resource recovery and protection plan and upon revision of the

recoverable coal reserves or LMU recoverable coal reserves estimates are the only MER determinations with which operators/lessees must comply. These comments were rejected.

Several comments questioned the meaning of the term "other resources." These comments have been addressed previously in this preamble.

One comment suggested that MER is to be determined only upon approval of the resource recovery and protection plan. The determination of MER is a critical part of any modification of any resource recovery and protection plan (in accordance with 30 CFR 211.11 (b)(2) and (c)(2)) or estimation of recoverable coal reserves or LMU recoverable coal reserves (in accordance with 30 CFR 211.11(a)(3)). This comment was rejected.

30 CFR 211.11(a)(3)

Two comments recommended that provisions be included in the rules for adding and subtracting beds from estimates of LMU recoverable coal reserves. The MMS agrees and the provisions at new 30 CFR 211.11(a)(3) and 30 CFR 211.80(g) reflect these concerns.

The following example illustrates the revision of the estimate of recoverable coal reserves for a Federal lease in accordance with 30 CFR 211.11(a)(3).

Date and Event

4–15–1965, Federal lease issued.
6–1–1968, Mining plan approved.
6–1–1970, Production commences.
8–1–1982, Operator/lessee elects to come under these rules and apply production after August 4, 1976, to diligence. From August 4, 1976, to the date of election, 12 million tons of coal were produced. The District Mining Supervisor estimates the Federal recoverable coal reserves to be 100 million tons.
4–15–1985, Lease readjusted.
5–1–1990, Recoverable coal reserves estimate revised to 70 million tons, based on new information. From date of election to date of revision, 10 million tons of coal were produced.

For the purpose of determining the commercial quantities requirement, the recoverable coal reserves are estimated at the time of election. The estimate includes the recoverable coal reserves estimate of 100 million tons remaining at the time of election plus production of the 12 million tons credited to diligence. Therefore the estimate of recoverable coal reserves at the time of election is 112 million tons, the diligent development requirement and the commercial quantities requirement is 1.12 million tons. Upon acquisition of new information, it is found that the estimate made at the time of election was 30 million tons too high. Therefore, in 1990 the estimate is revised downward from 112 million tons to 82 million tons. The 1990 revision of the estimate is not diminished by the 10 million tons of production achieved between the election and the revision. As a result of the 1990 revision, the commerical quantities requirement is reestablished at 0.82 million tons.

30 CFR 211.11(b)(1)

Several comments stated that this paragraph should contain a provision for consultation with the regulatory authority. The States have authority under SMCRA to regulate exploration for Federal coal only within a permit area after mining operations commence. These concerns are further discussed in the preamble discussion of comments received on 30 CFR 211.10(a). These comments were rejected.

30 CFR 211.11(b)(2)

One comment stated that "this provision [subjects] lessees to further regulations by * * * any governmental entity" and that they "vigorously [contend] that DOI lacks the authority to subject lessees to future regulations * * *." This will be addressed by BLM when it reinitiates its review of the standard Federal coal lease form. The current standard Federal coal lease form contains such a stipulation; any entity has the option not to obtain a Federal coal lease if the entity either disagrees with or cannot comply with Federal lease terms. This comment was rejected.

Several comments stated that a provision should be included to resolve differences in the requirements of OSM, a State regulatory authority, and the District Mining Supervisor. The MMS believes the provision allowing the District Mining Supervisor to "require modifications, after consultation with the operator/lessee and the regulatory authority as necessary" addresses these concerns. If three are disagreements among the entities, differences are raised to higher levels of authority for resolution. This is a procedural rather than regulatory issue. These comments were rejected.

One comment stated that "changes in plans initiated by the District Mining Supervisor * * * should be limited to situations where they are of considerable necessity and should be implemented under reasonable circumstances." The MMS agrees. This is already contained in 30 CFR 211.11(b)(2) by stating that the plans *may* be "revised or supplemented *reasonably* for modification * * *." (emphasis added). The comment further stated that "the reciprocal opportunity for operators to request changes should be viewed reasonably to allow for oversights and unforeseen circumstances." An operator/lessee may request any change, provided the request for the change is accompanied by a written justification as provided at 30 CFR 211.11(c)(2).

30 CFR 211.11(c)

One comment stated that "the modifications section on exploration plans allows the District Mining Supervisor to make sweeping changes at the request of the applicant with no required consulation * * *." The provisions at 30 CFR 211.11(c)(1) state, in part, "[t]he District Mining Supervisor shall promptly approve or disapprove in writing any such modifications, *after consultation* with the authorized officer and the regulatory authority as necessary * * *." (emphasis added) The "as necessary" was inserted because under certain circumstances the regulatory authority does not have to be consulted; for example, the regulatory authority has no jurisdiction over prelease exploration for Federal coal unless more than 250 tons of coal are to be removed. Therefore, were an operator/lessee (see definition of operator/lessee) to request a modification of prelease exploration being conducted under an approved BLM license, the regulatory authority would not be consulted; if less than 250 tons of coal were to be removed, only the authorized officer would be consulted. This comment was rejected.

Two comments stated that the procedures proposed for modifying an approved exploration plan are inconsistent with SMCRA and coal exploration provisions at 30 CFR Part 776 and 30 CFR 815.15, fail to limit the extent of permissible modifications, exclude public participation in violation of SMCRA, MLA, and Federal Land Policy and Management Act and that MMS has no authority to approve modifications to exploration activities within an approved permit area. For modifications inside an approved permit area, MMS will consult as necessary with the regulatory authority to determine if such modifications constitute a major change from contemplated operations approved for the permit area. The other concerns have been previously discussed in this preamble.

Two comments objected to the lack of criteria limiting the extent to which an approved resource recovery and protection plan may be changed by operator/lessee initiative and to exclusion of the public. One comment

also requested that OSM concur, rather than be consulted with, in any modification of an approved resource recovery and protection plan. The consultation provisions of 30 CFR 211.11(c) and the District Mining Supervisor's discretion in approving or not approving modifications of an approved resource recovery and protection plan limit the extent to which an approved resource recovery and protection plan may be changed by operator/lessee initiative. If, during consultation with the regulatory authority, a proposed modification is found to constitute a significant departure from the method of conduct of mining or reclamation operations contemplated by the original permit, the provisions at 30 CFR 788.12 and thus 30 CFR Part 786 are automatically implemented by the regulatory authority. Any changes to the conditions of the approved permit by the regulatory authority would automatically constitute concurrence with the modification of an approved resource recovery and protection plan. These comments were rejected.

30 CFR 211.12 Mining Operations Maps.

30 CFR 211.12(a)

One comment stated that the final two sentences of this paragraph "illustrate the type of cooperation or sharing of information between Federal Agencies which can reduce the burden on an operator on Federal coal lands." The comment also urged MMS to utilize this type of cross-referencing to the maximum extent possible.

Two comments requested that the "scale of maps required by [MMS] and the regulatory authority should be the same." The MMS agrees with these comments. This is reflected by the lack of a map scale requirement at 30 CFR 211.10(c) and 30 CFR 211.12 and the nonspecific, but not smaller than 1:24,000, map scale requirement at 30 CFR 211.10(a)(3)(viii).

30 CFR 211.12(b)

One comment stated that this paragraph "is directed solely to mines wherein coal is extracted by conventional underground mining techniques." The comment further stated that "[i]n situ [sic] production of coal does not permit accumulation of data necessary to meet the requirements of paragraph 211.12(b)." The comment recommended the addition of the following two sentences at the end of this paragraph: "The foregoing requirements apply to coal extraction using standard industry [operating] practices for conventional underground mining. When coal mining is to be accomplished by in situ [sic] gasification, the operator/lessee shall submit a program for underground mine maps to the District Mining Supervisor, which upon approval will become the basis for preparation of underground mine maps." The DOI is currently reviewing the mineral leasing laws to determine their applicability to, and implementation of regulations for, synthetic fuel production methods. Regulations related to synthetic fuel production will be promulgated at a later date. This comment will be considered in that rulemaking.

30 CFR 211.20 Diligent Development and Continued Operation Requirement.

Several comments stated that they were opposed to MLA diligence requirements being imposed on Federal leases issued prior to August 4, 1976, unless the operator/lessee elected to be subject to the rules of this Part prior to first lease readjustment after August 4, 1976. The MMS agrees. The provisions at 30 CFR 211.20 and 30 CFR 211.24 have been revised to reflect these concerns.

30 CFR 211.20(a)(2)

One comment opposed the use of any percentage of reserve requirement as a criterion for continued operation in an LMU. The MMS agrees in part. An operator/lessee must mine out the LMU recoverable coal reserves within a 40-year period. Assuming that production at the time that coal was first produced following LMU approval was at the maximum achievable rate to mine out the LMU in 40 years, the operation would have to be producing at least 2½ percent per continued operation year. The MMS believes that imposition of a requirement to produce 1 percent per continued operation year does not impose an onerous burden on the operator/lessee. In addition, an operator/lessee who for some reason cannot produce 1 percent of LMU recoverable coal reserves has the option to request the District Mining Supervisor to approve payment of advance royalty in lieu of this requirement for a total of up to 10 years over the life of the LMU.

30 CFR 211.21 Termination or Cancellation for Failure to Meet Diligent Development and Continued Operation.

30 CFR 211.21(c)

Several comments stated that production from an LMU should be allowed to be prorated to individual Federal leases contained in the LMU upon termination or cancellation for failure to meet diligent development and continued operation for the LMU. Several comments opposed such prorating.

Two comments stated that upon such termination or cancellation of an LMU, Federal leases should be reviewed individually for compliance with MLA. Two comments stated that if an LMU is relinquished or cancelled, individual Federal coal leases should be terminated. Several comments stated that the rules do not adequately address continuation of Federal leases upon such termination or cancellation of the LMU. The DOI has determined that upon termination or cancellation of an LMU, Federal leases automatically are subject to their individual Federal lease terms. Therefore, individual Federal leases would then be subject to requirements imposed on each Federal lease for such MLA requirements as diligent development and continued operation as if the Federal lease had not been included in an LMU. Federal leases may continue after termination or cancellation of the LMU if the Federal leases are in compliance with the individual Federal lease terms. Prorating of recoverable coal reserves would allow operators/lessees to hold certain Federal leases for speculative purposes. By not allowing prorating, DOI is encouraging the development of those Federal leases that are currently economical while forcing noneconomic Federal leases to be relinquished. (See the preamble discussion of comments received on 30 CFR 211.3(c)(2) regarding a "threshold warning system" coupled with "tough penalties.")

One comment stated that if diligent development is met for the LMU, diligent development should have been considered to have been met for all Federal leases contained in the LMU even if the LMU is subsequently terminated or cancelled. The MMS disagrees. Were the LMU to be terminated or cancelled for failure to maintain continued operation, such a suggestion would force the holder of each individual Federal lease to maintain continued operation under its specific Federal lease terms, thus subjecting most if not all such Federal leases to termination. Also, since DOI has determined that the 1976 amendments to MLA are prospective, if one of the Federal leases was issued prior to August 4, 1976, and not readjusted after that date, the continued operation requirement should not be applied unless the holder of the Federal lease has elected to be subject to the

rules of this Part. This comment was rejected.

Several comments questioned the authority of DOI to cancel any Federal coal lease or LMU which fails to meet the 3-year resource recovery and protection plan submittal requirement. One comment stated that no discretion for such a cancellation is allowable; rather, such a provision must be enforced. One comment requested clarification of the language "may cancel" for failure to submit a resource recovery and protection plan within 3 years, versus the language "shall be terminated" for failure to meet diligent development. Failure to submit a resource recovery and protection plan is breach of a *statutory* term in 30 U.S.C. 207(c). The current Federal coal lease form states that DOI will not waive breaches of statutory terms. Although MLA does not expressly require Federal lease cancellation for failure to submit a resource recovery and protection plan within 3 years, DOI *may* cancel a Federal lease for a breach of a Federal lease term. The MLA states in 30 U.S.C. 207(a) that any Federal lease not producing commercial quantities at the end of 10 years "shall be terminated." This termination is not discretionary, nor does it require judicial action like cancellation does. No changes to these rules were made based on these comments.

One comment stated that the cancellation of a Federal lease for failure to meet continued operation should not be discretionary. The MMS agrees with this comment and 30 CFR 211.21(a) has been revised accordingly and continued operation has been deleted from 30 CFR 211.21(c). One comment suggested revising the terms of 30 CFR 211.21(a) by the addition of "during the diligent development period." This comment was rejected as the additional language would be repetitious of 30 CFR 211.2(a) (13) and (14).

30 CFR 211.22 Extension or Suspension of Continued Operation, 3-Year Resource Recovery and Protection Plan Submittal Requirement, and Operations and Production.

One comment stated that authority to promulgate rules for the suspension of operations was not granted to DOE. Section 302(b)(3) of the DOE Organization Act transferred to DOE the authority to promulgate rules relating to suspensions for failure to meet diligence requirements. Since MMS now has promulgation authority for diligent development and continued operation rules, both rules are contained in this final rulemaking.

Several comments stated that extensions provided at 30 CFR 211.22(a)(1) and (b), 30 CFR 211.40(b)(4)(iii), and 30 CFR 211.63 (l), (m), (n), (o), and (p), are contrary to MLA, which does not provide for extensions or suspensions of these requirements. Specifically, it was stated that normal business risks are not justification for suspensions or extensions. The MMS agrees that normal business risks are not justification for suspensions or extensions. However, 30 CFR 211.22 (a)(1) and (b) do not contain any provision that implies this. With respect to extensions, Section 7(b) states, in part, that Federal leases are "subject to the conditions of diligent development and continued operation * * * except where operations under the lease are interrupted by strikes, the elements, or casualties not attributable to the lessee * * *." Section 7(b) states further that the "Secretary * * *, upon determining that the public interest will be served thereby, may suspend the condition of continued operation * * *." Section 39 of MLA states, in part, that the "Secretary * * *, in the interest of conservation [of resources], shall direct or shall assent to the suspension of operations and production under any lease granted * * *, any payment of * * * minimum royalty * * * likewise shall be suspended during such period of suspension of operations and production; and the term of such lease shall be extended by adding any such suspension period thereto." The MMS considers the foregoing to be sufficient authority to promulgate the final rules of this Part as written and rejected these comments.

One comment stated that extensions or suspensions for LMU's should extend the 40-year mine-out requirement. The MMS agrees in part. The DOI has determined that only suspensions under Section 39 of MLA extend the 40-year period.

30 CFR 211.22(a)(1)

One comment stated that Federal leases should only be extended if the lessee appealed on the grounds that the mining plan approval took too much time. The MLA provides only for the *force majeure* provisions contained in 30 CFR 211.22(a)(1).

One comment stated that it was not explained why extensions were deleted for administrative delays and extraordinary circumstances. Several comments stated that extensions for administrative delays and extraordinary circumstances should be allowed. The MLA does not provide for extensions beyond the 10-year period provided in Section 7(b) due to administrative delays and extraordinary circumstances, thus these provisions were deleted. Such extensions were formerly allowed under 43 CFR 3475.4(b) only for Federal leases issued prior to August 4, 1976. Since the rules of this Part will only be applied to such leases upon first lease readjustment after August 4, 1976, or when operators/lessees elect to be subject to the rules of this Part prior to such readjustment, and since such extensions are not allowed for leases issued or readjusted after August 4, 1976, under MLA, these comments were rejected.

30 CFR 211.22(a)(2)

One comment stated that the rules should state a presumption against acceptance of advance royalty in lieu of continued operation. One comment stated that the term "public interest" contained in the "lease [form], the statute, and the regulations" make "public interest" presumptive; thus, MMS would always approve advance royalty paid in lieu of continued operation. Another comment requested the definition of the term "public interest." The acceptance of advance royalty, when the Secretary determines that the public interest will be served, is discretionary under the second sentence of Section 7(b) of MLA. These comments were rejected.

One comment stated that payment of advance royalty in lieu of continued operation should be at the discretion of the operator/lessee. The MMS agrees in part. The rules of this Part provide for the operator/lessee to request that he be permitted to pay advance royalty. However, the District Mining Supervisor has discretion to accept or reject such request under Section 7(b) of MLA.

30 CFR 211.22(b)

One comment was in favor of suspensions of diligent development. The DOI has determined that such extensions are not provided for by MLA. Several comments stated that suspensions should not extend the 10-year diligent development period. The MMS agrees and this final rulemaking has been revised accordingly.

One comment stated that refunds with interest of advance royalty payments should be made where circumstances beyond control of the company prevent the operator/lessee from recovering such payments through mining. The MMS agrees in part. The DOI has determined that in such situations, all excess advance royalty payments shall be refunded; however, no interest that

accrued on the advance royalty payment shall be refunded.

Two comments objected to the direction of a suspension by DOI. The comments stated that a Federal lease could be extended "out of existence" by making extensions longer than the period allowed for the payment of advance royalty. Section 39 of MLA provides for a suspension of operations and production in the interest of conservation. Therefore, these comments were rejected.

One comment state that suspensions of operations should be liberally implemented in consideration of diverse problems and conditions encountered in coal mining. Two comments stated that advance royalty should be suspended in addition to suspension of an operation subject to continued operation. The following discussion clarifies suspensions, exclusions, and extensions allowed by MLA, as amended, specifically by FCLAA.

Section 7(b) of MLA, as amended, conditions Federal coal leases upon "continued operation of the mine or mines" by the operator/lessee. This condition may be excused or suspended in three situations. First, at the operator/lessee's request because of market or similar conditions, the Secretary may "suspend" under Section 7(b) of MLA only the condition of continued operation, as opposed to the entire Federal lease, by accepting advance royalty in lieu of continued operation. The operator/lessee still has beneficial use of the Federal leasehold; rental and Federal lease readjustment periods still run under the Section 7(b) advance royalty suspension. When the Secretary suspends only the condition of continued operation, Section 39 of MLA specifies that the Secretary is not authorized to "waive, reduce, or suspend" advance royalty payments.

Second, the Federal lease condition of continued operation is excused by operation of Section 7(b) of the statute when "strikes, the elements, or casualties not attributable to the lessee" prevent operation. In such cases and if it is "in the interest of conservation," the Secretary may also suspend rental payments and extend the term of the Federal lease under the authority of Section 39.

Finally, the Secretary in the interest of conservation may require or assent to "the suspension of operations and production" under Section 39 of MLA. The Secretary, in other words, is authorized to suspend the Federal lease and all of its conditions including the operator/lessee's right to beneficially use the Federal leasehold. In such cases, suspension of the Federal lease, by terms of the statute, also suspends rental payments and extends the term of the Federal lease.

The MLA thus authorizes exceptions from and suspensions of continued operation in several situations. The DOI has concluded that the restriction on the Secretary's authority contained in the last sentence of Section 39 of MLA is not inconsistent with the construction adopted here. The Secretary is not waiving, reducing, or suspending advance royalty payments when *force majeure* intervenes because there is no condition of continued operation in such situations. Similarly, the Secretary is not waiving, suspending, or reducing advance royalty payments when the Secretary suspends the entire Federal lease "in the interest of conservation." When a Federal lease is suspended under these provisions, the operator/lessee is under no obligation to pay advance royalty because the condition of continued operation is not in force.

This interpretation is further supported by the significant contractual problems that might result from an alternative construction of these three types of relief from the condition of continued operation. For example, if the Secretary were to order a suspension in the interest of conservation for more than a total of 10 years, the operator/lessee would be caught between requirements of Sections 7(b) and 39. Similarly, the Secretary could order a suspension of operations near the end of the primary 20-year Federal lease term and thereby preclude the operator/lessee from recouping the advance royalty payments made prior to the 20th year out of royalty owed on production after the 20th year.

For these reasons, DOI has concluded that the final sentence in Section 39 of MLA does not preclude the Secretary from suspending a Federal lease in the interest of conservation during the period of the lease when it is subject to the condition of continued operation.

30 CFR 211.23 Payment of Advance Royalty in lieu of Continued Operation.

30 CFR 211.23 (a), (b), and (c)

Several comments stated that advance royalty should be allowed in lieu of diligent development. Advance royalty can only be paid in lieu of continued operation (Section 7(b) of MLA) which commences upon achieving diligent development (Section 7(a) of MLA). These comments were rejected.

One comment suggested that a minor change should be made at 30 CFR 211.23(b) to clarify the wording between 30 CFR 211.23 (a) and (b) by inserting "however" at the beginning of the first sentence. The MMS agrees and the change has been made as suggested.

Several comments stated that advance royalty should be made on a schedule that considered the individual Federal lease royalty rate rather than arbitrarily setting 8 percent or 12½ percent flat rates. One comment stated that 8 percent should be the flat rate regardless of the type of mining. Additionally, several comments suggested that advance royalty rates should be based on the schedule of production proposed for the LMU in the resource recovery and protection plan. Several comments were in favor of the proposed wording at 30 CFR 211.23(c). Section 2(d)(4) of MLA states that the "Secretary may amend the provisions of any lease included in a logical mining unit so that mining under that lease will be consistent with the requirements imposed on that logical mining unit." This mandate is implemented at 30 CFR 211.80 (b) and (e) of the rules of this Part. For the purposes of determining the amount of advance royalty to be paid on an LMU, DOI has determined that 12½ percent and 8 percent are applicable as stated at 30 CFR 211.23(c). Although the District Mining Supervisor may direct establishment of an LMU in accordance with 30 CFR 211.80(b) implementing Sections 2(d)(1) and 2(d)(5) of MLA, DOI has determined that the District Mining Supervisor will only direct establishment of an LMU if it is absolutely necessary to ensure MER of Federal coal bed(s). Absent such direction by the District Mining Supervisor, the operator/lessee would have to agree with approval stipulations for the LMU for which the operator/lessee applied. Thus, any operator/lessee would be able to retract his application for an LMU.

Several comments stated that advance royalty should be based on 1 percent of the Federal LMU recoverable coal reserves. The MMS agrees and the provisions at 30 CFR 211.23(c) have been revised accordingly. See also the preamble discussion of comments received on 30 CFR 211.80(e)(5).

30 CFR 211.23(d)

One comment suggested that the provisions would invite *pro forma* annual requests by operators/lessees to pay advance royalty and suggested the deletion of the fourth sentence. The MMS disagrees. The operators/lessees would not submit *pro forma* applications for the acceptance of advance royalty in lieu of continued operation because action by the District Mining Supervisor accepting such requests would require

the actual payment of such advance royalty, thus tying up capital that could otherwise be used in mining operations. In addition, an operator/lessee would soon use up the maximum 10 years in which advance royalty could be paid. This comment was rejected.

One comment, although supporting this provision, questioned DOI's authority to refuse to accept advance royalty for the full 10 years authorized by MLA. This concern is addressed in the preamble discussion of comments received on 30 CFR 211.22(a)(2).

30 CFR 211.24 Crediting of Production Toward Diligent Development.

30 CFR 211.24(b)

Several comments stated that the operators/lessees should be allowed to elect to apply production for Federal leases issued prior to August 4, 1976, to diligent development rather than elect not to apply production. The MMS agrees and the provisions at 30 CFR 211.24 have been revised.

30 CFR 211.24(g)

One comment stated that production achieved before formation of an LMU should be applied toward diligent development for the LMU. The MMS agrees. The provisions at 30 CFR 211.24(g) have been revised to state that Federal production may be so applied toward diligent development.

30 CFR 211.25 Special Logical Mining Unit Rules.

30 CFR 211.25(a)

Several comments suggested inserting the phrase "of production in commercial quantities and" after the word "requirements." These comments were rejected because achievement of diligent development and maintaining continued operation, by definition, requires production of commercial quantities.

30 CFR 211.25(b)

One comment requested that DOI allow flexibility for achievement of diligent development if an LMU were enlarged or diminished. The MMS disagrees for reasons stated earlier in this preamble that resulted in the revisions at 30 CFR 211.80(g).

30 CFR 211.40 Performance Standards for Exploration and Surface and Underground Mining.

30 CFR 211.40(a)(1)

Two comments stated that rules governing exploration need to be more clearly delineated with respect to MMS, BLM, and regulatory authority responsibilities. Two comments suggested substituting State performance standards for Federal performance standards. One comment stated that these rules should only apply to exploration activities on federally leased or licensed lands and not to development activities in a permitted area. These comments are addressed in the preamble discussion of comments received on 30 CFR 211.10(a).

30 CFR 211.40(a) (2) and (3)

Two comments stated that it should be the responsibility of the operator/lessee to ensure against potential hazards (e.g., blowouts) when drilling on lands valuable or prospectively valuable for oil, gas, or geothermal resources. The MMS agrees that it is the responsibility of the operator/lessee to ensure against potential hazards. However, it is the responsibility of MMS to enforce Federal mandates to conserve resources, protect the environment, and protect public health and safety. These comments were rejected.

One comment stated that there should be flexibility in regulating plugging and abandonment. Another comment stated that the requirement of 5 feet of cement for capping of holes is unreasonable. Another comment stated that as written this provision is overregulation. The first sentence at 30 CFR 211.40(a)(3) was miswritten in the proposed rules. This paragraph has been reordered in this final rulemaking. When read with this revision, it is clear that 5 feet of cement is the minimum cap and that exploration activities must be managed in a manner approved by the District Mining Supervisor to prevent pollution or mixing of waters and ensure safety. Flexibility is already addressed by the fact that lesser caps or plugs may be approved by the District Mining Supervisor.

One comment questioned the applicability of Federal regulations when in conflict with State regulations. It is not the intent of DOI to supersede State requirements where a State has jurisdiction.

One comment stated that more stringent plugging standards are needed. Where conditions warrant, the District Mining Supervisor has discretionary authority to impose more strict requirements.

30 CFR 211.40(a)(4) and (5)

Several comments stated that the requirement that representative core samples be retained for 1 year is an unnecessary burden on operators/lessees.

The MMS agrees with these comments. The 30 CFR 211.40(a)(4) has been revised accordingly. The District Mining Supervisor *may* require that an operator/lessee keep representative samples of drill cores for 1 year.

Two comments stated that the District Mining Supervisor does not have authority to authorize conversion of drill holes to water wells. The MMS does not assume any regulatory authority over water use from such a converted well. This provision is intended to allow the surface owner or authorized officer to request that a drill hole be converted to a water well rather than to force an operator/lessee to abandon the drill hole in accordance with 30 CFR 211. This request must be approved by the District Mining Supervisor, because such a request must be treated as an amendment to the approved exploration plan. The District Mining Supervisor's primary concern on this issue is to determine that final liability for securing the drill hole is accepted by a responsible party. Appropriate consultation must be made as provided for at 30 CFR 211.40(a)(5) so that the jurisdiction of the State over rights to the water is not compromised.

30 CFR 211.40(b)(1)

One comment stated that MMS is obligated "to proceed with due regard for the conservation of unique paleontological and archeological resources * * *." This protection is included as standard Federal coal lease terms and, with respect to regulating surface coal mining operations, falls under the purview of the regulatory authority pursuant to 30 CFR Chapter VII, Subchapter K (specifically 30 CFR 810.2(h)).

One comment stated that this paragraph "violates Section 3(c) [sic] of FCLAA which calls for an independent examination of alternative mining methods." Section 2(a)(3)(C) of MLA does contain such a requirement. However, this Section 2(a)(3)(C) requirement applies solely to a prelease evaluation. The authority for 30 CFR 211.40(b) is Section 2(d)(1) of MLA (Section 5(b) of FCLAA) for LMU's. A different part of Section 2(a)(3)(C) of MLA (Section 3 of FCLAA) pertains to mining plans regarding MER. In neither case is an examination of alternative mining methods either the sole or a mandatory criteria for postlease MER determinations. The comment continues, stating "MER can be used as a technology forcing [sic] standard to compel lessees to employ new technologies to increase the amount and rate of coal production." The MMS agrees. Standard industry operating practices require operators/lessees to maintain state-of-the-art capability in order to remain competitive in mining

and marketing of coal. The MMS believes that standard industry operating practices are the most accurate indicator of state-of-the-art.

30 CFR 211.40(b) (3) and (4)

One comment stated that these paragraphs and "30 CFR 211.80(h) (6) and (7) [sic]" are redundant. The MMS agrees that the proposed revisions were redundant; however, it is necessary to retain some duplicative language because diligent development, continued operation, and royalties are handled differently for Federal leases than for LMU's. The diligence provisions proposed at 10 CFR 378 have been incorporated in this final rulemaking. See preamble discussion of comments received on 30 CFR 211.1(c)(4) and the associated tabulation of revised paragraphs.

30 CFR 211.40(b)(5)

Several comments stated that this paragraph imposes an onerous burden and requested that it be deleted. The MMS agrees. This paragraph has been deleted and the rest of 30 CFR 211.40(b) renumbered accordingly. If an operator/lessee elects to store waste for later processing, the provisions at 30 CFR 211.63(k) shall apply.

30 CFR 211.40(b)(9)

Two comments commended the word changes in this paragraph as improvements on the 30 CFR 211 proposed rulemaking of May 19, 1980. One comment stated further that "coal preparation also results in inherent losses of coal in processing, and requires a prudent operator to consider the overall effect and extent of preparation versus the alternative of not processing to achieve overall economies of resource recovery." The MMS agrees, as is reflected in the wording at 30 CFR 211.40(b)(1) that the operator/lessee shall consider coal preparation operations to avoid wasting of coal and to encourage achieving of MER. It is not a requirement that all operations contain coal preparation operations. Individual operations and specific operating economics will determine whether an operator/lessee proposes to use coal preparation facilities.

30 CFR 211.40(c) (2) and (e)

One comment recommended that OSM and MMS coordinate closely on regulations such as those regarding subsidence and auger mining. The MMS agrees. At the time of permit application package review, MMS will review the resource recovery and protection plan under its MLA responsibilities concurrently and in coordination with the regulatory authority's review of the permit application package under its SMCRA responsibilities.

One comment noted that this paragraph does not apply to synthetic fuels production and requested that two sentences applicable to *in situ* gasification operations be added to the paragraph. The DOI is currently reviewing the mineral leasing laws to determine the applicability to, and implementation of regulations for, synthetic fuel production methods. Regulations related to synthetic fuel production will be promulgated at a later date. This comment will be considered in that rulemaking.

30 CFR 211.40(c)(3)

Several comments expressed concern regarding top coal being used as primary roof support in underground mines. This paragraph was written primarily to address top coal left by standard mining technologies. The first sentence of this paragraph has been revised accordingly. One of the comments further stated that this paragraph "appears to contemplate the top-slicing method only." The 30 CFR 211.40(c)(3) specifically does not exclude advanced technologies.

30 CFR 211.40(c)(4)(i)

Several comments stated that it should be permissible to mine lower bed(s) before the upper bed if the upper bed is not economically recoverable or where such recovery of the lower bed(s) would not cause subsidence or interaction with the upper bed. The MMS agrees.

The paragraph as written allows operators/lessees to justify such sequencing to the District Mining Supervisor.

30 CFR 211.40(c)(6)

One comment stated that abandonment of a mining area due to thinning of coal beds or reduction in quality of the coal should be at the discretion of the operator/lessee. This comment was rejected because the District Mining Supervisor must adjust the determination of MER under such circumstances as required by MLA and implemented at 30 CFR 211.40(c)(7).

30 CFR 211.40(d)(2)

One comment stated that this paragraph "attempts to completely defeat MER * * *." This comment was rejected. As written, the paragraph allows changes in the mining operations which may be necessary to reflect such factors as differing coal quality or unsuspected geologic conditions.

30 CFR 211.40(d)(3)

One comment stated that abandonment of a mining area under this paragraph should be at the discretion of the operator/lessee. This comment was rejected. See preamble discussion of comments received on 30 CFR 211.40(c)(6).

30 CFR 211.40(d)(4)

One comment recommended that the word "necessary" be changed to "possible." This comment was rejected because such a word change could be construed to require that every method for extinguishing a fire be applied immediately. "Necessary" takes into account the safety of the personnel who could be affected.

30 CFR 211.40(d)(5) and 30 CFR 211.41 Completion of Operations and Abandonment.

Several comments stated that all "abandonment proposals should involve the [regulatory authority (RA)] at an early date in order for RA review and approval." These comments were rejected because either temporary or permanent abandonment of mining operations, as used in the rules of this Part, applies to resource recovery and protection plan requirements only. Such provisions in no way infringe upon the purview of the regulatory authority pursuant to 30 CFR Chapter VII, Subchapter K, or upon the purview of BLM pursuant to 43 CFR Part 3400.

30 CFR 211.62 Reports.

30 CFR 211.62(a)

One comment stated that there appears to be an unnecessary duplication of filing of exploration reports in the three paragraphs. The MMS agrees and this paragraph has been clarified accordingly.

Several comments stated that the reporting requirement for exploration licenses should only be at the end of the 2-year license term. Exploration license data are necessary at least annually so that Federal lease tract delineation can be conducted as efficiently as possible using the maximum amount of data available. These comments were rejected.

30 CFR 211.62(b)(7)

Several comments requested deletion of "geologic interpretation." The MMS agrees with this deletion. The paragraph has been amended accordingly and is now codified at 30 CFR 211.62(c); the rest of 30 CFR 211.62 has been renumbered accordingly. The remaining language states that if a licensee generates any recoverable coal reserves

or coal reserve base estimates based on the data obtained under the exploration license, they shall be submitted to the District Mining Supervisor. It should be noted that since these estimates were based on data obtained from an exploration license, the information is deemed proprietary in accordance with Section 2(b)(3) of MLA as implemented at 30 CFR 211.6.

30 CFR 211.62(b)(10)

One comment stated that any request for additional information "should be required only upon the statement of specific reasons for needing such data on an individual case basis." The only time the District Mining Supervisor requests additional information is to ensure that the operator/lessee is in compliance with MLA as regulated by MMS. These provisions are not intended to be a harassment mechanism.

30 CFR 211.62(d)(1)

One comment stated that consideration "should be given to allowing quarterly royalty payments and reports rather than monthly submissions." The 30-day period following the end of the period covered by the report does not require monthly reporting. Each Federal lease contains a specific term establishing the royalty reporting period. Prior to enactment of FCLAA, 30 U.S.C. 207 (Section 7 of MLA) required royalties to be paid at least quarterly. The FCLAA deleted this requirement. Following final rulemaking for 43 CFR Part 3400 and 30 CFR Part 211, DOI will revise the standard Federal coal lease form. This concern will be addressed at that time.

30 CFR 211.62(e)

One comment stated that some "proof of adverse intend [sic] is needed before a double royalty is imposed for failure to report the true weight or value of coal mined." Since "adverse intent" is not a commonly used or understood standard, this paragraph has been revised to require the penalty when an operator/lessee "knowingly" records or reports less than the true weight or value. It is the responsibility of the operator/lessee to ensure that such oversights or inadvertent errors do not occur.

30 CFR 211.63 Royalties.

30 CFR 211.63(b)

One comment was in favor of the overriding royalty provisions. Several comments stated that the override provisions would not significantly affect the ability to finance a mining venture. Several comments stated that the override limitations could adversely affect financing and that financing agreements should not be considered an override. Several comments stated that production payments for financing should not be considered an override. The 30 CFR 211.63(b) states that overriding royalty interests and production payments or other similar interests are not constrained by the 50 percent override limitation when these interests are created in order to finance a mine. The 30 CFR 211.63(b) adequately addresses the concerns expressed by these comments.

One comment stated that production payments should not be considered an override. Production payments are not overriding royalty interests. However, production payments reduce the profit realized by the operator/lessee. As profit decreases for a property, the amount of recoverable coal reserves may decrease. Therefore, in the interest of conservation, both overriding royalty interests and production payments are not allowed unless created in order to finance a mine.

One comment stated that the original lessee should be able to retain override interests for improvements if the assignee subsequently reassigns the Federal lease. Override interests created in order to improve a mine are not affected by subsequent assignments of Federal lease.

Two comments stated that the 50 percent override limitation was unnecessary since an assignment would not occur if the override was excessive or a burden on the assignee. The MMS disagrees. The 50 percent limitation will prevent speculation and undue dealing in Federal coal leases by intervening interest owners.

Two comments stated that the 50 percent override limit should apply to the Federal lease royalty rate in effect at the time of assignment, not the royalty rate for the Federal lease at issuance. The 50 percent limitation applies to the Federal royalty due on production. The term "first payable" means paid first out of any unit of production to the United States, which as lessor has first claim on proceeds to satisfy its royalty. Overrides are "second" and "third" payable after the Federal royalty. The 30 CFR 211.63(b) has been modified by the deletion of "rate of" to clarify the administrative intent of the 50 percent limitation.

Two comments stated that net profit shares or other interests should only be considered an override if calculated directly on production. Two comments stated that net profit interests allow for an override in excess of 50 percent and should not be allowed. The term "net profit shares" has been deleted.

One comment questioned what constitutes expenditures for Federal lease improvements. Expenditures for improvements are allowed as the basis for a greater than 50 percent override on a case-by-case basis. In general, only expenditures that are directly related to development of the Federal lease will be allowed.

Several comments identified differences between the 30 CFR 211.63(b) and 43 CFR 3473.3–2(c) override provisions and questioned which governs. The differences have been resolved in this final rulemaking.

30 CFR 211.63(c)(1)

One comment stated that the phrases "whenever necessary to promote development" and "cannot be successfully operated under its terms" are too broad. The MLA (30 U.S.C. 209) specifically provides the Secretary with discretionary authority to reduce royalties for these purposes. This comment was rejected.

Several comments objected to giving royalty reduction approval to the District Mining Supervisor. These comments stated that the Secretary should exercise approval authority. The Secretary has delegated approval authority to the District Mining Supervisor. These comments were rejected.

Several comments stated that reduction of royalties is inconsistent with DOI's goal to increase production. Two comments stated that reductions reduce revenues to the Federal Government. The MLA (30 U.S.C. 209) authorizes royalty reductions in order to promote development or whenever the Federal lease cannot be successfully operated under Federal lease terms. Reductions are often essential to allow for increased production. In addition, revenues will not be reduced because royalty reductions will enable operators/lessees to extract coal that would be uneconomic under Federal lease terms and would not be produced.

Two comments stated that unwarranted relief should not be allowed via reductions. One comment stated that reductions subsidize bad business judgment and poor mine design. The 30 CFR 211.63(c) specifies criteria for a royalty reduction and, in accordance with 30 CFR 211.63(c)(3), royalty reductions will not be approved unless they are warranted and meet the criteria. Royalty reductions are not intended to subsidize marginal or poorly run operations.

One comment stated that allowing reductions implies that too much Federal coal has been leased. Royalty

reductions are not related to additional coal leasing. Reductions are based on current operational difficulties; they are granted in the interest of conservation. If royalty reductions are not allowed, additional leasing may be necessary to replace production that could have been achieved had a royalty reduction been granted.

Two comments stated that deletion of the 5 percent floor for reductions for underground operations was not addressed by the environmental assessment for revision to the regulations. The environmental assessment on the proposed rules addressed removal of the 5 percent floor on pages 2 and 16. These comments were rejected.

One comment stated that the limit for reductions for underground minable coal should be specified. One comment stated that reductions below 5 percent for underground coal should only be granted for difficult operations or to make an underground operation competitive with a surface operation. One comment questioned how the 5 percent floor applies to a surface mine that subsequently shifts to underground mining. One comment was in favor of removal of the 5 percent floor and one comment questioned whether royalty for an *in situ* operation could be reduced below 5 percent. The MLA does not specify a minimum limit for royalty reductions for underground or surface mines. Royalties can be reduced, but in no case can they be reduced to zero. To make royalty reduction provisions consistent for underground and surface operations, the 5 percent floor was removed for underground operations. This revision is not inconsistent with 30 U.S.C. 209. A minimum royalty has not been specified in the rules of this Part because the degree of reduction varies by operation and type of operation.

One comment stated that granting reductions without notice to the public, other operators, or the regulatory authority is destructive to the public interest. As previously stated in this preamble, MMS believes that the provisions at 30 CFR 211.5(a), which make decisions of the District Mining Supervisor available for public inspection provide adequate public notice.

Several comments were in favor of the 30 CFR 211.63(c)(1) provisions as written.

30 CFR 211.63(c) (3) and (4)

One comment stated that the reduction criteria are vague and that MMS royalty reduction guidelines do not have force or effect of law. The information necessary for evaluating a royalty reduction varies on a case-by-case basis. The application requirements at 30 CFR 211.63(c) have been written to request general data applicable to most operations. In order not to require information irrelevant to an operation, MMS has developed guidelines that more adequately address specific situations. The guidelines detail the information required by the provisions at 30 CFR 211.63(c) and derive their authority from that same paragraph. Therefore, this comment was rejected.

One comment recommended that "act" at 30 CFR 211.63(c)(4) should be changed to "grant." This comment was rejected since it would deny the District Mining Supervisor discretion to consider relevant factors not included in the application.

30 CFR 211.63(d)

Two comments stated that royalty payments should be allowed on a quarterly rather than monthly basis. As noted, the royalty reporting period is specified in individual Federal leases.

One comment stated that production royalty for an LMU should be based on the Federal lease royalty rate. The MMS agrees. The royalty paid on coal produced from the LMU is based on the royalty rate for the Federal coal leases from which production is achieved. No Federal royalty is due for non-Federal coal.

30 CFR 211.63(e)

One comment stated that the District Mining Supervisor should not have authority to assess royalty on inventory. The assessment of royalty on inventory is determined on a case-by-case basis. A royalty will be assessed only where the inventory is in excess of operational needs. This comment was rejected.

30 CFR 211.63 (f) and (g)

Many comments objected to including reimbursed and nonreimbursed royalties and fees in the gross value. Two of the comments also objected to including reimbursed and nonreimbursed transportation costs; and one objected to including reimbursed and nonreimbursed cleaning costs. The comments asserted that inclusion of reimbursed and nonreimbursed royalties and fees in gross value was inflationary, anticompetitive, contrary to MER, decreased the value of coal especially where royalties and fees are high, and contrary to environmental protection and public welfare. It was also stated that production would be curtailed by the higher royalty due. Several comments asserted that gross value should be the unit sale or contract price minus royalties and fees. Two comments stated that gross value should be the "F.O.B." mine price excluding all royalties and fees. One comment stated overriding royalties should be excluded from gross value. Many comments stated a preference as to the point where gross value should be determined. Several comments stated the point for gross value determination should be at the mine mouth, one stated at the mine after primary crushing, and three stated at the point of sale. One comment asked for clarification of when transportation or processing costs can be excluded from gross value in accordance with 30 CFR 211.63(h). All of these comments are addressed in the discussion of comments received on 30 CFR 211.2(a)(20).

30 CFR 211.63(i) and (j)

Several comments questioned the procedures that MMS will use for gross value determinations for *in situ* technology. As previously stated, rules governing *in situ* technology will be promulgated at a later date. These comments will be considered as part of that rulemaking.

30 CFR 211.70 Inspections.

30 CFR 211.70(a)

Several comments asserted that the provisions were overly broad and that the District Mining Supervisor's authority should be limited to MLA responsibilities at 30 CFR 211.70(b). The District Mining Supervisor has authority to inspect operations to determine compliance with *applicable* laws. This concern has been addressed in this preamble.

30 CFR 211.72 Enforcement.

30 CFR 211.72(a)

Two comments stated that elimination of OSM's enforcement role on Federal lands is contrary to SMCRA. The responsibilities of OSM under the interim Federal Lands Program are detailed at 30 CFR Part 211 (1981) and remain in effect until repromulgated or deleted by OSM (see 30 CFR 211.1(a) and the introductory discussion of RELATION TO OSM'S FEDERAL LANDS PROGRAM). These comments were rejected.

30 CFR 211.72(b)

One comment suggested that all orders issued by mail be sent via certified mail, return receipt requested. The MMS agrees and 30 CFR 211.71(b) has been changed accordingly.

30 CFR 211.72(c)

One comment suggested that the provisions at 30 CFR 211.72(c) be sparingly applied. The provisions will be applied by the District Mining Supervisor following an assessment of the situation utilizing his professional judgment. This comment was rejected.

30 CFR 211.72(d)

One comment stated that this provision is too broad. This comment was rejected. Enforcement of SMCRA provisions is authorized *only* in emergency situations by Section 521(a)(2) of SMCRA and may be appealed pursuant to 43 CFR Part 4.

30 CFR 211.73 Appeals.

One comment suggested setting a time limit for processing appeals. The time required to process an appeal is dependent on the complexity of the appeal and varies for different actions under appeal. Setting a time limit for processing an appeal would not be conducive to a thorough review. Therefore, this comment was rejected.

One comment suggested that in order to reduce processing time, appeals pursuant to 30 CFR Part 290 should be waived in favor of utilizing procedures contained in 43 CFR Part 4. Any notice or order issued pursuant to 30 CFR 211.72(e) is processed in accordance with 43 CFR Part 4. Other notices or orders issued by the District Mining Supervisor, if appealed, must first be processed pursuant to 30 CFR Part 290.

30 CFR 211.80 Logical Mining Units.

30 CFR 211.80(a)

Several comments favored deleting the requirement for automatic LMU designations.

Two comments opposed removing the policy on automatic formation of LMU's. They further stated that no basis was given for this change and that the change was not conducive to future planning for the lands' nonfuel resources. The diligence requirements of the 1976 amendments to MLA do not apply to Federal leases issued prior to August 4, 1976, until the first lease readjustment after August 4, 1976. Since the 40-year mine-out period is a diligence requirement for LMU's, it will not be applied to Federal leases issued prior to August 4, 1976, without consent of the affected operators/lessees. The MLA requirement that a resource recovery and protection plan for the life-of-the-mine be submitted 3 years from lease issuance or first lease readjustment after August 4, 1976, is conducive to land-use planning. The two comments opposing discretionary LMU formation were rejected.

30 CFR 211.80(b)

Several comments stated that the District Mining Supervisor should not be given authority to order formation of an LMU. The MLA authorizes the Secretary to require an operator/lessee of a lease issued or readjusted after August 4, 1976, to form an LMU. The Secretary has delegated this authority to the District Mining Supervisor. These comments were rejected.

One comment requested clarification of circumstances in which a District Mining Supervisor would require formation of an LMU. The District Mining Supervisor may only require formation of an LMU when MER of the coal deposit(s) would be increased in accordance with Section 2(d)(1) of MLA.

One comment suggested that 30 CFR 211.80(b) be modified to make it clear that an operator/lessee has the option of creating an LMU for Federal leases issued prior to 1976. The MMS agrees and 30 CFR 211.80(b) has been modified to reflect this change.

Several comments stated that only Federal leases included in an LMU should have their terms amended for consistency with stipulations required for approval of the LMU. The rules of this Part are intended to apply only to Federal coal leases. The wording in this paragraph has been modified to reflect more clearly this intent.

Two comments stated that Federal lease terms should only be amended at lease readjustment. Also, one comment stated that royalty rates should not be amended at the time of LMU formation. The MLA provides for amendment of any Federal lease term so that mining under that lease will be consistent with requirements imposed on that LMU. Under these rules, royalty rates do not enter into determination of the establishment of an LMU. The 30 CFR 211.80(e)(4) states that royalty rates will not be amended at the time of LMU formation. Further, royalty rates will only be subject to change at the times of Federal lease readjustment.

One comment asked whether a Federal lease issued prior to August 4, 1976, and included in an LMU is subject to diligence requirements and the 40-year mine-out provision. One comment stated that Federal lease obligations should not be increased if such a lease is included in an LMU. Section 2(d)(5) of MLA states "[l]eases issued before the date of enactment of this Act may be included *with the consent of all lessees* in such logical mining unit and if so included, *shall be subject to the provisions of this section.*" (emphasis added) Therefore, leases issued prior to August 4, 1976, included in an LMU will be subject to diligence requirements and the 40-year mine-out period. These comments were rejected.

30 CFR 211.80(c)(3)

Several comments stated that the term "effective control" should only apply to coal mining operations. The rules of this Part are intended to require the operator/lessee to demonstrate his right to enter and mine all recoverable coal reserves contained in the proposed LMU. The rules of this Part have been modified to more clearly reflect this intent. It should also be noted that an approved permit under SMCRA is not a prerequisite to *formation* of an LMU.

One comment requested clarification of the criteria that MMS will use to determine what constitutes a sufficient property interest in particular lands to include them in a proposed LMU. Legal documentation conferring upon the operator/lessee the right to enter and extract recoverable coal reserves from the proposed LMU, or if the land contains no coal, to use the surface for coal mining purposes, constitutes effective control. The determination of sufficient property interest for establishment of effective control will be made on a case-by-case basis.

30 CFR 211.80(c)(4)

Two comments stated that an LMU application should not be required to contain a resource recovery and protection plan. This was not the intent of the paragraph; 30 CFR 211.80(c)(4) has been deleted and the remainder of 30 CFR 211.80(c) has been renumbered.

30 CFR 211.80(c)(5)

One comment stated that 30 CFR 211.80(c)(5) gives the District Mining Supervisor too much authority to require additional information. For the District Mining Supervisor to fulfill his responsibilities under MLA, additional information be required. The additional information will be used to facilitate review of the LMU application. This comment was rejected.

30 CFR 211.80(d)

One comment stated that the District Mining Supervisor should consult with the LMU applicant about deeper bed(s) that may be subject to reclassification from resources to reserves for *in situ* operations during the 40-year mine-out period. The 30 CFR 211.11(a)(3) states that recoverable coal reserves estimates may be adjusted as new information becomes available. Additionally, regulations related to synthetic fuel

production will be promulgated at a later date. This comment will be considered in that rulemaking.

30 CFR 211.80(e)

Two comments stated that the 40-year mine-out period can be avoided by not forming an LMU. Section 2(d)(2) of MLA imposes the 40-year mine-out requirement only on LMU's. The MLA does not impose this requirement on Federal leases. The Federal lease mine-out period will be controlled by provisions of diligent development and continued operation.

One comment asserted that the 40-year mine-out period is too short. Several comments stated that the 40-year mine-out period should begin after diligent development for the LMU has been achieved. Section 2(d)(2) of MLA specifies that the LMU shall "be *mined* within a period * * * which shall not be more than forty years." (emphasis added) This provision cannot be altered by rulemaking. The DOI has determined that it is consistent with legislative history of the 1976 amendments to MLA that the date that coal is first produced (i.e., mined) from the LMU following the effective date of LMU approval is the latest date that the 40-year mine-out period can commence. These comments were rejected.

30 CFR 211.80(e)(1)

One comment asked what time limitation is imposed on the resource recovery and protection plan, since a resource recovery and protection plan does not have a 40-year mine-out requirement unless it covers Federal leases in an LMU. One comment stated that there is a discrepancy between proposed 10 CFR 378.303(b) and 30 CFR 211.80(e)(1). The proposed 10 CFR 378.303(b) more accurately reflected the MLA requirement. Therefore, 30 CFR 211.80(e)(1) has been revised accordingly.

30 CFR 211.80(e)(5)

One comment requested clarification of the amount of detailed information, particularly with respect to recoverable coal reserves and the treatment of proprietary data, that would be required for non-Federal lands to be included in a proposed LMU. All proprietary data submitted will be treated in accordance with 30 CFR 211.6. The MMS must have separate estimates of Federal LMU recoverable coal reserves and non-Federal LMU recoverable coal reserves in order to determine that MER of Federal LMU recoverable coal reserves will be achieved. The total LMU recoverable coal reserves are needed so that MMS can ensure that the LMU meets diligent development and continued operation requirements, especially where production from non-Federal recoverable coal reserves is used to satisfy these requirements. The provisions at 30 CFR 211.80(e)(5) have been revised to reflect more accurately the requirement that both recoverable coal reserves estimates must be submitted to the District Mining Supervisor.

30 CFR 211.80(f)(3)

One comment questioned whether, when a portion of a Federal lease is segregated into a new Federal lease, all reserves under that portion of the Federal lease are consigned to the new Federal lease. One comment questioned whether the lessee of a segregated Federal lease would be forced to relinquish any part of the Federal lease. One comment questioned whether a single Federal lease could be included in two LMU's.

A new Federal lease formed by segregation could include all leased reserves of that portion of the original Federal lease or only specific bed(s). Where two LMU's cover a single Federal lease, the Federal lease would have to be segregated by bed or portion of bed so that separate Federal leases would be created for each LMU. No operator/lessee will be forced to relinquish a Federal lease or portion of a Federal lease that is in compliance with MLA requirements.

Several comments questioned whether a new Federal lease created as a result of a segregation would be subject to the Federal coal leasing program. Federal leases created by segregation retain rent and royalty provisions of the original Federal lease and will be subject to readjustment at the same time that the original Federal lease is subject to readjustment. Federal leases created as a result of segregation are not new Federal leases issued under MLA and do not require additional NEPA documentation.

One comment stated that segregation of a Federal lease or relinquishment of a portion of a Federal lease should not be restrained by legal subdivisions. The general practice is to lease by legal subdivisions. This practice will not be changed for purposes of Federal lease segregation or relinquishment. This comment was rejected.

One comment asserted that DOI should implement this paragraph in a way which would reflect individual circumstances of each Federal lease. The MMS agrees with this comment. The intent of the rules of this Part is to provide for flexibility based on case-specific circumstances.

30 CFR 211.80(g)

One comment asked whether recoverable coal reserves can be modified if boundaries of an LMU remain unchanged. The District Mining Supervisor has authority to adjust LMU recoverable coal reserves estimates in accordance with 30 CFR 211.11(a)(3).

One comment stated that termination of an LMU should be allowed at the operator/lessee's request and that Federal leases contained in the LMU continue in effect after termination of the LMU. One comment stated that a lessee should be allowed to relinquish part or all of the Federal leases or beds in an LMU. The LMU's cannot be terminated by *any* party unless the operator/lessee has failed to comply with diligent development, continued operation, the 3-year resource recovery and protection plan submittal requirement, the 40-year mine-out requirement, or the operator/lessee has relinquished all Federal leases in the LMU. In order to clarify this issue further, the language at 30 CFR 211.80(h)(4)(iii) has been incorporated at 30 CFR 211.80(g).

One comment questioned whether the 40-year mine-out period changes if additional land or reserves are added to the LMU. The 40-year mine-out period is not affected by any modification to an LMU. This position is reflected at 30 CFR 211.80(g).

Several comments stated that diligence requirements and the 40-year mine-out period should be revised when an LMU is enlarged or diminished. Although an increase or decrease in the amount of LMU recoverable coal reserves based on new information (see 30 CFR 211.11(a)(3)) will affect the amount of recoverable coal reserves that must be produced to satisfy the commercial quantities requirement for diligent development and continued operation, the 40-year mine-out period imposed on the LMU cannot be changed by an increase or decrease of the amount of LMU recoverable coal reserves, regardless of the method used to increase or decrease reserves (see 30 CFR 211.80(g)). Therefore, these comments were rejected.

One comment requested clarification of diligent development and continued operation requirements where production occurs within a portion of an LMU, and that portion is subsequently eliminated from the LMU. The DOI interprets 30 CFR 211.25(a) to mean that production from anywhere within the LMU will be credited toward diligent development and continued operation of the entire LMU. The production is LMU-

specific and does not change with modification of LMU boundaries.

30 CFR 211.80(h)

Several comments stated that the starting point of the 40-year period was unclear. The intent of proposed 30 CFR 211.80(h)(1) was that the 40-year LMU mine-out period will begin on the date that coal is first produced following approval of the LMU. The provisions at 30 CFR 211.80(e)(6) have been revised to clarify this intent.

One comment stated that the 40-year period should start upon the date that diligent development is achieved for the LMU. Several comments stated that beginning the 40-year period upon production was contrary to MLA and was not addressed in the supporting documentation. The DOI does not believe that operators/lessees should be penalized for not being in production immediately upon LMU approval. Section 2(d)(2) of MLA provides that the LMU must be *mined* within a period not to exceed 40 years.

Therefore, DOI has determined that the 40-year mine-out period commences on the date that coal is first produced (mined). These comments were rejected.

Several comments were in favor of the rulemaking as proposed.

Executive Order 12291 Federal Regulation

The DOI has determined that this document is not a major rule and does not require a regulatory analysis under Executive Order 12291 because the existing regulatory scheme was found to be basically sound and required only streamlining to reflect changed conditions. The organization of the rules is revised to group similar provisions in general headings. The streamlining of application processing may result in a decrease in the ultimate cost for consumers and an increase in productivity of United States coal operations.

Regulatory Flexibility Act

The DOI has also determined that the rulemaking will not have a significant economic effect on a substantial number of small entities, and does not require a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 601, et seq.). The updating of 30 CFR Part 211 will have a minor beneficial economic effect on a substantial number of small entities. The reduction of the filing requirements for advance approval of routine operations will have a beneficial effect on a large number of coal operations. There are no adverse economic effects due to revision of the rules of this Part.

Paperwork Reduction Act

The information collection requirements contained in 30 CFR 211.62(d)(1) have been approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3507 and assigned clearance number 1028–0001.

The information collection requirements contained in 30 CFR 211.4, .10, .11, .12, .22, .23, .62, .63, .72, .80, and .101 have been approved by OMB under 44 U.S.C. 3507 and assigned clearance number 1028–0042.

Environmental Effects

Based on the final environmental assessment prepared on both the final rulemaking for 43 CFR Part 3400 and 30 CFR Part 211, it is hereby determined that this final rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

List of Subjects in 30 CFR Part 211

Administrative practice and procedure, Coal, Government contracts, Intergovernment relations, Mineral royalties, Mines, Public lands/mineral resources, Reporting requirements.

Under the authority of the Act of February 25, 1920, as amended and supplemented (30 U.S.C. 181, et seq.), the Act of August 7, 1947 (30 U.S.C. 351, et seq.), 43 U.S.C. 2, and 43 U.S.C. 1201, Part 211, Chapter II, Title 30 of the Code of Federal Regulations is revised to read as set forth below.

Dated: July 13, 1982.

James G. Watt,

Secretary of the Interior.

PART 211—COAL EXPLORATION AND MINING OPERATIONS RULES

General Provisions

Sec.

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211.62 Reports.
211.63 Royalties.
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211.70 Inspections.
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211.80 Logical mining units.
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Royalties

211.100 [Reserved]
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211.103–211.999 [Reserved]

Authority: The Mineral Leasing Act of February 25, 1920, as amended (30 U.S.C. 181, et seq.); the Mineral Leasing Act for Acquired Lands, as amended (30 U.S.C. 351–359); the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201, et seq.); the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470, et seq.); the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, et seq.); the Act of March 3, 1909, as amended (25 U.S.C. 396); the Act of May 11, 1938, as amended (25 U.S.C. 396a–396q); the Act of February 28, 1891, as amended (25 U.S.C. 397); the Act of May 29, 1924 (25 U.S.C. 398); the Act of March 3, 1927 (25 U.S.C. 398a–398e); the Act of June 30, 1919, as amended (25 U.S.C. 399); R.S. § 441 (43 U.S.C. 1457); the Federal Property and Administrative Services Act of 1949, as amended, (40 U.S.C. 471, et seq.); the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321, et seq.); and the Freedom of Information Act (30 U.S.C. 552).

§ 211.1 Scope, purpose, and responsibilities.

(a) *Scope.* The rules of this Part shall govern operations for the exploration, development, and production of Federal coal under Federal coal leases, licenses, and permits, regardless of surface ownership, pursuant to the Mineral Leasing Act of February 25, 1920, as amended (MLA), and in conjunction with the rules at 43 CFR Group 3400 and 30 CFR Chapter VII. Included are provisions relating to resource recovery and protection, royalties, diligent development, continued operation, maximum economic recovery (MER), and logical mining units (LMU's). Except as otherwise provided in 25 CFR Chapter I or Indian lands leases, these rules do not apply to operations on Indian lands. The provisions in these rules relating to advance royalty, diligent development, continued operation, MER, and LMU's shall not apply to Indian lands, leases and permits. The rules governing exploration licenses for unleased Federal coal are codified at 43 CFR Part 3410. Until final rulemaking is promulgated and implemented by the Office of Surface Mining Reclamation and Enforcement (OSM) regarding the initial Federal lands Programs, the initial Federal lands Program rules codified at 30 CFR Part 211 (1981) shall remain in effect.

(b) *Purpose.* The purposes of the rules of this Part are to ensure orderly and efficient development, mining, preparation, and handling operations for Federal coal; ensure production practices that prevent wasting or loss of coal or other resources; avoid unnecessary damage to coal-bearing or mineral-bearing formations; ensure MER of Federal coal; ensure that operations meet requirements for diligent development and continued operation; ensure resource recovery and protection plans are submitted and approved in compliance with MLA; ensure effective and reasonable regulation of surface and underground coal mining operations; require an accurate record and accounting of all coal produced; ensure efficient, environmentally sound exploration and mining operations; and eliminate duplication of efforts by the Minerals Management Service (MMS), OSM, and the States in the Federal coal program.

(c) *Responsibilities of other Federal Agencies.*—(1) *Office of Surface Mining Reclamation and Enforcement.* The responsibility for administration of the Surface Mining Control and Reclamation Act of 1977 (SMCRA) (30 U.S.C. 1201, et seq.) is vested in OSM.

(2) *Mine Safety and Health Administration.* The responsibility for enforcement of the Federal Coal Mine Health and Safety Act of 1969, as amended (83 Stat. 742), and the coal mine health and safety rules contained in Chapter I of this Title are vested in the Mine Safety and Health Administration, Department of Labor.

(3) *Bureau of Land Management.* The responsibility for the issuance of exploration licenses for unleased Federal coal, the issuance of licenses to mine, and the issuance, readjustment, modification, termination, cancellation, and/or approval of transfers of Federal coal leases pursuant to MLA, as amended, is vested in the Bureau of Land Management.

§ 211.2 Definitions.

(a) As used in the rules of this Part, the following terms shall have the following meanings:

(1) *Advance royalty* means a payment under a Federal lease in advance of actual production when authorized by the District Mining Supervisor to be made in lieu of continued operation. Payments made under the minimum production clause, in lieu of actual production from a Federal lease issued prior to 1977 and not readjusted after August 4, 1976, are not advance royalty under the provisions at 30 CFR 211.23.

(2) *Assistant Secretary for Energy and Minerals* means Assistant Secretary for Energy and Minerals, or designee, Department of the Interior (DOI).

(3) *Associate Director for Onshore Minerals Operations* means Associate Director for Onshore Minerals Operations, or designee, MMS, DOI.

(4) *Associate Director for Royalty Management* means Associate Director for Royalty Management, or designee, MMS, DOI.

(5) *Chief, Onshore Solid Minerals Division* means Chief, Onshore Solid Minerals Division, or designee, MMS, DOI.

(6) *Coal reserve base* shall be determined using existing published or unpublished information, or any combination thereof, and means the estimated tons of Federal coal in place contained in beds of:

(i) Metallurgical or metallurgical-blend coal 12 inches or more thick; anthracite, semianthracite, bituminous, and subbituminous coal 28 inches or more thick; and lignite 60 inches or more thick to a depth of 500 feet below the lowest surface elevation on the Federal lease.

(ii) Metallurgical and metallurgical-blend coal 24 inches or more thick; anthracite, semianthracite, bituminous and subbituminous coal 48 inches or more thick; and lignite 84 inches or more thick occurring from 500 to 3,000 feet below the lowest surface elevation on the Federal lease.

(iii) Any thinner bed of metallurgical, anthracite, semianthracite, bituminous, and subbituminous coal and lignite at any horizon above 3,000 feet below the lowest suface elevation on the Federal lease, which is currently being mined or for which there is evidence that such coal bed could be mined commercially at this time.

(iv) Any coal at a depth greater than 3,000 feet where mining actually is to occur.

(7) *Commercial quantities* means 1 percent of the recoverable coal reserves or LMU recoverable coal reserves.

(8) *Contiguous* means having at least one point in common, including cornering tracts. Intervening physical separations such as burn or outcrop lines and intervening legal separations such as rights-of-way do not destroy contiguity as long as legal subdivisions have at least one point in common.

(9) *Continued operation* means the production of not less than commercial quantities of recoverable coal reserves in each of the first 2 continued operation years following the achievement of diligent development and an average amount of not less than commercial quantities of recoverable coal reserves per continued operation year thereafter, computed on a 3-year basis consisting of the continued operation year in question and the 2 preceding continued operation years.

(10) *Continued operation year* means the 12-month period beginning with the commencement of the first royalty reporting period following the date that diligent development is achieved and each 12-month period thereafter, except as suspended in accordance with 30 CFR 211.22(b).

(11) *Deputy Minerals Manager for Mining* means Deputy Minerals Manager for Mining, or designee, MMS, DOI.

(12) *Development* means activities conducted by an operator/lessee, after approval of a permit application package, to prepare a mine for commercial production.

(13) *Diligent development* means the production of recoverable coal reserves in commercial quantities prior to the end of the diligent development period.

(14) *Diligent development period* means a 10-year period which:

(i) For Federal leases shall begin on either—

(A) The effective date of the Federal lease for all Federal leases issued after August 4, 1976; or

(B) The effective date of the first lease readjustment after August 4, 1976, for

Federal leases issued prior to August 4, 1976; and

(ii) For LMU's shall begin on either—

(A) The effective approval date of the LMU, if the LMU contains a Federal lease issued prior to August 4, 1976, but not readjusted after August 4, 1976, prior to LMU approval; or

(B) The effective date of the most recent Federal lease issuance or readjustment prior to LMU approval, for any LMU that does not contain a lease issued prior to August 4, 1976, that has not been readjusted after August 4, 1976, prior to LMU approval.

The diligent development period shall terminate at the end of the royalty reporting period in which the production of recoverable coal reserves in commercial quantities was achieved, or at the end of 10 years, whichever occurs first.

(15) *Director* means Director, or designee, MMS, DOI.

(16) *District Mining Supervisor* means District Mining Supervisor, or designee, MMS, DOI.

(17) *Exploration* means drilling, excavating, and geological, geophysical or geochemical surveying operations designed to obtain detailed data on the physical and chemical characteristics of Federal coal and its environment including the strata below the Federal coal, overburden, soil, and strata above the Federal coal, and the hydrologic conditions associated with the Federal coal.

(18) *Exploration plan* means a detailed plan to conduct exploration; it shows the location and type of exploration to be conducted, environmental protection procedures, present and proposed roads, and reclamation and abandonment procedures to be followed upon completion of operations.

(19) *General Mining Order* means any numbered formal order, issued by the Deputy Minerals Manager for Mining, which is published in the **Federal Register** after opportunity for public comment. General Mining Orders apply to coal exploration, mining, and related operations.

(20) *Gross value*, for the purpose of royalty calculations, means the unit sale or contract price times the number of units sold, subject to the provisions at 30 CFR 211.63 under which gross value is determined.

(21) *License* means a license to mine coal pursuant to the provisions of 43 CFR Part 3440, or an exploration license issued pursuant to the provisions of 43 CFR 3410.

(22) *Logical mining unit (LMU)* means an area of land in which the recoverable coal reserves can be developed in an efficient, economical, and orderly manner as a unit with due regard to conservation of recoverable coal reserves and other resources. An LMU may consist of one or more Federal leases and may include intervening or adjacent lands in which the United States does not own the coal. All lands in an LMU shall be under the effective control of a single operator/lessee, be able to be developed and operated as a single operation, and be contiguous.

(23) *Logical mining unit (LMU) recoverable coal reserves* means the sum of estimated Federal and non-Federal recoverable coal reserves in the LMU.

(24) *Maximum economic recovery (MER)* means that, based on standard industry operating practices, all profitable portions of a leased Federal coal deposit must be mined. At the times of MER determinations, consideration will be given to: existing proven technology; commercially available and economically feasible equipment; coal quality, quantity, and marketability; safety, exploration, operating, processing, and transportation costs; and compliance with applicable laws and regulations. The requirement of MER does not restrict the authority of the District Mining Supervisor to ensure the conservation of the recoverable coal reserves and other resources and to prevent the wasting of coal.

(25) *Methods of operation* means the methods and manner, described in an exploration or resource recovery and protection plan, by which exploration, development, or mining activities are to be performed by the operator/lessee.

(26) *Mine* means an underground or surface excavation or series of excavations and the surface or underground support facilities that contribute directly or indirectly to mining, production, preparation, and handling of coal.

(27) *Minable reserve base* means that portion of the coal reserve base which is commercially minable and includes all coal that will be left, such as in pillars, fenders, or property barriers. Other areas where mining is not permissible (including, but not limited to, areas classified as unsuitable for coal mining operations) shall be excluded from the minable reserve base.

(28) *Minerals Management Service (MMS)* means the DOI Bureau created from the Conservation Division, U.S. Geological Survey, by Secretarial Order No. 3071, (January 19, 1982).

(29) *Minerals Manager* means the regional Minerals Manager, or designee, MMS, DOI.

(30) *MLA* means the Act of February 25, 1920, as amended, commonly referred to as the Mineral Leasing Act and codified at 30 U.S.C. 181, et seq., and the Mineral Leasing Act for Acquired Lands, as amended, 30 U.S.C. 351–359.

(31) *Notice of availability* means formal notification by the District Mining Supervisor to: appropriate Federal, State, and local government agencies; to the surface and mineral owners; and to the public in accordance with 30 CFR 211.5.

(32) *Operator/lessee* means lessee, licensee, and/or one conducting operations on a Federal lease or license under a written contract or written agreement with the lessee or licensee.

(33) *Permanent abandonment of exploration operations* means the completion of all activities conducted under an approved exploration plan, including plugging of all drill holes, submission of required records, and reclamation of all disturbed surfaces.

(34) *Permanent abandonment of mining operations* means the completion of all development, production, and resource recovery and protection requirements conducted under an approved resource recovery and protection plan, including satisfaction of all Federal rental and royalty requirements.

(35) *Preparation* means any physical or chemical treatment to prepare coal for market. Treatment may include crushing, sizing, drying, mixing, or other processing, and removal of noncoal waste such as bone or other impurities to enhance the quality and therefore the value of the coal.

(36) *Production* means mining of recoverable coal reserves and/or commercial byproducts from a mine using surface, underground, auger, or *in situ* methods.

(37) *Recoverable coal reserves* means the minable reserve base excluding all coal that will be left, such as in pillars, fenders, and property barriers.

(38) *Resource recovery and protection* includes practices to: recover efficiently the recoverable coal reserves subject to these rules; avoid wasting or loss of coal or other resources; prevent damage to or degradation of coal/bearing or mineral-bearing formations; ensure MER of the Federal coal; and ensure that other resources are protected during exploration, development, and mining, and upon abandonment.

(39) *Resource recovery and protection plan* means a plan showing that the proposed operation meets the requirements of MLA for development, production, resource recovery and

protection, diligent development, continued operation, MER, and the rules of this Part for the life-of-the-mine.

(40) *Royalty reporting period* means the period of time established by DOI for the calculation of production royalties due.

(41) *Secretary* means Secretary, or designee, DOI.

(42) *Subsidence* means a lowering of surface elevations over an underground mine caused by loss of support and subsequent settling or caving of strata lying above the mine.

(b) The following shall have the meanings as defined at 43 CFR 3400.0–5:

Authorized officer
Federal lands
Lease
Licensee

(c) The following shall have the meanings as defined at 30 CFR Chapter VII:

Alluvial valley floors
Federal Lands Program
Ground water
Indian lands
Overburden
Permit
Permit application
Permit application package
Permit area
Regulatory authority
Roads
Spoil

§ 211.2–1 Information collection.

The information collection requirements contained in 30 CFR 211 which require the filing of forms have been approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3507. The Coal Production and Royalty Report form in 30 CFR 211.62(d)(1), U.S. Geological Survey Form 9–373A, has been approved by OMB under 44 U.S.C. 3507 and assigned clearance number 1028–0001.

The information is being collected for Federal royalty accounting purposes. The information will be used to permit accounting and auditing of royalties submitted by the operators/lessees of Federal coal leases. The obligation to respond is mandatory for all operators/lessees of Federal coal leases. For nonproducing Federal leases, the report is required on an annual basis. For producing Federal leases, the report is required monthly or quarterly as specified in the Federal lease.

The information collection requirements contained at 30 CFR 211.4 211.10, 211.11, 211.12, 211.22, 211.23, 211.62, 211.63, 211.72, 211.80, and 211.101 have been approved by OMB under 44 U.S.C. 3507 and assigned clearance number 1028–0042. The information may be collected from some operators/lessees to either provide data so that proposed operations may be approved or to enable the monitoring of compliance with approvals already granted. The information will be used to grant approval to begin or alter operations or to allow operations to continue. The obligation to respond is required to obtain the benefit under the Federal lease.

§ 211.3 General responsibilities.

(a) The MMS has the general responsibility to administer MLA with respect to coal mining, production, and resource recovery and protection operations on Federal coal leases and licenses, and to supervise exploration operations for Federal coal.

(b) Subject to the supervisory authority of the Secretary, the rules of this Part shall be administered by MMS through the Director; Associate Director for Onshore Minerals Operations; Associate Director for Royalty Management; Chief, Onshore Solid Minerals Division; Minerals Manager; Deputy Minerals Manager for Mining; and District Mining Supervisor.

(c) The District Mining Supervisor is empowered to oversee exploration, development, production, resource recovery and protection, diligent development, continued operation, preparation, handling, product verification, and abandonment operations subject to the rules of this Part, and shall be responsible for the following:

(1) *Exploration plans.* Approve, disapprove, approve upon condition(s), or require modification to exploration plans for Federal coal.

(2) *Resource recovery and protection plans.* Recommend to the Assistant Secretary for Energy and Minerals the approval, disapproval, or approval upon condition(s) of resource recovery and protection plans.

(3) *LMU applications.* Approve, disapprove, or approve upon condition(s) LMU applications or modifications thereto; direct the establishment of LMU's in the interest of conservation of recoverable coal reserves and other resources; conduct public hearings on LMU applications, as appropriate, recommend amendments to Federal lease terms when determined necessary to ensure consistency with LMU stipulations; monitor and ensure compliance with LMU stipulations and the rules of this Part; and require reports and information for the establishment of an LMU.

(4) *Inspection of operations.* Examine as frequently as necessary, but at least quarterly, federally leased or licensed lands where operations for exploration, development, production, preparation, and handling of coal are conducted or are to be conducted; inspect such operations for product verification, resource recovery and protection, MER, diligent development and continued operation; inspect such operations for the purpose of determining whether wasting or degradation of other resources or damage to formations and deposits or nonmineral resources affected by the operations is being avoided or minimized; and determine whether there is compliance with all provisions of applicable laws, rules, and orders, all terms and conditions of Federal leases and licenses, and all requirements of approved exploration or resource recovery and protection plans.

(5) *Compliance.* Require operators/lessees to conduct operations subject to the rules of this Part in compliance with all provisions of applicable laws, rules, and orders, all terms and conditions of Federal leases and licenses under MLA requirements, and approved exploration or resource recovery and protection plans for requirements of production, development, resource recovery and protection, MER, diligent development and continued operation upon commencement of production.

(6) *Waiver, suspension, or reduction of rentals, or reduction of royalties.* Receive and act on applications for waiver, suspension, or reduction of rentals, and receive and act on applications for reduction of royalties, but not advance royalty, filed pursuant to the rules of this Part.

(7) *Extensions or suspensions.* Receive and act on applications for extensions or suspensions filed in accordance with 30 CFR 211.22 and, when appropriate, terminate extensions or suspensions that have been granted, provided that approval of an extension or a suspension shall not preclude the regulatory authority from requiring the operator/lessee to continue to comply with the reclamation requirements of 30 CFR Chapter VII, Subchapter K, or an approved State program.

(8) *Cessation and abandonment.* Upon receipt of notice of proposed abandonment or upon relinquishment of a Federal lease, in accordance with 43 CFR 3452.1–2, or Federal license, in accordance with 43 CFR 3410.3–1(d), the District Mining Supervisor shall conduct an inspection to determine whether the applicable exploration, development, production, resource recovery and protection, and abandonment requirements of the Federal lease or license have been met. Relinquishment or abandonment of a Federal lease shall

not preclude the regulatory authority from requiring the operator/lessee to comply with the reclamation requirements of 30 CFR Chapter VII, Subchapter K, or an approved State program.

(9) *Exploration drill holes.* Prescribe or approve the methods for protecting coal-bearing formations from damage or contamination that might occur as a result of any holes drilled to, or through, the coal-bearing formations for any purpose under an approved exploration plan.

(10) *Trespass.* Report to the authorized officer, with a copy to the regulatory authority, any trespass on Federal lands that involves exploration activities or removal of unleased Federal coal, determine the quantity and quality of coal removed, and recommend the amount of trespass damages.

(11) *Water and air quality.* Inspect exploration operations to determine compliance with air and surface and ground water pollution control measures required by Federal statutes as implemented by the terms and conditions of applicable Federal leases, licenses or approved exploration plans, and promptly notify appropriate representatives of the regulatory authority and Federal Agencies in the event of any noncompliance.

(12) *Implementation of rules.* Issue General Mining Orders and other orders for enforcement, make determinations, and grant consents and approvals as necessary to implement or ensure compliance with the rules of this Part. Any oral orders, approvals, or consents shall be promptly confirmed in writing.

(13) *Lease bonds.* (i) Determine whether the total amount of Federal lease bond with respect to operations under the rules of this Part is adequate at all times to satisfy the reclamation requirements of the exploration plan.

(ii) Determine whether the total amount of any bond furnished with respect to operations subject to the rules of this Part is at all times adequate to satisfy the requirements of the Federal lease or license relating to exploration, development, production, resource recovery and protection, and shall determine if the bond amount is adequate to satisfy any payments of rentals on producing Federal leases and payments of Federal royalties.

(iii) Notify the authorized officer of determinations under (i) and (ii) above.

(d) The Associate Director for Royalty Management:

(1) Shall oversee all matters related to the collection of Federal rentals and royalties and obtain appropriate records, computations, and any audits of the royalty payments and obligations of the operators/lessees.

(2) Shall be responsible for obtaining copies of and auditing Federal coal production and sales records.

(3) Shall determine Federal rental liability of operators/lessees, on a Federal lease-by-lease basis, upon transfer of such responsibility from the Bureau of Land Management to MMS.

(4) Shall determine Federal royalty liability of operators/lessees.

(5) Shall collect and deposit Federal rental and royalty payments and maintain Federal rental and royalty accounts.

§ 211.4 General obligations of the operator/lessee.

(a) The operator/lessee shall conduct exploration activities, reclamation, and abandonment of exploration operations for Federal coal pursuant to the performance standards of the rules of this Part, applicable requirements of 30 CFR 815.15 (OSM permanent performance standards for coal exploration) or an approved State program, any Federal lease or license terms and/or conditions, the requirements of the approved exploration plan, and orders issued by the District Mining Supervisor.

(b) The operator/lessee shall conduct surface and underground coal mining operations involving development, production, resource recovery and protection, and preparation and handling of coal in accordance with the rules of this Part, terms and conditions of the Federal leases or licenses, the approved resource recovery and protection plan, and any orders issued by the District Mining Supervisor.

(c) The operator/lessee shall prevent wasting of coal and other resources during exploration, development, and production and shall adequately protect the recoverable coal reserves and other resources upon abandonment.

(d) The operator/lessee shall immediately report to the District Mining Supervisor any conditions or accidents causing severe injury or loss of life that could affect mining operations conducted under the resource recovery and protection plan or threaten significant loss of recoverable coal reserves or damage to the mine, the lands, or other resources, including, but not limited to, fires, bumps, squeezes, highwall caving, landslides, inundation of mine with water, and gas outbursts, including corrective action initiated or recommended. Within 30 days after such accident, the operator/lessee shall submit a detailed report of damage caused by such accident and of the corrective action taken.

(e) The principal point of contact for the operator/lessee with respect to any requirement of the rules of this Part shall be the District Mining Supervisor. All reports, plans, or other information required by the rules of this Part shall be submitted to the District Mining Supervisor. The principal point of contact for the operator/lessee regarding payments of Federal rentals and royalties shall be the Associate Director for Royalty Management.

(f) The operator/lessee shall provide the District Mining Supervisor or the Associate Director for Royalty Management free access to the Federal premises.

§ 211.5 Procedures and public participation.

(a) *Written findings.* All major decisions and determinations of the Minerals Manager, Deputy Minerals Manager for Mining, District Mining Supervisor and/or Associate Director for Royalty Managment shall be in writing; shall set forth with reasonable detail the facts and rationale upon which such decisions or determinations are based; and shall be available for public inspection, pursuant to 30 CFR 211.6, during normal business hours at the appropriate office.

(b) *Logical mining units (LMU's).*—(1) *Availability of LMU proposals.* Applications for the approval of an LMU or modification thereto submitted under 30 CFR 211.80, or a proposal by the District Mining Supervisor to establish an LMU, shall be available for public inspection, pursuant to 30 CFR 211.6, in the office of the District Mining Supervisor. A notice of the availability of any proposed LMU or modification thereto shall be prepared immediately by the District Mining Supervisor, promptly posted at his office, and mailed to the surface and coal owners, if other than the United States; appropriate State and Federal Agencies; and the clerk or other appropriate officer of the county in which the proposed LMU is located. The notice will be posted or published in accordance with the procedures of such offices. The notice shall be submitted by the District Mining Supervisor to a local newspaper of general circulation in the locality of the proposed LMU for publication at least once a week for 2 weeks consecutively.

(2) *Notice of proposed decision.* Prior to the final approval or establishment of any LMU, the District Mining Supervisor shall have the proposed decision published in a local newspaper of general circulation in the locality of the proposed LMU at least once a week for

2 weeks consecutively and shall not approve the application for at least 30 days after the first publication of the proposed decision. Such notice may be published concurrently with the notice of availability.

(3) *Public participation.* A public hearing shall be conducted upon the receipt by the District Mining Supervisor of a written request for a hearing from any person having a direct interest which is or may be affected adversely by approval of the proposed LMU, provided that the written request is received within 30 days after the first publication of the notice of proposed decision in a newspaper of general circulation in the locality of the proposed LMU. A complete transcript of any such public hearing, including any written comments submitted for the record, shall be kept and made available to the public during normal business hours at the office of the District Mining Supervisor that held the hearing, and shall be furnished at cost to any interested party. In making any decision or taking any action subsequent to such public hearing, the District Mining Supervisor shall take into account all testimony presented at the public hearing.

§ 211.6 Confidentiality.

(a) Information on file with MMS obtained pursuant to the rules of this Part or 43 CFR 3400 shall be open for public inspection and copying during regular office hours upon a written request, pursuant to rules at 43 CFR Part 2, except that:

(1) Information such as geologic and geophysical data and maps pertaining to Federal recoverable coal reserves obtained from exploration licensees under the rules of this Part or 43 CFR 3410 shall not be disclosed except as provided in 43 CFR 2.20(c).

(2) Information obtained from an operator/lessee under the rules of this Part that constitutes trade secrets and commercial or financial information which is privileged or confidential or other information that may be withheld under the Freedom of Information Act (5 U.S.C. 552(b)), such as geologic and geophysical data and maps, shall not be available for public inspection or made public or disclosed without the consent of the operator/lessee.

(3) Upon termination of a Federal lease, such geologic and geophysical data and maps shall be made available to the public.

(4) Upon issuance or readjustment of a Federal lease, the estimated Federal lease recoverable coal reserves figure shall not be made available to the public unless such a release has been included as a Federal lease term.

(b) Information requested by the operator/lessee to be kept confidential under this section shall be clearly marked "CONFIDENTIAL INFORMATION." All pages so marked shall be physically separated from other portions of the submitted materials. All information not marked "CONFIDENTIAL INFORMATION" will be available for public inspection, except as stated at 30 CFR 211.6(a) for data submitted prior to August 30, 1982.

§§ 211.7–211.9 [Reserved]

§ 211.10 Exploration and resource recovery and protection plans.

(a) *Exploration plans.* For background and application procedures for exploration licenses for unleased Federal coal, see 43 CFR 3410. For background and application procedures for exploration for Federal coal within an approved permit area after mining operations have commenced, see 30 CFR Chapter VII. For any other exploration for Federal coal prior to commencement of mining operations, the following rules apply:

(1) Except for casual use, before conducting any exploration operations on federally leased or licensed lands, the operator/lessee shall submit an exploration plan to and obtain approval from the District Mining Supervisor. Casual use, as used in this paragraph, means activities which do not cause appreciable surface distrubance or damage to lands or other resources and improvements. Casual use does not include use of heavy equipment or explosives or vehicular movement off established roads and trails.

(2) The operator/lessee shall submit five copies of exploration plans to the District Mining Supervisor. Exploration plans shall be consistent with and responsive to the requirements of the Federal lease or license for the protection of recoverable coal reserves and other resources and for the reclamation of the surface of the lands affected by the operations. The exploration plan shall show that reclamation is an integral part of the proposed operations and that reclamation will progress as contemporaneously as practicable with such operations.

(3) Exploration plans shall contain all of the following:

(i) The name, address, and telephone number of the applicant, and, if applicable, the operator/lessee of record.

(ii) The name, address, and telephone number of the representative of the applicant who will be present during and be responsible for conducting the exploration.

(iii) A narrative description of the proposed exploration area, cross-referenced to the map required under 30 CFR 211.10(a)(2)(viii), including applicable Federal lease and license serial numbers; surface topography; geologic, surface water, and other physical features; vegetative cover; endangered or threatened species listed pursuant to the Endangered Species Act of 1973 (16 U.S.C. 1531, et seq.); districts, sites, buildings, structures, or objects listed on, or eligible for listing on, the National Register of Historic Places; and known cultural or archeological resources located within the proposed exploration area.

(iv) A narrative description of the methods to be used to conduct coal exploration, reclamation, and abandonment of operations including, but not limited to—

(A) The types, sizes, numbers, capacity, and uses of equipment for drilling and blasting, and road or other access route construction;

(B) Excavated earth- or debris-disposal activities;

(C) The proposed method for plugging drill holes;

(D) Estimated size and depth of drill holes, trenches, and test pits; and,

(E) Plans for transfer and modification of exploration drill holes to be used as surveillance, monitoring, or water wells.

(v) An estimated timetable for conducting and completing each phase of the exploration, drilling, and reclamation.

(vi) The estimated amounts of coal to be removed during exploration, a description of the method to be used to determine those amounts, and the proposed use of the coal removed.

(vii) A description of the measures to be used during exploration for Federal coal to comply with the performance standards for exploration (30 CFR 211.40(a)) and applicable requirements of 30 CFR 815.15 or an approved State program.

(viii) A map at a scale of 1:24,000 or larger showing the areas of land to be affected by the proposed exploration and reclamation. The map shall show existing roads, occupied dwellings, and pipelines; proposed location of trenches, roads, and other access routes and structures to be constructed; applicable Federal lease and license boundaries; the location of land excavations to be conducted; coal exploratory holes to be drilled or altered; earth- or debris-

disposal areas; existing bodies of surface water; and topographic and drainage features.

(ix) The name and address of the owner of record of the surface land, if other than the United States. If the surface is owned by a person other than the applicant or if the Federal coal is leased to a person other than the applicant, a description of the basis upon which the applicant claims the right to enter that land for the purpose of conducting exploration and reclamation.

(x) Such other data as may be required by the District Mining Supervisor.

(b) *Resource recovery and protection plans.* Before conducting any Federal coal development or mining operations on Federal leases or licenses, the operator/lessee shall submit and obtain approval of a resource recovery and protection plan, unless a current resource recovery and protection plan has been approved prior to August 30, 1982. If the resource recovery and protection plan is submitted solely to meet the MLA 3-year submittal requirement, the resource recovery and protection plan shall be submitted to the District Mining Supervisor. Upon receipt of a resource recovery and protection plan, the District Mining Supervisor will review such plan for completeness and for compliance with MLA. Prior to commencement of any coal development or mining operations on a Federal lease or license, a permit application package containing, among other documents, a resource recovery and protection plan and a permit application shall be submitted to the regulatory authority. On any Federal lease issued after August 4, 1976, MLA requires that a resource recovery and protection plan shall be submitted no later than 3 years after the effective date of the Federal lease. On any Federal lease issued prior to August 4, 1976, MLA requires that a resource recovery and protection plan shall be submitted no later than 3 years after the effective date of the first lease readjustment after August 4, 1976, or the effective date of the operator/lessee's election provided for at 30 CFR 211.20(b)(1), unless a current resource recovery and protection plan has been approved. Any resource recovery and protection plan submitted but not approved as of the effective date of these rules shall be revised to comply with these rules.

A resource recovery and protection plan for an LMU shall be submitted to the District Mining Supervisor as provided in 30 CFR 211.80(e)(1).

(c) The District Mining Supervisor may contact directly operators/lessees regarding MLA requirements. The resource recovery and protection plan shall contain all the requirements pursuant to MLA for the life-of-the-mine and, unless previously submitted in an LMU application or as directed by the District Mining Supervisor, shall include all of the following:

(1) Names, addresses, and telephone numbers of persons responsible for operations to be conducted under the approved plan to whom notices and orders are to be delivered; names and addresses of operators/lessees; Federal lease serial numbers; Federal license serial numbers, if appropriate; and names and addresses of surface and subsurface coal or other mineral owners of record, if other than the United States.

(2) A general description of geologic conditions and mineral resources, with appropriate maps, within the area where mining is to be conducted.

(3) A description of the proposed mining operation, including:

(i) Sufficient coal analyses to determine the quality of the minable reserve base in terms including, but not limited to, Btu content on an as-received basis, ash, moisture, sulphur, volatile matter, and fixed carbon content.

(ii) The methods of mining and/or variation of methods, basic mining equipment and mining factors including, but not limited to, mining sequence, production rate, estimated recovery factors, stripping ratios, highwall limits, and number of acres to be affected.

(iii) An estimate of the coal reserve base, minable reserve base, and recoverable coal reserves for each Federal lease included in the resource recovery and protection plan. If the resource recovery and protection plan covers an LMU, recoverable coal reserves will also be reported for the non-Federal lands included in the resource recovery and protection plan.

(iv) The method of abandonment of operations proposed to protect the unmined recoverable coal reserves and other resources.

(4) Maps and cross sections, as follows:

(i) A plan map of the area to be mined showing the following—

(A) Federal lease boundaries and serial numbers;

(B) LMU boundaries, if applicable;

(C) Surface improvements, and surface ownership and boundaries;

(D) Coal outcrop showing dips and strikes; and,

(E) Locations of existing and abandoned surface and underground mines.

(ii) Isopach maps of each coal bed to be mined and the overburden and interburden.

(iii) Typical structure cross sections showing all coal contained in the coal reserve base.

(iv) General layout of proposed surface or strip mine showing—

(A) Planned sequence of mining by year for the first 5 years, thereafter in 5-year increments for the remainder of mine life;

(B) Location and width of coal fenders; and,

(C) Cross sections of typical pits showing highwall and spoil configuration, fenders, if any, and coal beds.

(v) General layout of proposed underground mine showing—

(A) Planned sequence of mining by year for the first 5 years, thereafter in 5-year increments for the remainder of mine life;

(B) Location of shafts, slopes, main development entries and barrier pillars, panel development, bleeder entries, and permanent barrier pillars;

(C) Location of areas where pillars will be left and an explanation why these pillars will not be mined;

(D) A sketch of a typical entry system for main development and panel development entries showing centerline distances between entries and crosscuts;

(E) A sketch of typical panel recovery (e.g., room and pillar, longwall, or other mining method) showing, by numbering such mining, the sequence of development and retreat; and,

(vi) For auger mining—

(A) A plan map showing the area to be auger mined and location of pillars to be left to allow access to deeper coal;

(B) A sketch showing details of operations including coal bed thickness, auger hole spacing, diameter of holes and depth or length of auger holes.

(5) A general reclamation schedule for the life-of-the-mine. This should not be construed as meaning duplication of a permit application in a permit application package under SMCRA. The resource recovery and protection plan may cross-reference, as appropriate, a permit application submitted under SMCRA to fulfill this requirement.

(6) Any required data which are clearly duplicated in other submittals to the regulatory authority or Mine Safety and Health Administration may be used to fulfill the requirements of the above paragraphs provided that the cross-reference is clearly stated. A copy of the

relevant portion of such submittals must be included in the resource recovery and protection plan.

(7) Explanation of how MER of the Federal coal will be achieved for the Federal coal leases included in the resource recovery and protection plan. If a coal bed, or portion thereof, is not to be mined or is to be rendered unminable by the operation, the operator/lessee shall submit appropriate justification to the District Mining Supervisor for approval.

§ 211.11 Action on plans.

(a)(1) *Exploration plans.* The District Mining Supervisor after evaluating a proposed exploration plan and all comments received thereon, and after consultation with the authorized officer, and with the regulatory authority when exploration is to be conducted within an approved permit area prior to commencement of mining operations, shall promptly approve or disapprove in writing an exploration plan. In approving an exploration plan, the District Mining Supervisor shall determine that the exploration plan complies with the rules of this Part, applicable requirements of 30 CFR 815.15 or an approved State program, and any Federal lease or license terms and/or conditions. Reclamation must be accomplished as set forth in the exploration plan. The District Mining Supervisor may impose additional conditions to conform to the rules of this Part. In disapproving an exploration plan, the District Mining Supervisor shall state what modifications, if any, are necessary to achieve such conformity. No exploration plan shall be approved unless the bond, executed pursuant to the provisions of 43 CFR 3474 or 43 CFR 3410, has been determined by the authorized officer to be adequate. When the land involved in the exploration plan is under the surface management jurisdiction of an agency other than DOI, that other agency must concur with the approval terms of the exploration plan.

(2) *Resource recovery and protection plans.* No resource recovery and protection plan or modification thereto shall be approved which is not in conformance with the rules of this Part, any Federal lease or license terms and/or conditions, and is not found to achieve MER of the Federal coal within an LMU or Federal lease issued or readjusted after August 4, 1976. The determination of MER shall be made by the District Mining Supervisor based on review of the resource recovery and protection plan. No resource recovery and protection plan shall be approved prior to the filing of a complete permit application package and unless the Federal lease bond, executed pursuant to the provisions of 43 CFR 3474 has been determined by the authorized officer to be adequate.

(3) *Recoverable coal reserve estimates.* For all Federal coal leases issued or readjusted after August 4, 1976, the recoverable coal reserves or LMU recoverable coal reserves shall be those estimated by the District Mining Supervisor as of the date of approval of the resource recovery and protection plan, or the date of approval of any existing mining plan as defined at 30 CFR 740.5 (1981). If an operator/lessee credits production toward diligent development in accordance with 30 CFR 211.24, such credits shall be included in the recoverable coal reserves or LMU recoverable coal reserves estimates. The estimate of recoverable coal reserves or LMU recoverable coal reserves may only be revised as new information becomes available. Estimates of recoverable coal reserves or LMU recoverable coal reserves shall not be reduced due to any production after the original estimate made by the District Mining Supervisor.

(b) *Changes in plans by District Mining Supervisor.* (1) Approved exploration plans may be required to be revised or supplemented at any time by the District Mining Supervisor, after consultation with the operator/lessee and the authorized officer as necessary, to adjust to changed conditions, to correct oversights, or to reflect changes in legal requirements.

(2) The District Mining Supervisor, pursuant to MLA, may require approved resource recovery and protection plans to be revised or supplemented reasonably for modifications, after consultation with the operator/lessee and the regulatory authority as necessary, to adjust to changed conditions, to correct oversights, or to reflect changes in legal requirements. Such revisions shall be made in writing, as appropriate, and the District Mining Supervisor shall submit a copy to the regulatory authority.

(c) *Changes in plans by operator/lessee.* (1) The operator/lessee may propose modifications to an approved exploration plan and shall submit a written statement of the proposed change and its justification to the District Mining Supervisor. The District Mining Supervisor shall promptly approve or disapprove in writing any such modifications, after consultation with the authorized officer and the regulatory authority as necessary, or specify conditions under which they would be acceptable.

(2) The operator/lessee may propose modifications to an approved resource recovery and protection plan for any requirements under MLA, and shall submit a written statement of the proposed change and its justification to the District Mining Supervisor. The District Mining Supervisor shall promptly approve or disapprove in writing any such modifications, after consultation with the regulatory authority as necessary, or specify conditions under which they would be acceptable. Upon approval of modifications, the District Mining Supervisor shall submit a copy to the regulatory authority.

§ 211.12 Mining operations maps.

(a) *General requirements.* Upon commencement of mining operations, the operator/lessee shall maintain accurate and up-to-date maps of the mine, drawn to scales acceptable to the District Mining Supervisor. Before a mine or section of a mine is abandoned, closed, or made inaccessible, a survey of the mine or section shall be made by the operator/lessee and recorded on such maps. All excavations in each separate coal bed shall be shown in such a manner that the production of coal for any royalty reporting period can be accurately ascertained. Additionally, the maps shall show the name of the mine; name of the operator/lessee; Federal lease or license serial number(s); permit number; Federal lease and permit boundary lines; surface buildings; dip of the coal bed(s); true north; map scale; map explanation; location, diameter, and depth of auger holes; improvements; topography, including subsidence resulting from mining; geologic conditions as determined from outcrops, drill holes, exploration, or mining; any unusual geologic or other occurrences such as dikes, faults, splits, unusual water occurrences, or other conditions that may influence MER; and other information that the District Mining Supervisor may request. Copies of such maps shall be properly posted to date and furnished, in duplicate, to the District Mining Supervisor annually, or at such other times as the District Mining Supervisor requests. Copies of any maps, normally submitted to the regulatory authority, Mine Safety and Health Administration, or other State or Federal Agencies, that show all of the specific data required by this paragraph or 30 CFR 211.12 (b), (c), and (d) shall be acceptable in fulfilling these requirements.

(b) *Underground mine maps.* Underground mine maps, in addition to

the general requirements of 30 CFR 211.12(a), shall show all mine workings; the date of extension of the mine workings; an illustrative coal section at the face of each working unit; location of all surface mine fans; ventilation stoppings, doors, overcasts, undercasts, permanent seals, and regulators; direction of the ventilating current in the various parts of the mine at the time of making the latest surveys; sealed areas; known bodies of standing water in other mine workings, either in, above, or below the active workings of the mine; areas affected by squeezes; elevations of surface and underground levels of all shafts, slopes, or drifts, and elevation of the floor, bottom of the mine workings, or mine survey stations in the roof at regular intervals in main entries, panels, or sections; and sump areas. Any maps submitted to the regulatory authority to be used to monitor subsidence shall also be submitted to the District Mining Supervisor.

(c) *Surface mine maps.* Surface mine maps, in addition to the general requirements of 30 CFR 211.12(a), shall include the date of extension of the mine workings and a detailed stratigraphic section at intervals specified in the approved resource recovery and protection plan. Such maps shall show areas from which coal has been removed; the highwall; fenders; uncovered, but unmined, coal beds; and elevation of the top of the coal beds.

(d) *Vertical projections and cross sections of mine workings.* When required by the District Mining Supervisor, vertical projections and cross sections shall accompany plan views.

(e) *Accuracy of maps.* The accuracy of maps furnished shall meet standards acceptable to the District Mining Supervisor and shall be certified by a professional engineer, professional land surveyor, or other such professionally qualified person.

(f) *Liability of operator/lessee for expense of survey.* If the operator/lessee fails to furnish a required or requested map within a reasonable time, the District Mining Supervisor, if necessary, shall employ a professionally qualified person to make the required survey and map, the cost of which shall be charged to, and promptly paid by, the operator/lessee.

(g) *Incorrect maps.* If any map submitted by an operator/lessee is believed to be incorrect, and the operator/lessee cannot verify the map or supply a corrected map, the District Mining Supervisor may employ a professionally qualified person to make a survey and any necessary maps. If the survey shows the maps submitted by the operator/lessee to be substantially incorrect, in whole or in part, the cost of making the survey and preparing the maps shall be charged to, and promptly paid by, the operator/lessee.

§§ 211.13–211.19 [Reserved]

§ 211.20 Diligent development and continued operation requirement.

(a) *General requirements.* (1) Except as provided at 30 CFR 211.20(b), each Federal coal lease and LMU is required to achieve diligent development.

(2) Once the operator/lessee of a Federal coal lease or LMU has achieved diligent development, the operator/lessee shall maintain continued operation on the Federal lease or LMU for every continued operation year thereafter, except as provided in 30 CFR 211.22.

(b) Federal coal leases issued prior to August 4, 1976, until the first readjustment of the lease after August 4, 1976, shall be subject to the Federal lease terms, including those that describe the minimum production requirement, except that:

(1) An operator/lessee holding such a lease may elect to be subject to the rules of this Part by notifying the District Mining Supervisor in writing within 1 year of the effective date of the rules of this Part.

(i) Such election shall consist of a written request, in triplicate, to the District Mining Supervisor that a Federal lease(s) be subject to the rules of this Part, and shall contain the following—

(A) Name and address of the operator/lessee of record.

(B) Federal lease number(s).

(C) Certified record of annual Federal coal production since August 4, 1976, for the Federal lease(s) that the operator/lessee requests to have credited toward diligent development in accordance with 30 CFR 211.24.

(ii) Upon verification by the District Mining Supervisor of the reported annual Federal coal production, the District Mining Supervisor shall notify the operator/lessee by certified mail, return receipt requested, that the election has been approved. The effective date of the election shall be the most recent royalty reporting period prior to the submittal of the election to the District Mining Supervisor.

(2) Upon the effective date of the first lease readjustment after August 4, 1976, all such Federal leases shall be subject to the rules of this Part.

(c) Any Federal coal lease included in an LMU shall be subject to the diligent development and continued operation requirements imposed on the LMU in lieu of those diligent development and continued operation requirements that would apply to the Federal lease individually.

§ 211.21 Termination or cancellation for failure to meet diligent development and maintain continued operation.

(a) Any Federal coal lease or LMU which has not achieved diligent development shall be terminated by DOI.

(b) After an LMU has been terminated under the provision of 30 CFR 211.21(a), any Federal coal lease included in that LMU shall then be subject to the diligent development and continued operation requirements that would have been imposed on that Federal lease by the rules of this Part, as if the Federal lease had not been included in the LMU.

(c) Any Federal coal lease on which continued operation is not maintained shall be subject to cancellation.

(d) The DOI may cancel any Federal coal lease or LMU which fails to meet the requirement for submission of a resource recovery and protection plan.

§ 211.22 Extension or suspension of continued operation, 3-year resource recovery and protection plan submission requirement, and operations and production.

(a) Applications for extensions or suspensions of continued operation or 3-year resource recovery and protection plan submittals shall be filed in triplicate in the office of the District Mining Supervisor. The District Mining Supervisor, if he determines the application to be in the public interest, is authorized to act on such applications, and to terminate extensions or suspensions which have been or may be granted.

(1) The requirement for continued operation shall be suspended and the date by which a resource recovery and protection plan must be submitted shall be extended by the period of time in which the District Mining Supervisor determines that operations under the Federal coal lease or LMU are interrupted by strikes, the elements, or casualties not attributable to the operator/lessee.

(2) The District Mining Supervisor may suspend the requirement for continued operation upon the payment of advance royalty in accordance with 30 CFR 211.23 for any operation. The District Mining Supervisor, upon notifying the operator/lessee 6 months in advance, may cease to accept advance royalty in lieu of the requirement for continued operation.

(b) In the interest of conservation, the District Mining Supervisor is authorized

to act on applications for suspension of operations and production filed pursuant to 30 CFR 211.22(b) direct suspension of operations and production, and terminate such suspensions which have been or may be granted. Applications by an operator/lessee for relief from any operations and production requirements of a Federal lease shall contain justification for the suspension and shall be filed in triplicate in the office of the District Mining Supervisor.

(1) A suspension in accordance with 30 CFR 211.22(b) shall take effect as of the time specified by the District Mining Supervisor. Any such suspension of a Federal coal lease or LMU approved by the District Mining Supervisor also suspends all other terms and conditions of the Federal coal lease or LMU, except the diligent development period, for the entire period of such a suspension. Rental and royalty payments will be suspended during the period of such suspension of all operations and production, beginning with the first day of the Federal lease month on which the suspension of operations and production becomes effective. Rental and royalty payments shall resume on the first day of the Federal lease month in which operations or production is resumed. Where rentals are creditable against royalties and have been paid in advance, proper credit shall be allowed on the next rental or royalty on producing Federal leases due under the Federal lease.

(2) The minimum annual production requirements shall be proportionately reduced for that portion of a Federal lease year for which suspension of operations and production is directed or granted by the District Mining Supervisor, in the interest of conservation of recoverable coal reserves and other resources, in accordance with 30 CFR 211.22(b).

(3) The term of any Federal lease shall be extended by adding to it any period of suspension in accordance with 30 CFR 211.22(b) of operations and production.

(4) A suspension in accordance with 30 CFR 211.22(b) does not suspend the permit and the operator/lessee's reclamation obligation under the permit.

§ 211.23 Payment of advance royalty in lieu of continued operation.

(a) Advance royalty may only be accepted in lieu of continued operation upon application to and approval by the District Mining Supervisor.

(b) However, any request by an operator/lessee for suspension of the continued operation requirement and payment of advance royalty in lieu thereof shall be made no later than 30 days after the beginning of the continued operation year. If an operator/lessee requests authorization to pay advance royalty in lieu of continued operation later than 30 days after the beginning of any continued operation year, the District Mining Supervisor may condition acceptance of advance royalty on the payment of a late payment charge on the amount of the advance royalty due. The late payment charge will be calculated in accordance with 30 CFR 211.102.

(c) For advance royalty purposes, the value of the Federal coal will be calculated in accordance with 30 CFR 211.63 and this section. When advance royalty is accepted in lieu of continued operation, it shall be paid in an amount equivalent to the production royalty that would be owed on the production of 1 percent of the recoverable coal reserves or the Federal LMU recoverable coal reserves. The advance royalty rate for an LMU shall be deemed to be 8 percent where the Federal LMU recoverable coal reserves contained in the LMU would be recovered by only underground maning operations and 12½ percent where the Federal LMU recoverable coal reserves contained in the LMU would be recovered only by other mining operations. For LMU's that contain Federal LMU recoverable coal reserves that would be recovered by a combination of underground and other mining methods, the advance royalty rate shall be deemed to be 12½ percent. The unit value of the recoverable coal reserves for determining the advance royalty payment for a Federal lease or LMU shall be:

(1) The unit value for production royalty purposes of coal produced and sold under the Federal coal lease or LMU during the immediately preceding production royalty payment period; or

(2) Computed at the average unit price at which coal from other Federal leases in the same region was sold during such period, if no coal was produced and sold under the Federal coal lease or LMU during the immediately preceding royalty payment period, or if the District Mining Supervisor finds that there is an insufficient number of such sales to determine such value equitably; or

(3) Determined by the District Mining Supervisor, if there were no sales of Federal coal from such region during such period or if the District Mining Supervisor finds that there is an insufficient number of such sales to determine such value equitably.

(d) The aggregate number of years during the period of any Federal coal lease or LMU for which advance royalty may be accepted in lieu of the requirement of continued operation shall not exceed 10. For Federal leases issued prior to August 4, 1976, advance royalty shall not be accepted in lieu of continued operation for more than a total of 10 years following the first lease readjustment after August 4, 1976.

Any continued operation year in which any advance royalty is paid shall be deemed a year in which advance royalty is accepted in lieu of continued operation for the purposes of this paragraph. However, if an operator/lessee meets the requirement for continued operation in any continued operation year in which the operator/lessee has paid advance royalty, such year shall not be considered when calculating the maximum number of years for which advance royalty may be accepted for the Federal lease or LMU. The number of years for which advance royalty has been paid under any Federal coal lease prior to its inclusion in an LMU shall not be considered when calculating the maximum number of years for which advance royalty may be accepted for the LMU.

(e) The dollar amount of any production royalty for a Federal coal lease or LMU owed for any continued operation year during or subsequent to the continued operation year in which advance royalty is paid, shall be reduced (but not below zero) by the dollar amount of any advance royalty paid under that Federal lease or LMU to the extent that such advance royalty has not been used to reduce production royalty for a prior year.

(f) No advance royalty paid during the initial 20-year term of a Federal coal lease or LMU shall be used to reduce a production royalty pursuant to 30 CFR 211.23(e) after the 20th year of the Federal coal lease or LMU. For purposes of this paragraph, the initial 20-year term of a Federal lease shall commence on the effective date of the Federal lease for all Federal leases issued after August 4, 1976; on the effective date of the first lease readjustment after August 4, 1976, for all Federal leases issued prior to August 4, 1976; and on the effective date of LMU approval for all LMU's. Any advance royalty paid on a Federal lease prior to its inclusion in an LMU shall be credited to the LMU and shall be considered to have been paid on the date of LMU approval for the purposes of this paragraph, provided that the Federal lease has been included in an LMU within the initial 20-year term of the Federal lease as determined in this paragraph and to the extent that the advance royalty has not already been credited against production royalty on the Federal lease.

(g) If an operator/lessee fails to make an approved advance royalty payment in any continued operation year, the District Mining Supervisor shall inform the operator/lessee in writing that the operator/lessee is in violation of the continued operation requirement. If the operator/lessee then fails to comply with 30 CFR 211.102, the Federal lease or LMU shall be subject to cancellation pursuant to 30 CFR 211.21.

§ 211.24 Crediting of production toward diligent development.

(a) For Federal coal leases issued after August 4, 1976, all production after the effective date of the Federal lease shall be credited toward diligent development.

(b) For Federal coal leases issued prior to August 4, 1976, all production after the effective date of the first lease readjustment after August 4, 1976, shall be credited toward diligent development.

(c) For Federal coal leases issued prior to August 4, 1976, that have not been readjusted after August 4, 1976, if the operator/lessee has elected under 30 CFR 211.20 to be subject to the diligent development and continued operation requirements of the rules of this Part, all production after the effective date of the operator/lessee's election shall be applied toward diligent development.

(d) For Federal coal leases issued prior to August 4, 1976, that have not been readjusted after August 4, 1976, if the operator/lessee has elected under 30 CFR 211.20 to be subject to the diligent development and continued operation requirements of the rules of this Part, all production after August 4, 1976, that occurred prior to the effective date of the operator/lessee's election shall be applied toward diligent development if the operator/lessee so requests.

(e) For Federal coal leases issued prior to August 4, 1976, that have been readjusted after August 4, 1976, all production after August 4, 1976, that occurred prior to the effective date of the first lease readjustment after August 4, 1976, shall be applied toward diligent development if the operator/lessee so requests. Such a request shall comply with the election application provisions at 30 CFR 211.20(b)(1). Any production after such readjustment shall be applied toward diligent development pursuant to 30 CFR 211.24(b).

(f) For Federal coal leases issued prior to August 4, 1976, that are governed by the Federal lease clauses which describe the minimum production requirements until the first lease readjustment after August 4, 1976, no production prior to the effective date of that first Federal lease readjustment shall be applied toward diligent development.

(g) For LMU's, any production credited under the rules of this Part to a Federal lease prior to its inclusion in the LMU shall be applied toward diligent development for the LMU.

§ 211.25 Special logical mining unit rules.

(a) Production anywhere within the LMU, of either Federal or non-Federal recoverable coal reserves or a combination thereof, shall be applied toward satisfaction of the requirements of the rules of this Part for achievement of diligent development and continued operation for the LMU.

(b) The dates for submission of a resource recovery and protection plan and achievement of diligent development shall not be changed by any enlargement or diminution of the LMU.

§ 211.26–§ 211.39 [Reserved]

§ 211.40 Performance standards for exploration and surface and underground standards.

The following performance standards shall apply to exploration, development, production, resource recovery and protection, MER, and preparation and handling of coal under Federal leases and licenses, and LMU's.

(a) *Performance standards for exploration.* (1) The operator/lessee shall comply with the standards of the rules of this Part and with all applicable requirements of the surface management agency, 30 CFR 815.15, or an approved State program.

(2) The operator/lessee, if required by the District Mining Supervisor, shall set and cement casing in the hole and install suitable blowout prevention equipment when drilling on lands valuable or prospectively valuable for oil, gas, or geothermal resources.

(3) All exploration drill holes must be capped with at least 5 feet of cement and plugged with a permanent plugging material that is unaffected by water and hydrocarbon gases and will prevent the migration of gases and water in the drill hole under normal hole pressures. For exploration holes drilled deeper than stripping limits, the operator/lessee, using cement or other suitable plugging material approved by the District Mining Supervisor, shall plug the hole through the thickness of the coal bed(s) or mineral deposit(s) and through aquifers for a distance of at least 50 feet above and below the coal bed(s) or mineral deposit(s) and aquifers, or to the bottom of the drill hole. A lesser cap or plug may be approved by the District Mining Supervisor. Exploration activities shall be managed to prevent water pollution and mixing of ground and surface waters and ensure the safety of people, livestock, and wildlife.

(4) The operator/lessee shall retain for 1 year, unless a shorter time period is authorized by the District Mining Supervisor, all drill and geophysical logs and shall make such logs available for inspection or analysis by the District Mining Supervisor, if requested. The District Mining Supervisor, at his discretion, may require the operator/lessee to retain representative samples of drill cores for 1 year. Confidentiality of such information will be accorded pursuant to the provisions at 30 CFR 211.6.

(5) The operator/lessee may utilize exploration drill holes as surveillance wells for the purpose of monitoring the effects of subsequent operations on the quantity, quality, or pressure of ground water or mine gases only with the written approval of the District Mining Supervisor, in consultation with the regulatory authority. The operator/lessee may convert exploration drill holes to water wells only after approval of the operator/lessee's written request by the District Mining Supervisor and the surface owner or authorized officer, in consultation with the regulatory authority. All such approvals shall be accompanied by a corresponding transfer of responsibility for any liability including eventual plugging, reclamation, and abandonment. Nothing in this paragraph shall supersede or affect the applicability of any State law requirements for such a transfer, conversion, or utilization as a supply for domestic consumption.

(b) *General performance standards for surface and underground mining.*— (1) *Maximum economic recovery (MER).* Upon approval of a resource recovery and protection plan for an LMU, or for a Federal lease issued or readjustment after August 4, 1976, the operator/lessee shall conduct operations to achieve MER of the Federal coal. To determine that MER of the Federal coal will be achieved, the District Mining Supervisor shall consider the information submitted by the operator/lessee under 30 CFR 211.10(c) and/or 30 CFR 211.80(c). The District Mining Supervisor may request additional information from the operator/lessee to aid in the MER determination. The operator/lessee shall consider coal preparation operations to avoid the wasting of coal and to encourage the achievement of MER. Federal leases issued prior to August 4, 1976, that have not yet been readjusted after August 4, 1976, shall comply with MLA regarding conservation of the

recoverable coal reserves and other resources.

(2) Diligent development, continued operation, advance royalty, and 3-year resource recovery and protection plan submission requirements are addressed at 30 CFR 211.20 through 30 CFR 211.25.

(3) *Unexpected wells.* The operator/lessee shall notify the District Mining Supervisor promptly if operations encounter unexpected wells or drill holes which could adversely affect the recovery of coal during mining operations, and shall take no further action that would disturb such wells or drill holes without the approval of the District Mining Supervisor.

(4) *Resource recovery and protection.* The operator/lessee shall conduct efficient operations to recover the recoverable coal reserves; prevent wasting and conserve the recoverable coal reserves and other resources; prevent damage or degradation to coal-bearing or mineral-bearing formations; and ensure that other resources are protected upon abandonment.

(5) *Release of lease bond.* Subsequent to permanent abandonment of mining operations, the District Mining Supervisor will determine if the operator/lessee has met obligations required under the Federal lease for resource recovery and protection, and will determine if the operator/lessee has met the Federal lease requirements pertaining to rentals and royalties. The District Mining Supervisor will make appropriate recommendations to the authorized officer for reduction or termination of the Federal lease bond.

(c) *Performance standards for underground mines*—(1) *Underground resource recovery.* Underground mining operations shall be conducted so as to prevent wasting of coal and to conserve recoverable coal reserves consistent with the protection and use of other resources. No entry, room, or panel workings in which the pillars have not been completely mined within safe limits shall be permanently abandoned or rendered inaccessible, except with the prior written approval of the District Mining Supervisor.

(2) *Subsidence.* The operator/lessee shall adopt mining methods which ensure proper recovery of recoverable coal reserves under MLA, as determined by the District Mining Supervisor. Operators/lessees of underground coal mines shall adopt measures consistent with known technology in order to prevent or, where the mining method used requires subsidence, control subsidence, maximize mine stability, and maintain the value and use of surface lands consistent with 30 CFR 784.20 and 30 CFR 817.121, 817.122, 817.124, and 817.126, or applicable requirements of an approved State program. Where pillars are not removed and controlled subsidence is not part of the resource recovery and protection plan, pillars of adequate dimensions shall be left for surface stability, giving due consideration to the thickness and strength of the coal beds and the strata above and immediately below the coal beds.

(3) *Top coal.* Top coal may be left in underground mines only upon approval by the District Mining Supervisor. The determination of mining height in thick coal beds will take into consideration safety factors, available equipment, overall coal bed thickness, and MER. The bottom coal left, if determined by the District Mining Supervisor to be of a minable thickness, should be maintained at a uniform thickness to allow recovery in the future as new technology is developed and economics allow.

(4) *Multiple coal bed mining.* (i) In general, the recoverable coal reserves in the upper coal beds shall be mined before the lower coal beds; simultaneous workings in each upper coal bed shall be kept in advance of the workings in each lower coal bed. The District Mining Supervisor may authorize mining of any lower coal beds before mining the upper coal bed(s) only after a technical justification, submitted to the District Mining Supervisor by the operator/lessee, shows that recovery of all coal bed(s) will not be adversely affected.

(ii) In areas subject to multiple coal bed mining, the protective barrier pillars for all main and secondary development entries, main haulageways, primary aircourses, bleeder entries, and manways in each coal bed shall be superimposed regardless of vertical separation or rock competency; however, modifications and exceptions to, or variations from, this requirement may be approved in advance by the District Mining Supervisor.

(5) The District Mining Supervisor shall approve the conditions under which an underground mine, or portions thereof, will be temporarily abandoned, pursuant to the rules of this Part.

(6) *Barrier pillars left for support.* (i) The operator/lessee shall not, without prior consent of the District Mining Supervisor, mine any recoverable coal reserves or drive any underground workings within 50 feet of any of the outside boundary lines of the federally leased or licensed land, or within such greater distance of said boundary lines as the District Mining Supervisor may prescribe with consideration for State or Federal environmental or safety laws. The operator/lessee may be required to pay for unauthorized mining of barrier pillars. The District Mining Supervisor may require that payment shall be up to, and include, the full value of the recoverable coal reserves mined from the pillars. The drilling of any lateral holes within 50 feet of any outside boundary shall be done in consultation with the District Mining Supervisor.

(ii) If the coal in adjoining premises has been worked out, an agreement shall be made with the coal owner prior to the mining of the coal remaining in the Federal barrier pillars which otherwise may be lost. If the water level beyond the pillar is below the operator/lessee's adjacent operations, and all the safety factors have been considered, the operator/lessee, on the written order of the District Mining Supervisor, shall mine out and remove all available Federal recoverable coal reserves in such barrier if it can be mined without undue hardship to the operator/lessee; with due consideration for safety; and pursuant to existing mining, reclamation, and environmental laws and rules. Either the operator/lessee or the District Mining Supervisor may initiate the proposal to mine coal in a barrier pillar.

(7) The abandonment of a mining area shall require the approval of the District Mining Supervisor.

(d) *Performance standards for surface mines.* (1) Pit widths for each coal bed shall be engineered and designed so as to eliminate or minimize the amount of coal fender to be left as a permanent pillar on the spoil side of the pit.

(2) The amount of bottom or rider coal beds wasted in each pit will be minimized consistent with individual mine economics and the coal quality standards that must be maintained by the operation.

(3) The abandonment of a mining area shall require the approval of the District Mining Supervisor.

(4) If a coal bed exposed by surface mining or an accumulation of slack coal or combustible waste becomes ignited, the operator/lessee shall immediately take all necessary steps to extinguish the fire and protect the remaining coal.

(5) The District Mining Supervisor shall approve the conditions under which a surface mine, or portions thereof, will be temporarily abandoned, pursuant to the rules of this Part.

(6) *Barrier or boundary coal.* The operator/lessee shall be encouraged by the District Mining Supervisor, in the interest of conservation of recoverable coal reserves and other resources, to mine coal up to the Federal lease or license boundary line; provided that, the mining is in compliance with existing

State and Federal mining, environmental and reclamation laws and rules, the mining does not conflict with existing surface rights, and the mining is carried out without undue hardship to the operator/lessee and with due consideration for safety.

(e) *Performance standards for auger mines.* (1) If auger mining is proposed, the District Mining Supervisor shall take into account the percentage of recovery, which in general shall exceed 30 percent, and the probable effect on recovering the remaining adjacent recoverable coal reserves by underground mining. If underground mining from the highwall or outcrop is contemplated in the foreseeable future, auger mining may not be approved if underground mining would ensure greater recovery of the unmined recoverable coal reserves. Where auger mining is authorized, the District Mining Supervisor will require a sufficient number and size of pillars at regular intervals along the highwall or outcrop to ensure access to the unmined recoverable coal reserves.

(2) A plan for recovery of recoverable coal reserves by auger methods shall be designed to achieve MER.

(3) Auger mining must comply with the rules of this Part, and 30 CFR Chapter VII or applicable requirements of an approved State program.

§ 211.41 Completion of operations and permanent abandonment.

(a) Before permanent abandonment of exploration operations, all openings and excavations shall be closed, backfilled, or otherwise permanently dealt with in accordance with sound engineering practices and according to the approved exploration plan. Drill holes, trenches, and other excavations for exploration shall be abandoned in such a manner as to protect the surface and not endanger any present or future underground operation, or any deposit of coal, oil, gas, mineral resources, or ground water. Areas disturbed by exploration operations will be graded, drained, and revegetated.

(b) Upon permanent abandonment of mining operations, the District Mining Supervisor will require that the unmined recoverable coal reserves and other resources be adequately protected. Upon completion of abandonment, the District Mining Supervisor will inform the authorized officer and regulatory authority as to whether the abandonment has been completed in compliance with the rules of this Part.

§ 211.42–§ 211.61 [Reserved]

§ 211.62 Reports.

(a) *Exploration reports.* The operator/lessee shall file with the District Mining Supervisor the information required in 30 CFR 211.62(b). Such filing shall be within 30 days after the end of each calendar year and promptly upon completion or suspension of exploration operations, unless otherwise provided in the exploration license or Federal lease, and at such other times as the District Mining Supervisor may request.

(b) *Exploration report content.* The exploration report shall contain the following information:

(1) Location(s) and serial number(s) of the federally leased or licensed lands.

(2) Nature of exploration operations.

(3) Number of holes drilled and/or other work performed during the year or report period.

(4) Total footage drilled during the year or other period as determined by the District Mining Supervisor.

(5) Map showing all holes drilled, other excavations, and the coal outcrop lines.

(6) Analyses of coal and other pertinent tests obtained from exploration operations during the year.

(7) Copies of all in-hole mechanical or geophysical stratigraphic surveys or logs, such as electric logs, gamma ray-neutron logs, sonic logs, or any other logs. The records shall include a log of all strata penetrated and conditions encountered such as water, quicksand, gas, or any unusual conditions.

(8) Status of reclamation of the disturbed areas.

(9) A statement on availability and location of all drill hole logs and representative drill cores retained by the operator/lessee pursuant to 30 CFR 211.40(a).

(10) Any other information requested by the District Mining Supervisor.

(c) Any coal reserve base, minable reserve base or recoverable coal reserves estimates generated from an exploration license shall be submitted to the District Mining Supervisor within 1 year after completion of drilling operations.

(d) *Production reports and payments.* (1) Operators/lessees shall report on USGS Form 9–373A, within 30 days after expiration of the period covered by the report, all coal mined, the basis for computing Federal royalty and any other form requirements, and shall make all payments due. Acceptance of the report and payment shall not be construed as an accord and satisfaction on the operator/lessee's Federal royalty obligation.

(2) Licensees shall report all coal mined on a semiannual basis on the report form provided.

(3) Non-Federal LMU production shall be reported in accordance with 30 CFR 211.80(h)(1).

(e) *Penalty.* If an operator/lessee knowingly records or reports less than the true weight or value of coal mined, the District Mining Supervisor shall impose a penalty equal to either double the amount of Federal royalty due on the shortage or the full value, as determined in 30 CFR 211.63, of the shortage. If, after notice, an operator/lessee or licensee maintains false records or files false reports, the District Mining Supervisor may recommend to the authorized officer that action be initiated to cancel the Federal lease or license, in addition to the imposition of any penalties.

(f) *Confidentiality.* Confidentiality of any information required under this section shall be determined in accordance with 30 CFR 211.6.

§ 211.63 Royalties.

(a) Provisions for the payment of advance royalty in lieu of continued operation are contained at 30 CFR 211.23.

(b) An overriding royalty interest, production payment, or similar interest that exceeds 50 percent of royalty first payable to the United States under the Federal lease, or when added to any other overriding royalty interest exceeds that percentage, except those created in order to finance a mine, shall not be created by a Federal lease transfer or surface owner consent. However, when an interest in the Federal lease or operating agreement is transferred, the transferor may retain an overriding royalty in excess of the above limitation if he shows that he has made substantial investments for improvements directly related to exploration, development, and mining on the land covered by the transfer that would justify a higher payment.

(c)(1) The District Mining Supervisor may waive, suspend, or reduce the rental on a Federal lease, or reduce the Federal royalty, but not advance royalty, on a Federal lease or portion thereof. The District Mining Supervisor shall take such action for the purpose of encouraging the greatest ultimate recovery of Federal coal, and in the interest of conservation of Federal coal and other resources, whenever in his judgment it is necessary to promote development, or if he finds that the Federal lease cannot be successfully operated under its terms. In no case shall the District Mining Supervisor

reduce to zero any royalty on a producing Federal lease.

(2) An application for any of the above benefits shall be filed in triplicate in the office of the District Mining Supervisor. The application shall contain the serial number of the Federal lease, the Bureau of Land Management State Office, the name and address of the record title holder and any operator/lessee, and the description of the lands in the manner provided by 43 CFR 3471.1.

(i) Each application shall include the name and location of the mine; a map showing the extent of the existing, proposed or adjoining mining operations; a tabulated statement of the Federal coal mined, if any, and subject to Federal royalty for the existing or adjoining operation covering a period of not less than 12 months before the date of filing of the application; and existing Federal rental and royalty rates on Federal leases covered by the application.

(ii) Each application shall contain a detailed statement of expenses and costs of operating the entire mine, the income from the sale of coal, and all facts indicating whether the mine can be successfully operated under the Federal rental and royalty provisions fixed in the Federal lease or why the reduction is necessary to promote development. Where the application is for a reduction in Federal royalty, full information shall be furnished as to whether royalties or payments out of production are paid to parties other than the United States, the amounts so paid, and efforts made to reduce them, if any. If the Federal lease included in the application is not part of nor adjoining an operating mine, these detailed financial data may be obtained from another operating mine which is in close proximity and for which the District Mining Supervisor has deemed to have similar operating characteristics.

(iii) The applicant shall also file a copy of agreements, between the operator/lessee and the holders of any royalty interests or production payments other than those created in order to finance a mine, to a reduction of all other royalties from the Federal lease so that the total royalties and production payments owed the holders of these interests will not be in excess of one-half of the Federal royalties, should the Federal royalty reduction be granted.

(3) If the applicant does not meet the criteria of the rules of this Part, the District Mining Supervisor shall reject such application or request more data from the operator/lessee.

(4) If the applicant meets the criteria of the rules of this Part, the District Mining Supervisor shall act on the application.

(d) Operators/lessees shall submit Federal royalty payments as provided for in the Federal lease. The payment shall be made within 30 days after the end of the royalty reporting period for which the royalty accrued.

(e) Where Federal royalty is calculated on a cents-per-ton basis, it shall be based on the actual weight of coal and shall accrue on the sale or use of the coal. In addition, where coal placed in inventory exceeds that which the District Mining Supervisor determines to be required for normal mining and processing operations, the Federal royalty shall also be paid on that excess estimated tonnage in inventory.

(f) Where Federal royalty is calculated on a percentage basis, the value of coal for Federal royalty purposes shall be the gross value at the point of sale, normally the mine, except as provided at 30 CFR 211.63(h). For captive operations or other than arms-length transactions, the District Mining Supervisor shall determine gross value and the point of sale.

(g) The gross value shall be the unit sale or contract price times the number of units sold, unless MMS determines that:

(1) A contract of sale or other business arrangement between the operator/lessee and a purchaser of some or all of the coal produced from the Federal lease is not a bona fide transaction between independent parties because it is based in whole or in part upon considerations other than the value of the coal; or,

(2) No consideration is received from some or all of such coal because the operator/lessee is consuming such coal or adding it to inventories, and for which Federal royalty is due and payable.

In either case, MMS shall determine the gross value of such coal taking into account:

(i) Any consideration received or paid by the operator/lessee in other related transactions.

(ii) The average price paid for coal of like quality produced from the same general area during the Federal lease month.

(iii) Contracts or other business arrangements, between coal producers and purchasers for the sale of coal other than coal produced under such Federal lease, which are comparable in terms, volume, time of execution, area of supply, and other circumstances.

(iv) Mining cost plus reasonable profit margin.

(v) Prices reported to a public utility commission and/or the Federal Energy Regulatory Commission.

(vi) Such other relevant factors as the District Mining Supervisor may deem appropriate.

(h) If additional preparation of the coal is performed prior to sale, such costs shall be deducted from the gross value in determining value for Federal royalty purposes. The District Mining Supervisor will allow such deductions only when, in his judgment and subject to his audit, the operator/lessee provides an accurate account of the costs incurred. However, the following shall not be deducted from the gross value in determining value for Federal royalty purposes: costs of primary crushing, storing, and loading; treatment with chemicals to prevent freeezing; treatment with oil to suppress dust in transit; and, other preparation of the coal which in the judgment of the District Mining Supervisor does not enhance the quality of the coal.

(i) If a Federal coal lease that provides for a percentage Federal royalty is developed by *in situ* technology, the gross value of production for the purpose of computing royalty shall be determined by MMS.

(j) If a Federal coal lease that provides for a cents-per-ton Federal royalty is developed by *in situ* technology, MMS will establish a procedure for estimating tonnage for royalty purposes.

(k) In the event waste piles or slurry ponds are reworked to recover coal, or if a market becomes available to sell the waste products containing coal, the operator/lessee shall pay Federal royalty at a rate specified in the Federal lease at the time of recovery. The operator/lessee shall make payment based on the Federal share of the coal when the coal is recovered regardless of whether it is stored on Federal lands. Where such waste containing coal from a Federal lease is mixed with similar waste from private lands, the operator/lessee shall maintain accurate records from which Federal ownership of coal in the waste may be determined. However, nothing in this section requires payment of a Federal royalty on Federal coal for which a Federal royalty has already been paid.

§ 211.64–§ 211.65 [Reserved]

§ 211.66 Maintenance of and access to records.

(a) Operators/lessees shall maintain current and accurate records for the Federal lease or LMU showing:

(1) The type, quality, and weight of all coal mined, sold, used on the premises,

or otherwise disposed of, and all coal in storage (remaining in inventory).

(2) The prices received for all coal sold and to whom and when sold.

(b) The District Mining Supervisor and the Associate Director for Royalty Management shall have access to all records of the operator/lessee pertaining to compliance with Federal lease terms relating to Federal royalties, including, but not limited to:

(1) Qualities and quantities of all coal mined, processed, sold, delivered, or used by the operator/lessee.

(2) Prices received for mined or processed products, prices paid for like or similar products, and internal transfer prices.

(3) Costs of mining, processing, handling, and transportation.

(c) Licensees must maintain a current record of all coal mined and/or removed.

(d) Operators/lessees will retain these records for a period of time as determined by the District Mining Supervisor and the Associate Director for Royalty Management in accordance with current MMS rules and procedures.

§ 211.67–§ 211.69 [Reserved]

§ 211.70 Inspections.

(a) The operator/lessee shall provide access, at all reasonable times, to the District Mining Supervisor for inspection or investigation of operations in order to determine whether the operations are in compliance with all applicable laws, rules, and orders; the terms and conditions of the Federal lease or license; and requirements of any approved exploration plan for:

(1) Abandonment.

(2) Environmental protection and reclamation practices.

(b) The operator/lessee shall provide access, at all reasonable times, to the District Mining Supervisor or the Associate Director for Royalty Management for inspection or investigation of operations in order to determine whether the operations are in compliance with all applicable laws, rules, and orders; the terms and conditions of the Federal lease or license; and requirements of any approved resource recovery and protection plan for:

(1) Production practices.

(2) Development.

(3) Resource recovery and protection.

(4) Diligent development and continued operation.

(5) Audits of Federal rental and royalty payments on producing Federal leases.

(6) Abandonment.

(7) MER determinations.

§ 211.71 Notices and orders.

(a) *Address of responsible party.* Before beginning operations, the operator/lessee shall inform the District Mining Supervisor in writing of the operator/lessee's post office address and the name and post office address of the superintendent or designated agent who will be in charge of the operations and who will act as the local representative of the operator/lessee. Thereafter, the District Mining Supervisor shall be informed of any changes.

(b) *Receipt of notices and orders.* The operator/lessee shall be construed to have received all notices and orders that are mailed by certified mail, return receipt requested, to the mine office or handed to a responsible official connected with the mine or exploration site for transmittal to the operator/lessee or his local representative.

§ 211.72 Enforcement.

(a) If the District Mining Supervisor determines that an operator/lessee has failed to comply with the rules of this Part, the terms and conditions of the Federal lease or license, the requirements of approved exploration or resource recovery and protection plans, or orders of the District Mining Supervisor, and such noncompliance does not threaten immediate and serious damage to the mine, the deposit being mined, valuable ore-bearing mineral deposits or other resources, or affect the royalty provisions of the rules of this Part, the District Mining Supervisor shall serve a notice of noncompliance upon the operator/lessee by delivery in person to him or his agent, or by certified mail, return receipt requested, addressed to the operator/lessee at his last known address. Failure of the operator/lessee to take action in accordance with the notice of noncompliance within the time limits specified by the District Mining Supervisor shall be grounds for cessation of operations upon notice by the District Mining Supervisor. The District Mining Supervisor may also recommend to the authorized officer the initiation of action for cancellation of the Federal lease or license and forfeiture of any Federal lease bonds.

(b) The notice of noncompliance shall specify in what respect(s) the operator/lessee has failed to comply with the rules of this Part, the terms and conditions of the Federal lease or license, the requirements of approved exploration or resource recovery and protection plans, or orders of the District Mining Supervisor, and shall specify the action that must be taken to correct such noncompliance and the time limits within which such action must be taken.

(c) If, in the judgment of the District Mining Supervisor, an operator/lessee is conducting activities which fail to comply with the rules of this Part, the terms and conditions of the Federal lease or license, the requirements of aproved exploration or resource recovery and protection plans, or orders of the District Mining Supervisor, and/or which threaten immediate and serious damage to the mine, the deposit being mined, valuable ore-bearing mineral deposits, or, regarding exploration, the environment, the District Mining Supervisor shall order the immediate cessation of such activities without prior notice of noncompliance.

(d) A written report shall be submitted by the operator/lessee to the District Mining Supervisor when such noncompliance has been corrected. Upon concurrence by the District Mining Supervisor that the conditions which warranted the issuance of a notice or order of noncompliance have been corrected, the District Mining Supervisor shall so notify the operator/lessee in writing.

(e) The District Mining Supervisor shall enforce requirements of SMCRA only if he finds a violation, condition, or practice that he determines to be an emergency situation for which an authorized representative of the Secretary is required to act pursuant to 30 CFR 843.11 and 30 CFR 843.12.

§ 211.73 Appeals.

Decisions or orders issued by MMS under 30 CFR 211 may be appealed pursuant to 30 CFR Part 290, except that decisions or orders issued by the District Mining Supervisor under 30 CFR 211.72(e) are subject to appeal pursuant to 43 CFR Part 4.

§ 211.74–§ 211.79 [Reserved]

§ 211.80 Logical mining units.

(a) *General.* An LMU shall become effective only upon approval by the District Mining Supervisor. An LMU may be enlarged by the addition of other Federal coal leases or with interests in non-Federal coal deposits, or both, in accordance with 30 CFR 211.80(g). An LMU may be diminished by creation of other separate Federal leases or LMU's, in accordance with 30 CFR 211.80(g).

(b) The District Mining Supervisor may direct, or an operator/lessee may initiate, the establishment of an LMU containing only Federal coal leases issued after August 4, 1976. The District Mining Supervisor may direct, or an operator/lessee may initiate, the establishment of an LMU containing

Federal coal leases issued prior to August 4, 1976, provided that the operators/lessees consent to making all such Federal leases within the LMU subject to the uniform requirements for submittal of a resource recovery and protection plan, LMU recoverable coal reserves exhaustion, diligent development, continued operation, MER, advance royalty, and royalty reporting periods (but not royalty rates) made applicable by the LMU stipulations and the rules of this Part. Any Federal lease included in an LMU shall have its terms amended as necessary so that its terms and conditions are consistent with the stipulations required for the approval of the LMU pursuant to 30 CFR 211.80(e).

(c) *Contents of an LMU application.* An operator/lessee must submit five copies of an LMU application to the District Mining Supervisor if the operator/lessee is applying on his own initiative to combine lands into an LMU, or if directed to establish an LMU by the District Mining Supervisor in accordance with 30 CFR 211.80(b). Such application shall include the following:

(1) Name and address of the designated operator/lessee of the LMU.

(2) Federal lease serial numbers and description of the land and all coal beds considered to be of minable thickness within the boundary of the LMU. Identification of those coal beds proposed to be excluded from any Federal lease which would be a part of the LMU.

(3) Documents and related information supporting a finding of effective control of the lands to be included in the LMU.

(4) Sufficient data to enable the District Mining Supervisor to determine that MER of the Federal recoverable coal reserves will be achieved by establishment of the LMU. If a coal bed, or portion thereof, is proposed not to be mined or to be rendered unminable by the operation, the operator/lessee shall submit appropriate justification to the District Mining Supervisor for approval.

(5) Any other information required by the District Mining Supervisor.

(6) If any confidential information is included in the submittal and is identified as such by the operator/lessee, it shall be treated in accordance with 30 CFR 211.6.

(d) *Consultation.* (1) Prior to approval, the District Mining Supervisor shall consult with the operator/lessee about any Federal recoverable coal reserves within the LMU that the operator/lessee does not intend to mine and any Federal recoverable coal reserves that the operator/lessee intends to relinquish. The District Mining Supervisor shall also consult with the operator/lessee about Federal lease revisions to make the time periods for resource recovery and protection plan submittals, the 40-year LMU recoverable coal reserves exhaustion requirement, and diligent development, continued operation, advance royalty and Federal rental and royalty collection requirements applicable to each producing Federal lease consistent with the LMU stipulations.

(2) The public participation procedures of 30 CFR 211.5 shall be completed prior to approval of an LMU.

(e) *Stipulations.* Prior to the approval of an LMU, the District Mining Supervisor shall notify the operator/lessee and authorized officer of stipulations required for the approval of the proposed LMU. The LMU stipulations shall provide for:

(1) The submittal, within 3 years from the effective date of LMU approval, of a resource recovery and protection plan that contains the information required by 30 CFR 211.10(c) for all Federal and non-Federal lands within the LMU.

(2) A schedule for the achievement of diligent development and continued operation for the LMU. The schedule shall reflect the date for achieving diligent development and maintaining continued operation of the individual Federal leases included in the LMU, consistent with the rules of this Part. An operator/lessee may request to pay advance royalty in lieu of continued operation in accordance with 30 CFR 211.23.

(3) Uniform reporting periods for Federal rental and royalty on Federal leases.

(4) The revision, if necessary, of terms and conditions of the individual Federal leases included in the LMU. The terms and conditions of the Federal leases, except for Federal royalty rates, shall be amended so that they are consistent with the stipulations of the LMU.

(5) Estimates of the Federal LMU recoverable coal reserves, and non-Federal LMU recoverable coal reserves, using data acquired by generally acceptable exploration methods.

(6) Beginning the 40-year LMU recoverable coal reserves exhaustion requirement on the date that coal is first produced from the LMU, after LMU approval, as determined during the first royalty reporting period following such date.

(7) Any other condition that the District Mining Supervisor determines to be necessary for the efficient and orderly operation of the LMU.

(f) *Criteria for approving the establishment of an LMU.* The District Mining Supervisor shall, except for good cause stated in a decision disapproving the application, approve an LMU if it meets the following criteria:

(1) The LMU fully meets the LMU definition.

(2) Mining operations on the LMU will achieve MER of Federal recoverable coal reserves within the LMU. A single operation may include a series of excavations.

(3) All single Federal leases that are included in more than one LMU shall be segregated into two or more Federal leases. If only a portion of a Federal lease is included in an LMU, the remaining land shall be segregated into another Federal lease. The District Mining Supervisor will consult with the authorized officer about the segregation of such Federal leases. The operator/lessee may apply to relinquish any such portion of a Federal lease under 43 CFR 3452.1.

(4) The operator/lessee has agreed to the LMU stipulations required by the District Mining Supervisor for approval of the LMU.

(5) The LMU does not exceed 25,000 acres, including both Federal and non-Federal lands.

(g) *Modification of an LMU.* (1) The boundaries of an LMU may be modified either upon application by the operator/lessee and approval of the District Mining Supervisor after consultation with the authorized officer, or by direction of the District Mining Supervisor after consultation with the authorized officer. In accordance with 30 CFR 211.11(a)(3), the District Mining Supervisor may adjust only the estimate of LMU recoverable coal reserves pursuant to departmental actions or orders that modify the LMU boundaries, or upon approval of an operator/lessee application.

(2) Upon application by the operator/lessee, an LMU may be enlarged by the addition of other Federal coal leases or with interests in non-Federal coal deposits, or both. The LMU boundaries may also be enlarged as the result of the enlargement of a Federal lease in the LMU, pursuant to 43 CFR 3432. An LMU may be diminished by creation of other separate Federal leases or LMU's or by the relinquishment of a Federal lease or portion thereof, pursuant to 43 CFR 3452.

(3) In considering an application for the modification of an LMU, the District Mining Supervisor shall consider modifying the LMU stipulations, including the production requirement for commercial quantities.

(4) Pursuant to 30 CFR 211.80(e), the 40-year mine-out period for an LMU shall not be extended as the result of the enlargement of an LMU or as the result

of the revision or amendment of a resource recovery and protection plan.

(h) *Administration of LMU operations.* An LMU shall be administered in accordance with the following criteria:

(1) Where production from non-Federal lands in the LMU is the basis, in whole or in part, for satisfaction of the requirements for diligent development or continued operation, the operator/lessee shall provide a certified report of such production, as determined by the District Mining Supervisor. The certified report shall include a map showing the area mined and the amount of coal mined.

(2) *Diligent development, continued operation and advance royalty.* Operators/lessees must comply with the diligent development, continued operation, and advance royalty requirements contained at 30 CFR 211.20 through 30 CFR 211.25.

(3) Operators/lessees must comply with the LMU stipulations.

§ 211.81–§ 211.99 [Reserved]

§ 211.100 [Reserved]

§ 211.101 Audits.

An audit of the accounts and books of operators/lessees for the purpose of determining compliance with Federal lease terms relating to Federal royalties may be required annually or at other times as directed by the Associate Director for Royalty Management. The audit shall be performed by a qualified independent certified public accountant or by an independent public accountant licensed by a State, territory, or insular possession of the United States or the District of Columbia, and at the expense of the operator/lessee. The operator/lessee shall furnish, free of charge, duplicate copies of audit reports that express opinions on such compliance to the Associate Director for Royalty Management within 30 days after the completion of each audit. Where such audits are required, the Associate Director for Royalty Management will specify the purpose and scope of the audit and the information which is to be verified or obtained.

§ 211.102 Late payment or underpayment charges.

(a) The failure to make timely or proper payment of any monies due pursuant to leases and contracts subject to these regulations will result in the collection by the Minerals Management Service (MMS) of the full amount past due plus a late payment charge. Exceptions to this late payment charge may be granted when estimated payments on minerals production have already been made timely and otherwise in accordance with instructions provided by MMS to the payor. However, late payment charges assessed with respect to any Indian lease, permit, or contract shall be collected and paid to the Indian or tribe to which the amount overdue is owed.

(b) Late payment charges are assessed on any late payment or underpayment from the date that the payment was due until the date on which the payment is received in the appropriate MMS accounting office. Payments received after 4 p.m. local time on the date due will be acknowledged as received on the following workday.

(c) Late payment charges are calculated on the basis of a percentage assessment rate. In the absence of a specific lease, permit, license, or contract provision prescribing a different rate, this percentage assessment rate is prescribed by the Department of the Treasury as the "Treasury Current Value of Funds Rate."

(d) This rate is available in the Treasury Fiscal Requirements Manual Bulletins that are published prior to the first day of each calendar quarter for application to overdue payments or underpayments in the new calendar quarter. The rate is also published in the Notices section of the **Federal Register** and indexed under "Fiscal Service/Notices/Funds Rate; Treasury Current Value."

(e) Late payment charges apply to all underpayments and payments received after the date due. These charges include production, minimum, or advance royalties; assessments for liquidated damages; or any other payments, fees, or assessments that a lessee/operator/payor is required to pay by a specified date. The failure to pay past due payments, including late payment charges, will result in the initiation of other enforcement proceedings.

§ 211.103–§ 211.999 [Reserved]

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Part VII

Environmental Protection Agency

Asbestos Reporting Requirements

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 763

[OPTS-84004B; TSH-FRL 2124-4]

Asbestos Reporting Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This final rule, under the authority of section 8(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2607(a), requires reporting to EPA by asbestos manufacturers, importers, and processors. The information sought includes data on the quantities of asbestos used in making products, employee exposure data, and waste disposal and pollution control equipment data. Reported information will be utilized by EPA and other Federal agencies in considering the regulation of asbestos.

DATE: This regulation becomes effective on August 30, 1982.

FOR FURTHER INFORMATION CONTACT: Douglas G. Bannerman, Industry Assistance Office (TS-799), Environmental Protection Agency, Rm. E-511, 401 M St., SW., Washington, D.C. 20460, Toll free: (800-424-9065). In Washington, D.C: (554-1404). Outside the USA: (Operator-202-544-1404).

SUPPLEMENTARY INFORMATION:

OMB Control Number: (2000-0478).

I. Introduction

EPA proposed a rule in the **Federal Register** of January 26, 1981 (46 FR 8200) under section 8(a) of the Toxic Substances Control Act (TSCA), to obtain information on industrial and commercial uses of asbestos. The Agency received 80 written comments on the proposal and held one public meeting. This preamble explains the provisions and procedures of the final rule and the changes EPA has made to reduce the burden of the rule.

The basic design of the rule remains unchanged; it divides the asbestos industry into two groups for reporting purposes. EPA will require detailed information on EPA Form 7710-36, "Reporting Commercial and Industrial Uses of Asbestos," from the first group—persons who mine, mill, or import bulk asbestos, or process it to form an asbestos mixture or product, such as asbestos paper. The latter persons are called "primary processors of asbestos." This first group must report within 90 days of the effective date of this rule.

EPA will require reporting in two phases for the second group—secondary processors of asbestos (secondary processors of asbestos make products from asbestos mixtures, not bulk asbestos), and persons who import asbestos mixtures or other products that contain asbestos. In the first phase, companies will have 60 days from the effective date of the rule to identify themselves and the asbestos mixtures they process or import on EPA Form 7710-37, "Reporting Secondary Processing and Importation of Asbestos Mixtures." EPA will then select a sample of respondents from this identification phase to complete the detailed EPA Form 7710-36 in the second phase of reporting for this group.

After considering the substantive comments to the proposed rule, the Agency has changed several provisions of the proposed rule to reduce the burden on repondents without significantly decreasing the value of the information that this rule will collect. The two primary changes from the proposal are (1) respondents must submit data from only 3 years on EPA Form 7710-36 and (2) the recordkeeping requirements for customer lists and monitoring data are eliminated. A full discussion of the substantive comments and EPA's responses to those comments can be found in a document entitled "Public Comments on the Proposed TSCA Section 8(a) Asbestos Reporting Rule" which is part of the public record for this rule and is incorporated into this document.

II. Purpose of the Rule

This rule will obtain current information about major aspects of asbestos manufacturing, processing, and importation to support the Agency's asbestos risk investigation. Under TSCA, EPA is examining the costs and the benefits to society from all applications of asbestos in order to decide, within a range of potential options, what actions may be necessary to adequately protect the public health. The investigation is considering the various Federal authorities now regulating different aspects of asbestos exposures, to examine the effectiveness of current regulatory activities. In addition to providing data for the TSCA investigation, this information rule will support decisions on a number of potential Federal actions by providing a total picture of the current situation that will help focus further activities in the most appropriate manner.

Information obtained by this rule, along with already available data, will be used to describe the exposures and economics of asbestos use to the extent needed for determining the cost and effectiveness of potential risk-reduction steps. The Agency will consider this reported information in calculating the extent of exposure from asbestos and in determining where the exposures present an unreasonable risk. The Agency cannot now adequately determine what asbestos-containing products are currently made and who makes them. While there are over 3,000 existing patents for applications of asbestos, there is no information on which ones have been used commercially. For example, persons who commented on the proposed reporting rule identified some products which the Agency had previously not identified as containing asbestos. Individual reports which identify firms, production sites, and asbestos products will provide an inventory of asbestos use that is not presently available.

The regulatory investigation now underway is examining the separate and cumulative exposures to all types of populations that occur during production, manufacturing, use, and disposal of asbestos products. Concurrently, EPA scientists are developing a health risk assessment to use in quantitatively predicting adverse health effects resulting from exposure to asbestos. Information from this rule will permit the Agency to attribute accurately the risk in specific industries or from specific products to a portion of the overall cumulative risk. The Agency will use the data to identify areas where exposure levels should be reduced. The reports will also identify industries and products that require no further consideration.

The Agency is assessing all available information and conducting factual discussions with industry. The information collected through this rule will offer a neutral basis from which the Agency can establish agreements, as appropriate, for industry to take voluntary steps to reduce the levels of risk. The Agency will encourage industry to adopt voluntary actions to control exposure levels.

EPA expects to initiate regulatory proceedings to control exposures in cases where non-regulatory actions are not appropriate. The Agency will examine the various Federal statutes to find the most appropriate authority to effect the necessary control. If TSCA provides the proper authority, the Agency may take actions to control specific uses of asbestos which involve risks that are found to be "unreasonable" within the meaning of section 6 of TSCA. The Agency may

determine that labelling of products would sufficiently reduce the risk.

If the Agency determines that regulatory measures are warranted under the authority of section 6 of TSCA, the Agency will use information from this rule to support regulatory impact analyses required under Executive Order 12291. A complete data base will allow the Agency to choose and document better the most cost-effective regulatory approach. The Agency will consider all relevant information that it can reasonably obtain from the current manufacturers and processors who would be most affected by regulations.

A. Need for the Data

This reporting is being required because adequate data are not otherwise available for the present investigation to determine where unreasonable risks from asbestos exist and the appropriate approaches to reduce those risks. Information that is currently available to the Agency is sufficient as the basis for qualitative generalizations about both the value of using asbestos in its various application and the risks from those activities. Yet, the Agency has no set of information that it can reference in quantifying either the risk from or the value of the various products and product subcategories. Before drawing any final conclusions about asbestos, the Agency needs a data base that it can use to characterize the current situation with a greater degree of accuracy.

EPA has examined all information presently available to Federal agencies and solicited information from industry prior to the issuance of this rule. Agency personnel and contractors reviewed the extensive literature concerning asbestos; obtained information from other Federal agencies; and developed new data and made site visits when possible. The search for information is described in an internal EPA document entitled, "Technical Information Summary" (TIS), which is part of the public record for this rule. The TIS summarizes the various sources of available information both in published literature and from Federal agencies, and it evaluates the usefulness of the information to the Agency. Additionally, the TIS describes efforts by EPA contractors to conduct necessary analyses and the problems they have encountered.

Briefly, the "Technical Information Summary" contains the following conclusions about Government and industry documents that are available: While information is available generally to characterize the industries that make products from bulk asbestos, very little data exist on secondary processors. Further, all of the information that is available is inadequate in several respects. The basic data source of asbestos consumption patterns is from the Bureau of Mines. Many of the documents concerning industrial and commercial uses of asbestos cite the Bureau of Mines data. However, the data used by the Bureau of Mines to determine asbestos consumption are from an annual voluntary survey of only a portion of asbestos processors and, for instance, do not count 40 percent of the bulk asbestos we know is imported. The Bureau of Mines estimates that the asbestos consumption figures are accurate only to ±50 percent. EPA expects to attain a higher degree of accuracy because virtually all of the processing of bulk asbestos will be reported under this rule and this production will be reported according to well-defined categories of both companies and products. In addition, EPA will be able to characterize all industry segments with greater confidence from data obtained in the representative survey. Agency contractors who have developed the preliminary analyses for the asbestos investigation participated in the design of these information requirements to ensure that any gaps and shortcomings of existing information will be corrected to the extent possible.

Available information provides general characteristics of the industries which make and process asbestos products. However, the information is already in an aggregated form and discrete components cannot be separated from the totals. For instance, at this time the Agency cannot characterize many products because data about the asbestos products are mixed in aggregates with data about similar, non-asbestos products. The underlying data of the aggregates, which are needed for the Agency analyses, are not available in most cases. For example, the Bureau of the Census is precluded under Title 13, U.S. Code, from disclosing individual reports it receives. Further, the information is too superficial to analyze separately subcategories of products. In some areas, as is the case for most secondary processors, existing information is too sparse to enable the Agency to make any but the most general estimates.

The lack of detail in available information means that the Agency is not able to analyze the effects that regulatory or voluntary actions on a single product may have on a multi-product industry and to quantify expected reductions in risk. This rule will characterize activities at the plant-site level, which will permit the Agency to analyze how specific actions would affect various elements of the analyses.

Most of the existing information consists of estimates that are based on data which may not reflect the current situation because the data were gathered many years ago. The most comprehensive information available covers the years 1975–1976, and it was generated to support and respond to OSHA's proposal in 1975 to lower the asbestos workplace standard. Present information indicates that significant changes have occurred. For instance, the U.S. Bureau of Mines reports that apparent consumption in the United States of raw asbestos fiber declined 36 percent in 1980, with a drop in consumption from 658,847 short tons in 1976 to 358,703 short tons in 1980. Changes have also occurred in the number of employees and the patterns of asbestos use. Information gathered through this rule will ensure a representative picture of the present situation and it will update or verify where possible data that already exist.

The TIS reviews EPA's search for information within EPA and from other Federal agencies. Data have been acquired from the EPA Compliance Data System Asbestos National Emission Standard For Hazardous Air Pollutants (NESHAP) file, inspection data from both the Occupational Safety and Health Administration (OSHA) and the Mine Safety and Health Administration (MSHA), reports from CPSC's General Order (see the following paragraphs), and importer data from the U.S. Customs Service. The Agency has acquired and evaluated information from these agencies, and concluded that these data do not adequately substitute for the information to be gathered by this rule.

A significant source of information on exposure levels in industry is the Occupational Safety and Health Administration (OSHA), which has performed workplace inspections since it promulgated the workplace exposure level standard in 1972. OSHA records contain a great deal of anecdotal information but, for the following reasons, few generalizations can be drawn about industry-wide exposure levels or the number of workers that are exposed. Because OSHA does not uniformly inspect all industries, it is difficult to make statistically valid extrapolations for all of industry. Moreover, approximately 80 percent of OSHA's inspections are in response to complaints, and cannot be extrapolated to make industry-wide estimates.

Inspections responding to complaints generally examine only the work area of concern to the complainant and, therefore, the data generally do not represent the facility-wide exposure situation. Finally, reports are available on industries in only 34 states, because the other states have been authorized by OSHA to conduct their own inspections.

The Consumer Product Safety Commission (CPSC) required the manufacturers of specified consumer products to submit certain information about how asbestos is used in those products under a General Order on December 22, 1980 (45 FR 84384). The Agency is examining the submitted data where respondents did not object to CPSC's sharing the reports with EPA. This rule contains a provision whereby companies need not report the same information to EPA if it was already reported to CPSC without objection to CPSC's sharing the data. However, the data from this General Order does not fully substitute for this rule because the Agency is interested in subjects beyond what CPSC asked, such as employee exposure and plant-site emissions.

Agency contractors have encountered a great deal of difficulty in performing their assessments with information that is available. A principal problem is that aggregate information about broad product categories is all that is available. This shortcoming in available data is significant because the contractors have found large variations in the ways companies process asbestos, control emissions, and dispose of wastes. Their draft reports contain many generalities and qualify many findings by citing the unreliability of available data or the absence of certain types of data. The contractors have individually attempted to gather additional data from industry, but have found that companies are reluctant to disclose confidential business information. Agency staff have intervened by officially requesting needed information; however, very little data has been submitted as a result.

B. Uses of Collected Information

The section 8(a) data will be used for analyses in the TSCA regulatory investigation and will be useful to other EPA offices and other Federal agencies. In preparation for obtaining these data, the Agency has developed plans to automate the information in a manner that will maximize the utility of the information to the Agency, other Federal agencies, and the public. A full description of how the Agency plans to use the reported data including computer-generated data outputs, can be found in the Information Use Plan that is part of the public record for this rule.

In the TSCA investigation, the Agency will use the information both to describe the current situation and to forecast changes either in the absence of additional regulation or as a result of new actions. Analyses will be conducted on several levels: industry-wide; by product category; and product subcategory. The Agency will use reported data to prepare exposure assessments, analyses of control options, and, if necessary, regulatory impact analyses.

The first analysis of the reported data will be the exposure assessment, where the operational objective is the development of sufficient data to determine cumulative human exposures. For the exposure assessment, the rule will identify the primary processor manufacturing sources, counting both workplace exposures (numbers of workers according to their general category of work and their exposure levels by product line) and the exposures to populations living around the plant-site (environmental releases from pollution control equipment and from uncontrolled vents). The size of the exposed general population and associated exposure levels will be computed using recognized techniques to analyze environmental pathways and monitoring data that provide the basis for modeling. In a sample survey, the Agency will learn how asbestos mixtures are used by secondary processors, who will provide facts that characterize exposure levels for their operations, the size of their workforce, and exposures to the general population. Primary and secondary processors will report the kinds and quantities of asbestos-containing waste they generate, which will permit analysis of possible fiber release into the atmosphere from waste sites. Importers will report the types of asbestos-containing materials that currently enter the U.S. customs territory. The Agency will relate production reports by secondary processors and importers with existing data to estimate the kinds of populations that may be exposed during the installation, use, removal, and disposal of the end-product.

This exposure assessment will be performed for each asbestos product category, and in most cases the Agency will assess exposures from product subcategories. The exposure factors will be used as input to appropriate dose-response studies to establish a risk factor that describes the estimated number of premature deaths to all populations as a result of the asbestos activity that is assessed. In the case of asbestos, the number of premature deaths and related health care costs are the primary societal costs that can be quantified. The assessments for each category will be considered as a whole, both to determine the overall extent of risk presented by asbestos and to attribute to each category or subcategory their portion of the total risk. As already stated, the Agency will concentrate its further efforts on products that appear to pose the greatest potential for human exposure.

The risk assessment may show that the total risk is so small that no further consideration is warranted. Alternatively, it may identify a particularly hazardous, apparently unnecessary situation that the Agency may want to investigate further. If the latter is the case, the Agency would examine the particular situation to find if there is a way to reduce the exposure levels. The particular situation could be referred to OSHA if it is a correctable workplace problem. The Agency would also examine the situation to determine the cost and availability of substitutes. This rule will not obtain information about substitutes; the Agency believes that it already possesses sufficient information to conduct analyses of substitutes. A great deal of information about the development of substitutes has been submitted to the Agency since the initiation of the asbestos investigation. In addition, EPA and CPSC jointly sponsored a national workshop on substitutes for asbestos in July 1980, where a great deal of information was presented. A record of the workshop can be found in the EPA publication "Proceedings of the National Workshop on Substitutes for Asbestos", EPA-560/3-80-001, which can be acquired from the National Technical Information Service (NTIS).

The Agency will also examine a hazardous situation to determine why it exists and the likelihood that it will continue. With the level of risk already defined, Agency analysts would determine the value and benefits that can be attributed to that situation. With a baseline understanding of the current economic value, Agency analysts can forecast the situation as it will be several years later if uninterrupted by regulation. Trend analysis permits the Agency to study the effects of market forces that encourage or discourage growth. Baseline data can be used to predict the future situation, which can then be compared to projections of regulatory effects to estimate the incremental change that could result from various regulatory options. The

principal economic measures that will be determined from data obtained through this rule are the value of production, the importance of the asbestos activity to the total value produced at the reported sites, the number of employees, the relative value of imports to exports, and the relative value of production to the Gross National Product. These measures will illustrate the monetary importance of the product to the plant site, to the company, to the total asbestos market, to the nation, and to the balance of trade.

Primary processors will report the value of their production for the last three years, describing the amount made for both export and domestic markets. Data from three years will permit analysts to use a multi-year average that is more reliable than data from a single year. Primary processors will report their consumption of bulk asbestos each year and estimate the relative value of their asbestos activity to total production at the plant site. Secondary processors will report the production of end products in which they incorporate the asbestos material and the purpose of including that material in the product. Both types of processors will report the total number of employees at the plant site as well as the number of production employees making subcategories of end products. With this detailed information, the Agency will be able to predict the future value of production and to establish what might be the economic effects of regulation.

Where the Agency finds that regulatory proceedings are appropriate, it will, through this rule, already have collected information necessary to describe fully the expected effects of the possible alternatives and to perform the analyses required by E.O. 12291. Thus, a complete data base provided by this rule will preclude the need to obtain additional data later in the investigation, which would delay resolution of the investigation. Timely action will benefit the Agency, industry, and the public by providing a means to take immediate action that protects public health and by removing a cloud of uncertainty over other uses of asbestos.

The primary purpose of gathering these data is to support the TSCA investigation. However, as noted earlier, other EPA offices and Federal agencies may also utilize the data base in any studies that involve the commercial and industrial uses of asbestos. EPA's Office of Air Quality Planning and Standards (OAQPS) is reviewing the Asbestos National Emission Standard for Hazardous Air Pollutants (NESHAP). Data from this rule that characterize and quantify emissions from stationary sources, the current economics of the industry, and its pollution control practices will be of value during the appraisal of this 1973 standard. EPA's Office of Solid Waste (OSW) may develop guidelines for the handling and disposal of asbestos-containing wastes. OSW expects to use data from this rule that quantify the kinds of waste presently generated by manufacturers and describe how and where those companies currently dispose of their wastes. Information that characterizes the kinds of asbestos-containing waste and current waste disposal practices will permit analysts to determine the relative degree of hazard posed by waste disposal activities. The Consumer Product Safety Commission (CPSC) is examining consumer products to determine what products may pose a chronic hazard to consumers. EPA has coordinated the data requirements of this rule with CPSC to eliminate duplication and to ensure that the reports will be useful to the CPSC investigation. This rule will provide a listing and quantification of imported and domestically produced consumer products containing asbestos which is not presently available. OSHA and MSHA have supported this rule throughout its development, because a current listing of companies, products, numbers of employees, and exposure levels would be very useful in reviews of the asbestos workplace exposure standards.

III. What to Report

EPA has developed two forms which are to be completed by respondents. The composite form, EPA Form 7710–36, "Reporting Commercial and Industrial Use of Asbestos," (hereafter referred to as the "Primary Form"), has individual sections for reporting data about products, production, asbestos consumption, employees, workplace exposures, waste and disposal, pollution control equipment, and estimated quantities of asbestos emissions. Production and importation from 1979–1981 will be reported by category of product, rather than by individual product lines. Respondents will fill out the sections that apply to them. Each respondent is to complete the relevant sections of the form depending on the activities of the reported plant site. The instructions to the form clearly list the sections that are to be completed by miners and millers, importers of bulk asbestos, and primary processors respectively. Those persons will complete all applicable sections of the Primary Form, and will report all asbestos importation and processing activities in the first reporting phase. In addition, the Primary Form contains separate sections to be completed in a second reporting phase by a sample of persons who are only secondary processors and importers of asbestos-containing products. Persons from those segments who are selected to complete the Primary Form during the sample survey will complete the applicable sections (see discussion below in unit VI, "Reporting Procedures").

EPA Form 7710–37, "Secondary Processing and Importation of Asbestos Mixtures," (hereafter referred to as the "Secondary Form"), is a short survey form which requires identification of asbestos mixtures or components, the amounts consumed or imported in 1981, and the products into which these mixtures and components are incorporated. The Secondary Form, to be completed by secondary processors and importers of asbestos-containing products, will serve several purposes for the Agency. The procedural purpose of the Secondary Form is to permit EPA to identify the companies in these groups in the least burdensome manner so that only a representative sample of the groups will be required to complete the Primary Form. The information from the Secondary Form, because it identifies firms and products and production amounts, will in itself provide EPA with valuable information. Data from the Secondary Forms will show the breadth of the secondary processor population and the variety of asbestos-containing products that are presently manufactured or imported. Finally, the reports of the quantities of asbestos mixtures that were consumed or imported in 1981 will permit EPA to gauge the present levels of processing and importation of asbestos products. These data will be used in estimating potential worker and consumer exposure and in judging the economic consequences of alternative options. In addition, knowing the products of secondary processing will support determinations of the availability of substitutes.

IV. Who Reports

This rule defines who must report and what to report according to the industrial activity of the respondent during 1981. The Primary Form must be completed by all persons who mine, mill, import, or process bulk asbestos. The Secondary Form must be completed by secondary processors or persons who import asbestos mixtures or articles containing asbestos components. Some

of these persons will be selected subsequently also to complete the Primary Form. This section will clarify the meaning of some of these terms that are specific to this rule.

Under this rule, a manufacturer is a person who mines or mills (produces) bulk asbestos or a person who imports asbestos either as bulk asbestos or as part of a product. Persons who, in addition to manufacturing, also process their products will report as both manufacturers and primary processors, as described below. This rule does not require reports by manufacturers or processors of products which contain asbestos as a contaminant or an impurity. While the Agency is concerned about the health risk posed by fibrous minerals in many ores or other products, this subject is not within the scope of the present rule.

TSCA defines a processor, in part, as a person who prepares a chemical substance of mixture, after its manufacture, for distribution in commerce. This rule classifies processors into two groups according to their starting material. "Primary processors of asbestos" are those whose starting material is bulk asbestos. "Secondary processors of asbestos" are those whose starting materials are asbestos mixtures.

A primary processor starts with bulk asbestos and makes a mixture that contains asbestos fiber. A primary processor may simply mix or repackage different types or sizes of fiber and then sell that product. Such mixing or repackaging of fibers is considered primary processing of bulk asbestos for the purpose of this rule. Asbestos mixtures are products to which asbestos fiber has been intentionally added and which can be used or processed further and incorporated into other products. For example, asbestos cement, asbestos paper, and asbestos-reinforced plastics are asbestos mixtures. In some cases, a primary processor further processes the asbestos mixtures. If so, the person is also a secondary processor. For instance, asbestos paper can be further processed to incorporate it into an article, or asbestos-reinforced plastics can be further processed to make vinyl-asbestos floor tile. Under this regulation, persons who are involved in both primary and secondary processing activities at the reported plant site must report both types of activities on the Primary Form. Only persons who are solely secondary processors at the reported plant site report as secondary processors.

"Secondary processors" are those who start with asbestos mixtures and incorporate them into their own products. For example, persons who fabricate asbestos cement sheet by cutting the sheet to make an electrical switch board, or persons who make garments by cutting an asbestos textile, are secondary processors. A person who fabricates asbestos cement sheet by cutting it to a specific dimension for a customer is a secondary processor. An automobile manufacturer is a secondary processor if he incorporates asbestos felt into an automobile as a hood insulation blanket or makes heating vent ducks from asbestos paper. A paint formulator is a secondary processor if he purchases a paint that contains asbestos and reformulates the paint by adding some agent to give the paint special properties for specific applications. A complete list of categories of asbestos-starting materials and products may be found in EPA Forms 7710–36 and 7710–37.

Those who import an asbestos mixture or an article containing an asbestos component(s) are required to identify themselves and the asbestos component(s) of the imported product. By this requirement, EPA is attempting to determine what asbestos-containing products are being distributed to consumers and to industry. This will enable the Agency to estimate the total health risk posed by asbestos, including the risk from imported products. The Agency recognizes that there is a large universe of asbestos-containing products that are imported, and that some importers may not know that discrete components of imported merchandise contain asbestos. To ease the burden on companies that import a number of products that may contain asbestos, this rule requires importers to provide information relating only to the products listed in the reporting forms. Therefore, in some cases, EPA will not learn of or obtain data on all imports that contain asbestos. However, the lists of products are very comprehensive and EPA expects to obtain information on most imports that contain asbestos. Some products, such as automobiles, are deliberately omitted because the Agency can otherwise obtain necessary information. Importers should note that under this rule, they are not required to conduct extensive research or to contact the foreign manufacturer to learn this information. Thus, under the rule, importers are required to report to the extent that this information is in their possession.

This rule requires reporting by manufacturers (including importers) and processors of asbestos mixtures. Section 8(a) states that reporting by manufacturers or processors of mixtures should be required only when the Administrator determines that it is "necessary for the effective enforcement" of TSCA. Those who manufacture or process asbestos mixtures are also necessarily processors of asbestos, the chemical substance. Therefore, the "effective enforcement" finding is not needed. Nevertheless, the characterization of these products and processing activities is essential to the asbestos investigation and to the exent that such persons can be regarded as manufacturers or processors of mixtures, the Administrator finds that it is necessary for the effective enforcement of TSCA. For a more detailed discussion of this issue, see the preamble to the proposed rule at 46 FR 8204, which is hereby adopted.

V. Exemptions From the Rule

The Agency is exempting certain classes of potential respondents from the requirements of the rule. The exemptions are designed to reduce the overall burden of the rule while still obtaining sufficient information for analyses that are planned.

All companies employing 10 or fewer employees are exempted from the requirements of this rule. EPA estimates that over 40 percent of companies not otherwise exluded will be exempted as a result of this provision, while firms that account for approximately 97 percent of employees and sales will still be included. Further discussion of this provision can be found below in unit XIII, "Regulatory Flexibility Act."

Certain secondary processors are excluded from this rule. Secondary processors are exempted if they apply, assemble, install, erect, or consume asbestos products without modifying or fabricating the asbestos products. For instance, an appliance manufacturer who installs electric motors containing asbestos components is excluded if the motor is made elsewhere. Similarly, an automobile manufacturer need not report the installation of pre-fabricated hood insulation blankets if no fabrication is required during installation. An airplane manufacturer would not report the application of asbestos-containing caulk. Included in this category are secondary processors who merely adjust an asbestos mixture prior to or during assembly or installation. While the Agency believes there may be risks from asbestos exposures in these categories, it expects to complete necessary analyses with estimates and extrapolations of data reported by the persons who make the asbestos-containing products that are processed by the excluded industries. For example, processors infrequently

"true" pre-formed brake linings during assembly with brake foundations to get a better fit. In this case, reports from manufacturers of the pre-formed brake linings will sufficiently quantify production of the friction material product subcategories. Exposure scenarios for the excluded industries can be quantified by relating expected exposure levels with the quantities of products that are made. Therefore, reports from these excluded industries are not essential.

This rule also exempts persons who repair articles, repackage asbestos mixtures without modification, or who engage in construction work. The Agency proposes to exempt these persons from reporting primarily because so many persons are in these categories, the workforce is constantly changing, and they are generally composed of many small businesses, such as brake repair shops and construction companies. Also, as is the case with other excluded industries, exposure scenarios for the construction and brake repair industries can be developed by relating expect exposure levels with production levels reported by product manufacturers.

Section 8(a) of TSCA does not apply to distributors of chemical substances or mixtures. Therefore, persons who are solely distributors, and do not manufacture, process, or import, are not covered by this rule.

Reporting is not required by persons who are "end users" of bulk asbestos or asbestos products and do not further distribute such items in commerce. The most common example of this is in the manufacture of chlorine, where some persons use asbestos as a diaphragm to separate chlorine and caustic soda. While much bulk asbestos is consumed annually by this industry and much waste generated, asbestos fiber is not present in the resultant products which are distributed in commerce and these activities are therefore not "processing" of asbestos.

VI. Reporting Procedures

Companies must report the activities of each plant site on an individual reporting form with one exception. That exception is that respondents have the option to report all of their company imports or exports on a single form. The form instructions explain further how this is to be done.

Miners, millers, primary processors, and importers of bulk asbestos must submit all appropriate portions of the Primary Form within 90 days after the effective date of the final rule. If the respondent's activities include "secondary processing" or importing of asbestos mixtures or articles containing asbestos components, all such activities, including those at other plant sites, must be reported at the same time the person reports as a miner, primary processor, or importer of bulk asbestos.

EPA will require reporting in a different way for persons who are solely secondary processors or importers of asbestos mixtures. Apparently there are many thousands of persons who are secondary processors or importers of asbestos-containing mixtures. EPA has devised a scheme to reduce the reporting burden for these companies. Persons who are solely secondary processors or importers of asbestos mixtures or articles containing asbestos components will report to EPA in phases. First, they will submit the Secondary Form within 60 days after the effective date of the rule. The Secondary Form reports will be used by EPA to improve the Agency's knowledge of the products being made with asbestos, the number of companies making the products that contain asbestos and the amounts of asbestos mixtures they use, and the kinds and amounts of mixtures and products being imported.

Further reporting of the information on the primary form by some respondents will be necessary to develop more complete profiles and projections for regulatory analyses. The Secondary Form will not ask all respondents (estimated to comprise 5,750 reports) for the detailed information the EPA would like to consider in the risk and economic analyses. Instead, the Agency plans to have a representative sample of Secondary Form respondents report more detailed information. The Agency wants to account for 100 percent of asbestos usage, but for purposes of this analysis, and to reduce the reporting burden, the Agency has determined extrapolations can be made from less than 100 percent. EPA believes that a sampling technique can provide information that would adequately describe secondary asbestos processing and products. Sampling to decrease the number of processors required to submit additional detailed information will reduce the overall burden of additional reporting substantially. In unit VIII, "Reporting Burden", EPA estimates that Phase 2 reporting will be required from approximately 1500 of the Phase 1 respondents. The objective is to sample only the number necessary to meet the goal of attaining a reliable sample.

EPA plans to use a stratified random sampling method as the basis for the sample survey. That is, the respondents to the Secondary Form will be divided into non-overlapping and reasonably homogeneous strata and then sampled by stratum. The strata will be defined by all or an appropriate subset of the following variables: reported asbestos-starting material, reported asbestos end product, and the volume of asbestos-starting material annually consumed. Additionally, the population may be further stratified according to size (the amount of asbestos mixture processed or imported) and geographic location, which will ensure that any sample fully represents the whole population. The type of asbestos-starting material and the asbestos end product would permit EPA to analyze a representative portion of each product category application. Consideration of the amount of the asbestos-starting material that is consumed will better ensure representation of both larger and smaller processors of asbestos materials.

The Agency can make the final decision on which variable(s) to use in stratifying and how large the sample will be only after examining the composition of the Secondary Form respondents, since the actual numbers of respondents and the products they report in the first phase will not be known until the first phase reports are submitted. The Agency will use standard statistical techniques in conducting the sample survey.[1] The Agency will stratify and sample respondents with the goal of minimizing the reporting burden as much as is practical. To extrapolate an estimate about a population from a sample survey requires obtaining reports from enough respondents to represent the whole population. To make an estimate about a stratum composed of a few respondents may require sampling a larger percentage than would be necessary to make an estimate of the same reliability about a stratum composed of a greater number of respondents. EPA will use one or a combination of the variables listed in the preceding paragraph to stratify respondents for the sample survey. The Agency will select the stratifying variable(s) which will result in the fewest number of respondents while still ensuring a reliable statistical sample.

The Secondary Form respondents selected for more detailed reporting will be notified by certified letter. These persons will have 90 days to complete relevant portions of the Primary Form.

Some persons subject to reporting under this rule may be exempted from reporting certain information already

[1] Kish, Leslie. Survey Sampling. New York: John Wiley. 1965.

reported to EPA or CPSC. A company which has adequately reported data to EPA will not be required to report the same information again, and must write "EPA" in place of the data on the form. Persons who have already reported production or importation quantities to CPSC must still identify themselves and the names of their products to EPA according to the requirements of this rule. However, data already reported must be referenced by writing "CPSC" in place of the data, unless the respondent specifically requested CPSC not to release the data to EPA.

The Agency intends to send reporting forms directly to as many potential respondents as possible. To identify persons currently subject to this rule, a master list of persons who produce or make asbestos products has been assembled from a number of different lists supplied by industry associations, Government agencies, and industry information that is publicly available. In addition, efforts will be made to publicize these reporting requirements widely, so that persons as yet unknown to EPA will comply with these reporting requirements.

VII. Confidentiality

The Agency has developed specific instructions for asserting and certifying claims of confidentiality for any information submitted in response to this rule. These instructions are incorporated in the reporting forms and may be found in §§ 763.76 and 763.77 of the rule. Any claims of confidentiality must be made at the time of submission as provided in 40 CFR Part 2 as amended September 8, 1978 (43 FR 39997), and March 23, 1979 (44 FR 17673), and in the manner specified in the reporting forms of this proposed rule. To ensure proper handling, confidential material must be submitted to: U.S. Environmental Protection Agency, Post Office Box 2070, Rockville, MD 20852.

This rule employs a simple certification method to assert a claim of confidentiality. To assert a claim of confidentiality, the respondent must mark the applicable line on the form that contains confidential information. The respondent must certify that the company has taken measures to protect the confidentiality of the information, that the information is not publicly available, and that disclosure of the information would cause the company substantial competitive harm. All of these conditions must exist for any information to be confidential. Determinations on confidentiality will be made by EPA in accordance with 40 CFR Part 2.

The Agency intends to aggregate information about production, consumption, employment, and environmental release that is reported for this rule. The Agency will primarily use aggregate data for analyses necessary to support the TSCA section 6 regulatory investigation. These data aggregates and analyses will be part of the section 6 asbestos rulemaking record that is available to the public. To protect confidential information in the aggregate data sets, in most cases no data from individual reports will be released, even if they are nonconfidential. Releasing discrete data could jeopardize the aggregate data sets, because through subtraction of nonconfidential data from the aggregate it could be possible to ascertain specific confidential data.

As previously stated, EPA intends to share all reported data with other Federal agencies, including confidential data in individual reports. However, EPA will require that personnel from other agencies obtain a TSCA security clearance before access to confidential data is granted (See "TSCA Confidential Business Information Security Manual," Chapter 6—Security Requirements for Other Federal Agencies). Similarly, EPA will require that an agency adopt certain security procedures before confidential information can be stored at that agency.

VIII. Changes From the Proposal

The final rule modifies several requirements of the proposed rule to ease the reporting burden, to respond to specific problems that were raised by commenters on the proposal, or to obtain the most useful information. Further discussion of comments on the proposal and our responses can be found in a document entitled "Public Comments on the Proposed TSCA Section 8(a) Asbestos Reporting Rule," which is part of the public record for this rule.

The final rule does not include the proposed requirement to keep lists of customers and to submit the lists at the Agency's request. Commenters convinced the Agency that that the information would be very sensitive and the requirement could be very burdensome. Also, the purpose of this rule is to characterize the industries making essentially finished goods, while most customers are "users" or distributors and, therefore, outside the scope of the present rule.

Several changes to the reporting forms should be noted. The Agency has substantially reduced the amount of requested information by requiring respondents to report production of subcategories of end products for only 3 years. The proposal would have required production data for 5 years about specific end products, including trade names, and data for 10 years about the importation or production of bulk asbestos. Data reported according to consistent subcategories of products will provide sufficient detail for our analyses. The Agency believes that data for 3 years will sufficiently describe the current situation, as well as provide reliable averages for analyses. An additional change is that data on bulk asbestos fiber is required only for each type of mineral. Again, EPA is not requiring data about specific grades of chrysotile fiber because the Agency's analyses do not need that level of detail.

The requirement to summarize workplace monitoring data is revised to increase the utility of the reported data and facilitate reporting. Respondents will still report only monitoring data that already exist in their files; however, they will summarize that data according to the types of end products they are reporting. The reports will be more useful to the Agency and OSHA by directly relating workplace concentration levels to the number of workers making the end product that is reported. The final rule does not require respondents to estimate the number of hours that workers are annually exposed to the measured concentration levels. While information on the duration of exposures would be useful, commenters asserted that extensive and burdensome searches through payroll records would be necessary to locate the data. Since the reports will consist of summaries of 8-hour time-weighted averages, Agency analysts will use assumptions and other available information to calculate duration of exposures.

The requirement to report air pollution control equipment has been modified at the request of EPA's Office of Air Quality Planning and Standards (OAQPS). The final rule requires respondents to answer several technical questions about each piece of equipment, replacing the proposal's requirement to provide the brand name and model number of each piece. The revised questions will obtain all the information necessary to estimate emissions and costs and will eliminate the need for submitters to calculate the quantities of asbestos that are released. OAQPS believes that the revisions will reduce reporting requirements while improving the usefulness of the data.

EPA is including two provisions to address special problems of importers. First, importers were concerned they would be unable to identify all imported

goods that contain asbestos and, therefore, would not fully comply with the rule. This rule provides that importers need report information relating only to the types of products listed on the form, which should cover most such imports. Second, importers asserted that the requirement to provide "reasonably ascertainable" information on the Primary Form during the second phase of reporting could require them to seek information from foreign manufacturers, possibly at considerable cost. The final rule requires importers to provide information "in their possession" during both phases of reporting.

IX. Reporting Burden

In order to assess the clarity of the form and to ensure that data are reported in the most effective manner, the Agency conducted a pre-test of the form through the Institute for Survey Research, Temple University. The respondents were members of the Asbestos Information Association. This pre-test was quite valuable to EPA in improving the clarity and coherence of the form. In addition, the respondents estimated the cost of completing each section of the form. The final report by the Institute for Survey Research, "Design and Testing of Asbestos Use Reporting Form", is part of the public record for this rule. The pre-test was not a statistically-based sample and only eight companies were asked to participate. Therefore, the resultant cost estimates could not be used directly to compute the reporting impacts of this rule. However, the pre-test results helped EPA arrive at an impact estimate. A detailed description of the reporting burden estimates can be found in a report by Arthur Young & Company, "Economic Impact Analysis for the TSCA Section 8(a) Rule, Reporting Commercial and Industrial Uses of Asbestos", which is part of the public record for this rule. The results of the pre-test and the reporting burden calculations are summarized in the "Reports Impact Analysis", an internal EPA report that is available in the OPTS Reading Room. The documents cited above may be acquired by writing or calling the Industry Assistance Office at the address and telephone number given at the beginning of this notice.

In unit XII of this preamble—"Regulatory Flexibility Act"—EPA calculates that 40 percent of the secondary processors will be small businesses and will be exempt from this rule. Therefore, in this section costs are calculated for 5,385 secondary processors, while we estimate there may be a total of 8,974 secondary processors if small businesses are counted. (These estimates are derived from a formula used in 1976 by the Asbestos Information Association, which is described in the "Reports Impact Analysis.") In addition, EPA calculations exclude primary processors who are known to be small businesses. However, the Agency does not calculate the cost reduction from excluding small importers because the composition of that segment is not well-defined, although it does expect that this group will contain some small businesses. Therefore, the actual reporting costs may be less than our present calculations.

As already discussed, two reporting forms will be used for this rule. The Primary Form will be completed by miners, millers, primary processors of asbestos, and importers of bulk asbestos in a first reporting phase. EPA estimates that for this group of respondents, a total of 487 reports would be received by the Agency. Completion of these reports would require a total of 7,500 hours, and cost approximately $230,000.

Secondary processors and importers of asbestos mixtures or articles containing asbestos components will be required initially to complete the Secondary Form. The Agency estimates that it will take four hours to complete each form, at a cost of $120 per form. The Agency anticipates receiving 5,750 such reports. Therefore, the Secondary Form reporting would require a total of 23,000 hours, and would cost approximately $690,000.

The Agency expects that approximately 1,500 of those persons who initially complete the Secondary Form will be selected, in a sample survey, to complete the Primary Form. The sample survey will require a total of 36,000 hours, and would cost $1,100,000.

Based on these cost estimates, and assuming a small business exclusion, EPA estimates the total cost of reporting for this rule would be $2 million, requiring 66,500 reporting hours.

Using available data, an economic impact analysis of the proposed rule was performed for primary processors. Using the measure of the one-time cost as a percent of annual gross profits, the estimated impact was found to be minimal (around 0.1 percent) for even the smallest primary processors (the ones most likely to be impacted).

Such an economic impact analysis was not possible for the other industry segments affected by this rule due to unavailability of data. EPA did compare the average value of shipments for four-digit SIC codes for primary processors and other SIC codes likely to contain asbestos secondary processors. This comparison suggested no significant difference between primary processors and other industry segments in the size ranges of 10–19 employees and 20–49 employees. These size categories are the smallest establishments likely to be impacted by this proposed rule and the ones most likely to experience adverse effects. On this basis, EPA feels that the potential impacts on secondary processors and others in the asbestos industry will be of a similar small magnitude as the impacts estimated for the primary processors. Refer to two documents in the public record: (1) "TSCA Section 8(a) Rule Reporting Commercial and Industrial Uses of Asbestos: Economic Impact on Secondary Processors," memorandum from Regulatory Impacts Branch, December, 1980, and (2) "Economic Impact Analysis for the TSCA Section 8(a) Rule Reporting Commercial and Industrial Uses of Asbestos," Arthur Young & Company, Washington, DC, October, 1980.

X. Sunset Provision

The general requirements of this rule will expire 5 years after the effective date of the rule. The selection and notification of sample survey participants for Phase 2 reporting (see unit VII of this preamble and § 763.71(c) of the rule) will take place within three years after the effective date of the rule. If EPA determines that any requirements of this rule should be continued, a notice to that effect will be published for comment.

XI. Public Record

EPA has established a public record for this rulemaking as defined in section 19(a)(3) of TSCA (docket number OPTS–84004). The public record, along with a complete index, is available for inspection in the OPTS reading room, E–107, from 8:00 a.m. to 4:00 p.m. Monday through Friday, except legal holidays, (401 M St., S.W., Washington, D.C. 20460). This record contains the basic information that the Agency considered in developing this rule. The Agency will supplement the record with additional information as it is received. This record includes the following:

1. The proposed rule, published in the **Federal Register** of January 26, 1981, (46 FR 8200).

2. Comments received in response to the proposed rule, including any comments received from the Office of Management and Budget during Paperwork Reduction Act of 1980 review.

3. "Commercial and Industrial Use of Asbestos Fibers; Advance Notice of Proposed Rulemaking," published in the **Federal Register** of October 17, 1979 (44 FR 60061).

4. "Commercial and Industrial Use of Asbestos Fibers. Extension of Comment Period and Announcement of Additional Control Option," published in the **Federal Register** of December 17, 1979 (45 FR 18374).

5. Comments received in response to the Advance Notice of Proposed Rulemaking and the Notice of Proposed Rulemaking.

6. Reports Impact Analysis of this rulemaking.

7. "Statistics for Companies with 10 or Fewer Employees" memorandum, from Chemical Information Reporting Branch, October 30, 1980.

8. "Design and Testing of Asbestos Use Reporting Form," Institute for Survey Research, Temple University, Philadelphia, PA., June 30, 1980.

9. "Economic Impact Analysis for the TSCA Section 8(a) Rule, Reporting Commercial and Industrial Uses of Asbestos", Arthur Young & Company, Washington, D.C., October, 1980.

10. The Technical Information Summary for this rulemaking.

11. The Information Use Plan for this rulemaking.

12. Records of all communications between EPA personnel and persons outside the Agency pertaining to the development of this rule. (This does not include any inter- or intra-agency memoranda unless specifically noted in the index of the rulemaking record.)

13. "Public Comments on the Proposed TSCA Section 8(a) Asbestos Reporting Rule."

XII. Regulatory Assessment Requirements

This rule fully complies with the following regulatory assessment requirements.

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "Major" and, therefore, subject to the requirement of a Regulatory Impact Analysis. EPA has determined that this regulation is not Major because it does not have an effect of $100 million or more on the economy and it will not affect competition, employment, or production costs. EPA estimates the total cost of this one-time reporting requirement is $2.0 million. This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any comments from OMB to EPA and EPA response to those comments will be available for public inspection in the record for this rulemaking.

B. Regulatory Flexibility Act

The Agency has included several provisions in this rule to minimize both its overall impact on businesses and the reporting requirements for individual companies. First, EPA is exempting the smallest companies that could be subject to the rule—those companies with 10 or fewer employees. This small business exemption will eliminate reporting from over 40 percent of the companies and the Agency estimates that it will reduce the overall potential cost of the rule by $1.1 million. EPA is also excluding from any reporting two large segments of processors that are composed of a high percentage of small businesses—construction and brake repair companies. Including those segments would raise the overall cost of this rule by several million dollars.

Second, every effort has been made to minimize the amount of data to be reported. Based on a pretest by industry and public comments, the Agency has designed the forms to require only common business information essential to the Agency's investigation. The economic impact analysis estimates that the median cost to any single respondent submitting the long form will be $1,100, which is about 0.1 percent of the smallest company's profits. The reporting costs for many small businesses will probably be less than the median cost because they will generally report about fewer products and employees.

Third, EPA will apply a sampling approach to over 90 percent of the respondents. Only a representative sample of secondary processors, which is the largest industrial segment subject to the rule and is composed of a large percentage of small businesses, will be selected for full reporting. In phase one, secondary processors will submit a short, one-page form that EPA estimates will take at most four hours ($120) to complete. The Agency will select the minimum necessary number of companies from phase one respondents to submit the long form in phase two. Utilizing this sample survey means that only ⅛ of all respondents to the rule will have to complete the long form.

The Agency is including these provisions as a special consideration to small businesses. The Agency's economic impact analysis shows that this rule will have a negligible impact on any business. Therefore, in accordance with the Regulatory Flexibility Act (Pub. L. 96-354), EPA has determined that this rule will not have a significant economic impact on a substantial number of small entities. As required, EPA has consulted with the Office of Advocacy, Small Business Administration.

C. Paperwork Reduction Act of 1980

As just described, the Agency has made every effort to minimize the amount of required information and the burden on respondents to the rule. The reporting forms were pretested, the proposed requirements have been reduced in a number of ways, and 90 percent of the respondents will be sampled. Furthermore, this rule exempts entire classes of businesses in cases where the Agency believes necessary analyses can be conducted with information that is otherwise available.

The Agency has prepared extensive plans to utilize fully all information that is collected through this rule. The Agency's "Information Use Plan", which is part of the public record, describes the specific uses that are planned for the required data elements. In addition, the Agency coordinated these information requirements with other Federal agencies to maximize the usefulness of reported data. The information to be reported does not duplicate efforts by other Federal agencies and the data will be useful to several regulatory agencies. An automated information system will ensure the most effective use of submitted data. Fully operational Agency procedures will protect confidential business information contained in the reports.

Information collection requirements contained in this regulation (§ 763.71) have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and have been assigned OMB control number 2000-0478.

List of Subjects in 40 CFR Part 763

Environmental protection, Hazardous materials, Recordkeeping and reporting requirements, Asbestos.

Dated: July 23, 1982.

Anne M. Gorsuch,

Administrator.

PART 763—ASBESTOS

Therefore, 40 CFR Part 763 is amended by adding a new Subpart D to read as follows:

Subpart A-C—[Reserved]

Subpart D—Reporting Commercial and Industrial Uses of Asbestos

Sec.

763.60 Scope and compliance.
763.63 Definitions.

763.65 Who must report.
763.71 Schedule for reporting.
763.74 Confidential business information.
763.76 Reporting commercial and industrial use of asbestos.
763.77 Reporting secondary processing and importation of asbestos mixtures.
763.78 Sunset provision.

Authority: Sec. 8(a) Toxic Substances Control Act (TSCA), Pub. L. 94–469, 90 Stat. 2029, (15 U.S.C. 2607(c)).

Subpart D—Reporting Commercial and Industrial Uses of Asbestos

§ 763.60 Scope and compliance.

(a) This rule requires reporting by persons who manufacture, import, or process asbestos. Different reporting requirements are imposed depending on the person's activity. Manufacturers, importers and processors of commercial and industrial asbestos fiber must report quantity, use, and exposure information. Importers of mixtures and articles containing asbestos and processors of asbestos mixtures will report to EPA in two phases. They initially must report limited information about processing or importation. Some must subsequently report additional information if they are selected as respondents in a sample survey.

(b) Subsection 15(3) of TSCA makes it unlawful for any person to fail or refuse to submit information required under this rule. Section 16 provides that a violation of section 15 renders a person liable to the United States for a civil penalty and possible criminal prosecution. Under section 17, the district courts of the United States have jurisdiction to restrain any violation of section 15.

§ 763.63 Definitions.

The definitions in section 3 of TSCA and the following definitions apply for this rule:

(a) "Asbestos" means the asbestiform varieties of: chrysotile (serpentine); crocidolite (riebeckite); amosite (cummingtonite-grunerite); anthophyllite; tremolite; and actinolite.

(b) "Asbestos mixture" means a mixture which contains bulk asbestos or another asbestos mixture as an intentional component. An asbestos mixture may be either amorphous or a sheet, cloth fabric, or other structure. This term does not include mixtures which contain asbestos as a contaminant or impurity.

(c) The term "bulk asbestos" means any quantity of asbestos fiber of any type or grade, or combination of types or grades, that is mined or milled with the purpose of obtaining asbestos. This term does not include asbestos that is produced or processed as a contaminant or an impurity.

(d) "EPA" means the United States Environmental Protection Agency.

(e) "Importer" means anyone who imports any chemical substance, including a chemical substance as part of a mixture or article, into the customs territory of the U.S. and includes the person liable for the payment of any duties on the merchandise, or an authorized agent on his behalf. Importer also includes, as appropriate:

(1) The consignee.

(2) The importer of record.

(3) The actual owner if an actual owner's declaration and superseding bond has been filed in accordance with 19 CFR 141.20.

(4) The transferee, if the right to draw merchandise in a bonded warehouse has been transferred in accordance with Subpart C of 19 CFR Part 144. For the purpose of this definition, the customs territory of the U.S. consists of the 50 states, Puerto Rico, and the District of Columbia.

(f) "Known to or reasonably ascertainable by" means all information in a person's possession or control, plus all information that a reasonable person might be expected to possess, control, or know, or could obtain without unreasonable burden or cost.

(g) "Manufacture for commercial purposes" means to import, produce, or manufacture with the purpose of obtaining an immediate or eventual commercial advantage for the manufacturer and includes, among other things, such "manufacture" of any amount of a chemical substance or mixture:

(1) For commercial distribution, including for test marketing, and

(2) For use by the manufacturer, including use for product research and development, or as an intermediate. "Manufacture for commercial purposes" also applies to substances that are produced coincidentally during the manufacture, processing, use, or disposal of another substance or mixture, including both byproducts and coproducts that are separated from that other substance or mixture, and impurities that remain in that substance or mixture. Byproducts and impurities may not in themselves have commercial value. They are nonetheless produced for the purpose of obtaining a commercial advantage since they are part of the manufacture of a chemical product for a commercial purpose.

(h) "Miner of asbestos" is a person who produces asbestos by mining or extracting asbestos-containing ore so that it may be further milled to produce bulk asbestos for distribution in commerce, and includes persons who conduct milling operations to produce bulk asbestos by processing asbestos-containing ore. Milling involves the separation of the fibers from the ore, grading and sorting the fibers, or fiberizing crude asbestos ore. To mine or mill is to "manufacture" for commercial purposes under TSCA.

(i) "Person" means any natural person, firm, company, corporation, joint venture, partnership, sole proprietorship, association, or any other business entity, any State or political subdivision thereof, any municipality, any interstate body, and any department, agency, or instrumentality of the Federal Government.

(j) "Primary processor of asbestos" is a person who processes for commercial purposes bulk asbestos.

(k) "Process for commercial purposes" means the preparation of a chemical substance or mixture, after its manufacture, for distribution in commerce with the purpose of obtaining an immediate or eventual commercial advantage for the processor. Processing of any amount of a chemical substance or mixture is included. If a chemical or mixture containing impurities is processed for commercial purposes, then those impurities are also processed for commercial purposes.

(l) "Secondary processor of asbestos" is a person who processes for commercial purposes an asbestos mixture.

(m) "Site" means a contiguous property unit. Property divided only by a public right-of-way shall be considered one site. There may be more than one manufacturing plant on a single site.

(n) "Small manufacturer, processor, or importer" means a manufacturer or processor who employed no more than 10 full-time employees at any one time in 1981.

§ 763.65 Who must report.

(a) Persons who were miners or primary processors of asbestos, or importers of bulk asbestos in 1981 must complete and submit a separate EPA Form 7710–36, Reporting Commercial and Industrial Use of Asbestos (see § 763.76), for each site and for each company activity not elsewhere reported, according to the schedule in § 763.71. When two or more persons meet the definition of "importer" for the same shipment, the principal in the transaction, not his agent or agents, shall report.

(b) Persons who were secondary processors of asbestos in 1981 must complete and submit Parts I and II of EPA Form 7710–37, Reporting Secondary

Processing and Importation of Asbestos Mixtures (see § 763.77), for each site or activity, according to the schedule in § 763.71.

(c) Persons who were importers in 1981 of asbestos mixtures or articles containing asbestos components must complete and submit Parts I and III of EPA Form 7710–37, Reporting Secondary Processing and Importation of Asbestos Mixtures, according to the schedule in § 763.71. When two or more persons meet the definition of "importer" for the same shipment, the principal in the transaction, not his agent(s), shall report.

(d) Secondary processors of asbestos and importers of asbestos mixtures or articles containing asbestos components must complete and submit a single EPA Form 7710–36, Reporting Commercial and Industrial Use of Asbestos, according to the schedule in § 763.71(c), if selected for further reporting as described in § 763.71(c).

(e) Particular information required on EPA Form 7710–36 which has been previously submitted to the Consumer Product Safety Commission (CPSC) in accordance with a general order dated Dec. 22, 1980 (45 FR 84384), may be referenced in the appropriate place on the form and need not be submitted unless the respondent has informed the CPSC of his objection to any sharing of the data with EPA. Information for 1981 which was not required by CPSC must be reported on the EPA forms.

(f) The following persons are not subject to §§ 763.65 and 763.71.

(1) Secondary processors of asbestos, to the extent that they process an asbestos mixture to repair articles, to construct buildings or other such construction activities, or to apply, assemble, install, erect, consume, or repackage the mixture without modification.

(2) Persons who are small manufacturers, processors, or importers, as defined in § 763.63(n).

§ 763.71 Schedule for reporting.

(a) All miners, primary processors, and importers of bulk asbestos subject to reporting under § 763.65(a) shall submit required data on EPA Form 7710–36 within 90 days after the effective date of this rule.

(b) All secondary processors and importers subject to reporting under § 763.65 (b) and (c) shall submit required data on EPA Form 7710–37 within 60 days after the effective date of this rule.

(c) All persons subject to paragraph (b) of this section who are selected for additional reporting shall submit required data on EPA Form 7710–36 within 90 days after receipt of EPA notification to do so. Selections will be made in the following manner. The respondents will be selected using a stratified random sampling technique. First, qualified statisticians will review reports on EPA Form 7710–37 and determine the optimal method to stratify respondents according to the composition of the respondent population. The strata will be defined by all or an appropriate subset of the following variables: the end product; the asbestos mixture that is the starting material in the end product; the volume of the asbestos mixture annually consumed or imported. Respondents will be stratified into as few groups as reasonably possible. The size of the sample will be determined after all respondents have been stratified. EPA intends to require further reporting from the minimum number of respondents possible while still meeting the EPA needs for statistically sound data. If there are insufficient numbers of respondents in a group to perform a statistically sound sample survey, then all of the respondents in that group may be required to complete EPA Form 7710–36. A standard random selection technique will be employed to select persons who will be required to complete and submit EPA Form 7710–36. Notification shall be sent by certified letter, signed by the Office Director, Office of Toxic Substances, and will have attached copies of this rule and EPA Form 7710–36. Letters of notification will be sent by EPA no later than three years after the effective date of this rule.

(d) EPA Form 7710–36 and EPA Form 7710–37 can be obtained by writing or telephoning:

Industry Assistance Office, Office of Pesticides and Toxic Substances (TS–799), Washington, D.C. 20460, Toll free: (800–424–9065), In Washington call: (554–1404).

(e) Completed forms must be mailed to: U.S. Environmental Protection Agency, Post Office Box 2070, Rockville, MD. 20852.

§ 763.74 Confidential business information.

(a) Any person submitting a document under this rule may assert a business confidentiality claim covering all or part of the submitted material unless otherwise instructed on the reporting form. EPA will disclose information covered by a claim only as provided in procedures set forth in 40 CFR Part 2.

(b) Certification for a claim made on any item reported under § 763.65 must be made by signing the certification statement as specified in the forms.

(c) If no certified claim accompanies a document at the time it is submitted to EPA, the document may be placed in an open file available to the public without further notice to the respondent.

§ 763.76 Reporting commercial and industrial uses of asbestos.

The following EPA Form 7710–36, Reporting Commercial and Industrial Uses of Asbestos, will be completed and submitted to EPA as required in §§ 763.65 and 763.71. Information must be reported on this form to the extent that it is known to or reasonably ascertainable by the respondent, except for importers. Importers must report information on this form to the extent that it is in the possession of the respondent.

(a) EPA Form 7710–36 (5–80). [insert form]

(b) [Reserved]

BILLING CODE 6560–50–M

O.M.B. No. 2000-0478: Approval Expires June 30, 1985

EPA United States Environmental Protection Agency

REPORTING COMMERCIAL AND INDUSTRIAL USES OF ASBESTOS

When completed send this form to:

U.S. Environmental Protection Agency
P.O. Box 2070
Rockville, MD 20852

Please read the accompanying instruction booklet before completing this form. Note that a separate form must be submitted for each plant site, except that total imports or exports of bulk asbestos may be reported in a consolidated corporate report. The instructions provide further directions.

When this form is complete, enclose it in the preaddressed envelope provided. Should you have any questions, please contact the Industry Assistance Office toll-free at (800) 424-9065 or in Washington, D.C. at (202) 554-1404.

All persons who are solely secondary processors, importers of asbestos mixtures, or importers of articles containing asbestos components will report in the first phase on EPA Form 7710-37, titled "Secondary Processing and Importation of Asbestos Mixtures." These persons will report in this form, EPA Form 7710-36, only upon receipt of notice to that effect from EPA (see 40 CFR 763, part D).

A(1). RESPONDENT IDENTIFICATION

1. Company name | Plant site name

Address (Number and street)

City | County | State | ZIP code

2. Principal technical contact person | Name | Job title | Office telephone (Area code, number, extension)

3. *If applicable* — Record mine identification number ——

4. *If applicable* — Record the name and address of the parent corporation which is responsible for the fiscal management of the reporting site.

Name of parent corporation

Address (Number and street)

City | County | State | ZIP code

5. Record the total number of years during which the manufacture and/or processing of asbestos has been conducted at the reporting site. —— Number of years

A(2). RESPONDENT ACTIVITY

6. Identify your activity from the definitions in the instruction booklet and mark (X) the box next to the category below that best describes your activity(ies). Mark (X) next to all activities that you are reporting on this form. You must at least complete the portions of this report that are indicated next to the box you mark, and you must complete other sections if you conduct that activity. For example, if at the same plant site you process bulk asbestos to produce an asbestos mixture and you also process an asbestos mixture that is made at another location, then you as a primary processor must also complete part D as a secondary processor.

All persons who are miners, millers, primary processors, or importers of bulk asbestos must report their asbestos activities at all plant sites.

Mark (X) your activity(ies) that is reported on this form.

- ☐ Mine and mill — Complete parts A, B(1), G, H, I, J, K [B(3), if applicable]
- ☐ Primary processor — Complete parts A, C, G, H, I, J, K [B(3), if applicable]
- ☐ Importer of bulk asbestos — Complete parts A, B(2) [B(3), if applicable]
- ☐ Secondary processor — Complete parts A, D, G, H, I, J, K
- ☐ Importer of asbestos mixtures — Complete parts A and E
- ☐ Importer of article(s) containing asbestos component(s) — Complete parts A and F

A(3). CERTIFICATION FOR CLAIMS OF CONFIDENTIALITY

You may claim as confidential any information you submit on this form. The instructions provide specific instructions on how to assert claims of confidentiality. For information which you submit in attachments to the form, provide a copy which clearly indicates the information you wish to claim confidential.

Space is provided at the end of each line to claim information on that line confidential.

For any information on this form you claim as confidential, you must certify that the information is confidential. The signature below will attest to the truth and accuracy of the following statements. All four statements must be true about any information you claim confidential.

1. My company has taken measures to protect the confidentiality of the information, and it will continue to take these measures.
2. The information is not, and has not been, reasonably obtainable by other persons (other than governmental bodies) by using legitimate means (other than discovery based on a showing of special need and in a judicial or quasi-judicial proceeding) without my company's consent.
3. The information is not publicly available.
4. Disclosure of the information claimed as confidential would cause substantial harm to my company's competitive position.

7. Signature of authorized official | Date

B(1). PRODUCTION OF BULK ASBESTOS

QUANTITY OF BULK ASBESTOS MINED OR MILLED

Enter, in short tons, the amount of bulk asbestos you produced (mined or milled) for 1979 through 1981.

Year	*Report in short tons*						Confidential Mark (X)
	Chrysotile	Crocidolite	Amosite	Anthophyllite asbestos	Tremolite asbestos	Actinolite asbestos	
1979							
1980							
1981							

B(2). IMPORTATION OF BULK ASBESTOS

QUANTITY OF BULK ASBESTOS IMPORTED

Enter, in short tons, the amount of bulk asbestos you imported for 1979 through 1981.

Mark (X) one: ☐ This is a corporate consolidated report. ☐ This is a plant site report.

Year	*Report in short tons*						Confidential Mark (X)
	Chrysotile	Crocidolite	Amosite	Anthophyllite asbestos	Tremolite asbestos	Actinolite asbestos	
1979							
1980							
1981							

B(3). EXPORTATION OF BULK ASBESTOS

QUANTITY OF BULK ASBESTOS EXPORTED

Enter, in short tons, the amount of bulk asbestos you exported for 1979 through 1981.

Mark (X) one: ☐ This is a corporate consolidated report. ☐ This is a plant site report.

Year	*Report in short tons*						Confidential Mark (X)
	Chrysotile	Crocidolite	Amosite	Anthophyllite asbestos	Tremolite asbestos	Actinolite asbestos	
1979							
1980							
1981							

EPA Form 7710-36 (6-12-82)

C. PRIMARY PROCESSOR PRODUCTION

Enter the following information for each type of end product that you shipped from your plant site. Classify your end products according to the list below.

End product shipped (Enter one end product per line) (1) Code number	Generic name	Type of asbestos fiber (Use one line per mineral type) (2)	Year	Quantity of asbestos consumed (Short tons) (3)	Product shipments: Total annual production (4) Quantity	Unit of measure	Value shipped (Thousands of dollars) (5) Domestic	Exports	Confidential Mark (X)
		☐ Chrysotile ☐ Anthophyllite	1979						
		☐ Crocidolite ☐ Tremolite	1980						
		☐ Amosite ☐ Actinolite	1981						
	☐ Continued	☐ Chrysotile ☐ Anthophyllite	1979						
		☐ Crocidolite ☐ Tremolite	1980						
		☐ Amosite ☐ Actinolite	1981						
	☐ Continued	☐ Chrysotile ☐ Anthophyllite	1979						
		☐ Crocidolite ☐ Tremolite	1980						
		☐ Amosite ☐ Actinolite	1981						

(6) Estimate the percentage of the total value shipped from the plant site reported here as primary processor production in 1981 ——— %

Asbestos Mixture Product Subcategories

Papers, felts, or related products	Unit of measure
01. Commercial paper	Short tons
02. Rollboard	Short tons
03. Millboard	Short tons
04. Pipeline wrap	Short tons
05. Beater-add gasketing paper	Short tons
06. High-grade electrical paper	Short tons
07. Unsaturated roofing felt	Short tons
08. Saturated roofing felt	Short tons
09. Flooring felt	Short tons
10. Corrugated paper	Short tons
11. Specialty paper (Specify generic name)	Short tons
Floor coverings	
12. Vinyl-asbestos floor tile	Square yards
13. Asbestos-felt-backed vinyl flooring	Square yards

Asbestos-cement products	Unit of measure
14. A/C pipe and fittings	Short tons
15. A/C sheet, flat	100 sq. ft.
16. A/C sheet, corrugated	100 sq. ft.
17. A/C shingle	Squares
Friction materials	
18. Drum brake lining (light-medium vehicle)	Pieces
19. Disc brake pads (light-medium vehicle)	Pieces
20. Disc brake pads (heavy vehicle)	Pieces
21. Brake block (heavy equipment)	Pieces
22. Clutch facings (all)	Pieces
23. Automatic transmission friction components	Pieces
24. Friction materials (industrial and commercial)	Pieces

Textiles	*Unit of measure
25. Cloth	Pounds
26. Thread, yarn, tap, roving, cord, rope, or wick	Pounds
Other products	
27. Sheet gasketing (other than beater-add)	Sq. yards
28. Packing	Pounds
29. Paints and surface coatings	Gallons
30. Adhesives and sealants	Gallons
31. Asbestos-reinforced plastics	Pounds
32. Insulation materials not elsewhere classified (Specify generic name)	(Specify)
33. Mixed or repackaged asbestos fiber	Short tons
34. Other (Specify generic name)	(Specify)

D. SECONDARY PROCESSOR PRODUCTION

Enter the following information for each type of end product that you shipped from your plant site. Classify end products and asbestos mixtures consumed according to the lists on this form.

End product shipped (Enter one end product per line) (1) Code number	Generic name	Total annual production (2) Year	Quantity	Unit of measure	Asbestos mixture consumed and form (Enter one mixture per line) (3) Code number	Generic name — Form	Function of asbestos in product (4)	Year	Annual consumption of asbestos mixtures (5) Quantity	Unit of measure	Delivered cost (Thousands of dollars)	Confidential Mark (X)
		1979						1979				
		1980						1980				
		1981						1981				
		1979						1979				
		1980						1980				
	☐ Continued	1981						1981				
		1979						1979				
		1980						1980				
	☐ Continued	1981						1981				

(6) Estimate the percentage of the total value shipped from the plant site reported here as secondary processor production in 1981 ——— %

Typical terms for products made from asbestos mixtures

Automotive and friction products
101. Drum brake lining (light-medium vehicle)
102. Disc brake pads (light-medium vehicle)
103. Disc brake pads (heavy vehicle)
104. Brake block (heavy equipment)
105. Clutch facings (all)
106. Automatic transmission friction components
107. Friction materials (industrial and commercial)
108. Custom automotive body filler
109. Transmissions
110. Mufflers
111. Radiator top insulation
112. Radiator sealant
113. Other (Specify generic name)

Appliances
114. Appliance, industrial and consumer (Specify generic name)

Construction products
115. Boiler and furnace baffles
116. Decorated building panels
117. A/C sheet
118. Flexible air conductor
119. Hoods and vents
120. Portable construction building
121. Roofing, saturated
122. Roof shingles
123. Wallboard
124. Waterproofing panels
125. Other (Specify generic name)

Clothing
126. Aprons
127. Boots
128. Gloves and mittens
129. Hats and helmets
130. Overgarters
131. Suits
132. Other (Specify generic name)

Floor coverings
133. Vinyl-asbestos floor tile
134. Asbestos-felt-backed sheet vinyl flooring

Electrical products and components
135. Cable insulation
136. Electronic motor components
137. Electrical resistance supports
138. Electrical switchboard
139. Electrical switch supports
140. Electrical wire insulation
141. Motor armature
142. Other (Specify generic name)

Fire and heat shielding equipment and components
143. Asc deflectors
144. Fire doors
145. Fireproof absorbent paper
146. Heat shields
147. Molten metal handling equipment
148. Oven and stove insulation
149. Pipe wrap
150. Stove lining, wood and coal
151. Stove pipe rings
152. Sleeves
153. Thermal insulation
154. Other (Specify generic name)

Gaskets
155. Sheet gasketing, rubber encapsulated beater addition
156. Sheet gasketing, rubber encapsulated compressed
157. Compressed sheet gasketing (other)
158. Metal reinforced gaskets
159. Automotive gaskets
160. Other (Specify generic name)

Marine equipment and supplies
161. Caulks, marine
162. Liners, pond or canal
163. Marine bulkheads
164. Other (Specify generic name)

Paints, coatings, sealants, and compounds
165. Asphaltic compounds
166. Automotive/truck body coatings
167. Buffing and polishing compounds
168. Caulking and patching compounds
169. Drilling fluid
170. Flashing compounds
171. Furnace cement
172. Glazing compounds
173. Plaster and stucco
174. Pump, valve, flange, and tank sealing components
175. Roof coatings
176. Textured paints
177. Tile cement
178. Other (Specify generic name)

Textile and felt products
179. Aluminized cloth
180. Rope or braiding
181. Yarn, lap, or roving
182. Wicks
183. Bags
184. Belting
185. Blankets
186. Carpet padding
187. Commercial/industrial dryer felts
188. Draperies
189. Drip cloths
190. Fire hoses

Textile and felt products — Con.
191. Ironing board pads and insulation
192. Mantles, lamp or catalytic heater
193. Packing and packing components
194. Piano and organ felts
195. Rugs
196. Tape
197. Theater curtains
198. Umbrellas
199. Other (Specify generic name)

Miscellaneous products
200. Aerial distress flares
201. Acoustical products
202. Ammunition wadding
203. Asbestos-reinforced plastic products
204. Ash trays
205. Baking sheets
206. Blackboards
207. Candlesticks
208. Chemical tanks and vessels
209. Filters
210. Grommets
211. Gun grips
212. Jewelry making equipment
213. Kilns
214. Lamp sockets
215. Light bulbs (all types)
216. Linings for vaults, safes, humidifiers, and filing cabinets
217. Phonograph records
218. Pottery clay
219. Welding rod coatings
220. Other (Specify generic name)

E. IMPORTATION OF ASBESTOS MIXTURES

Enter the following information for each type of asbestos mixture that you imported in 1981. Classify your imports according to the lists in section C or D.

Asbestos mixtures (Enter one mixture per line) (1) Code number	Generic name	Asbestos fiber content (if known) (2) Type of asbestos	Quantity (Per unit)	Year	Total annual imports (3) Quantity	Unit of measure	Value of imports (U.S. dollars)	Confidential Mark (X)
		☐ Chrysotile ☐ Anthophyllite ☐ Unknown		1979				
		☐ Crocidolite ☐ Tremolite		1980				
		☐ Amosite ☐ Actinolite	☐ Unknown	1981				
	☐ Continued	☐ Chrysotile ☐ Anthophyllite ☐ Unknown		1979				
		☐ Crocidolite ☐ Tremolite		1980				
		☐ Amosite ☐ Actinolite	☐ Unknown	1981				
	☐ Continued	☐ Chrysotile ☐ Anthophyllite ☐ Unknown		1979				
		☐ Crocidolite ☐ Tremolite		1980				
		☐ Amosite ☐ Actinolite	☐ Unknown	1981				

U.S. ENVIRONMENTAL PROTECTION AGENCY

REPORT OF COMMERCIAL AND INDUSTRIAL USES OF ASBESTOS
Continued

COMPANY NAME AND ADDRESS
(Same as reported in item 1 on page 1)

F. IMPORTATION OF ARTICLE(S) CONTAINING ASBESTOS COMPONENTS

Enter the following information for each article that you imported in 1981. Classify your imports according to the lists in section C or D.

Article name (Enter one article per line) (1)		Total annual imports (2)				Asbestos component(s) (Use one line per component) (3)	Confidential Mark (X)
Code number	Generic name	Year	Quantity	Unit of measure	Value (U.S. dollars)		
		1979					
		1980					
		1981					
		1979					
		1980					
		1981					
		1979					
		1980					
		1981					

G. EMPLOYEES

Record the number of employees at the reporting site in each of the categories below. Count each employee in one category only.

	Number of employees	Confidential Mark (X)
(1) TOTAL number of employees at plant site *(Sum of 2, 3, 4, and 5)*		
(2) Number of production employees		
(3) Number of employees in shipping, receiving, and moving		
(4) Number of maintenance employees		
(5) Number of other employees		

H. SUMMARY OF CURRENT WORKER EXPOSURES

This section requires you to report, by category of production workers, the arithmetic mean of the 8-hour time weighted average (TWA) and ceiling concentration exposure levels for all employees at the reporting site. Report for all employees for whom you have determined a TWA and according to each production line making the reported products. The instructions include a worksheet for making necessary calculations (see Appendix B).

End product (Enter name) (1)		Respondent activity (2)	Production work category (3)	Number of employees (4)	8 hr. time weighted average				Ceiling concentration level (Range) (9)	Confidential Mark (X)
Code number	Generic name				Arithmetic mean of detectable measurements (5)	Standard deviation (6)	Total number of measurements (filters) (7)	Number of non-detectable measurements (8)		
	Not applicable	**Miners and millers**	**Mine operations** (includes all employees working in mine, including transporters)							
			Mill operations (includes all employees working in production areas of mill)							
		Primary processors	**Fiber introduction** operations (includes blending, mixing, bag opening, fluffing, willowing, etc.)							
		Primary processors and secondary processors	**Wet mechanical operations** (includes machining, sawing, drilling, cutting, grinding, pulverizing, weaving, etc.)							
			Dry mechanical operations (includes machining, sawing, drilling, cutting, grinding, pulverizing, weaving, etc.)							
			Other production employees							
		Primary processors	**Fiber introduction operations** (includes blending, mixing, bag opening, fluffing, willowing, etc.)							
		Primary processors and secondary processors	**Wet mechanical operations** (includes machining, sawing, drilling, cutting, grinding, pulverizing, weaving, etc.)							
			Dry mechanical operations (includes machining, sawing, drilling, cutting, grinding, pulverizing, weaving, etc.)							
			Other production employees							
		Primary processors	**Fiber introduction operations** (includes blending, mixing, bag opening, fluffing, willowing, etc.)							
		Primary processors and secondary processors	**Wet mechanical operations** (includes machining, sawing, drilling, cutting, grinding, pulverizing, weaving, etc.)							
			Dry mechanical operations (includes machining, sawing, drilling, cutting, grinding, pulverizing, weaving, etc.)							
			Other production employees							

(10) Sampling and analysis methods

☐ Mark this box if you use the NIOSH method to sample airborne concentrations of asbestos fibers in the workplace and analyze measurements (DHEW (NIOSH) Pub. No. 79-127).

If you utilize other sampling and analysis methods, enter the appropriate codes for those methods listed in the instruction booklet under part I.

(11) Enter the lowest detectable level of the measurements that your company expects to attain by the sampling and analysis methods. (Measurements below this level should be considered as "nondetectable." for the purposes of this rule.)

I. MEASURING ASBESTOS EMISSIONS OR FIBER RELEASE

NPDES Permit number _____ | Date

☐ Yes, enclosed is a separate report for this section concerning measuring asbestos emissions. ☐ No separate report

EPA Form 7710-36 (6-12-82)

J. WASTE AND DISPOSAL

Enter the following information for each end product you report in section B(1), C, and D. If you cannot provide information by end product, provide information according to the form of waste (column 2).

End product (1) Code number	End product (1) Generic name	Form of waste (sludge, slurry, broke or scrap, baghouse fines, or specify other) (2)	Total annual quantity of asbestos waste (Short tons) (3)	Average percent asbestos (4)	Disposal site (5) Type of land disposal facility (See instructions) (a)	Disposal site (5) Location (b)	Disposal site (5) Ownership (c)	Disposal site (5) Permitted hazardous waste facility? (d)	Method of disposal (6)	Confidential Mark (x)
	☐ End product report ☐ Form of waste report			%	☐ Surface impoundment ☐ Waste pile ☐ Land treatment ☐ Land fill ☐ Seepage facility ☐ Injection well	☐ On-site ☐ Off-site	☐ Company ☐ Private ☐ Municipal	☐ Yes ☐ No		
	☐ End product report ☐ Form of waste report			%	☐ Surface impoundment ☐ Waste pile ☐ Land treatment ☐ Land fill ☐ Seepage facility ☐ Injection well	☐ On-site ☐ Off-site	☐ Company ☐ Private ☐ Municipal	☐ Yes ☐ No		
	☐ End product report ☐ Form of waste report			%	☐ Surface impoundment ☐ Waste pile ☐ Land treatment ☐ Land fill ☐ Seepage facility ☐ Injection well	☐ On-site ☐ Off-site	☐ Company ☐ Private ☐ Municipal	☐ Yes ☐ No		

(7) You may describe in a separate enclosure any steps you take to ensure that waste does not release airborne fibers.

☐ Yes, enclosed is a separate description of waste disposal practices. ☐ No separate report

K. POLLUTION CONTROL EQUIPMENT

On separate lines enter information about each piece of air pollution control equipment used to control asbestos emissions at your plant site. ☐ Confidential

Item number (1)	Type of equipment (See code) (2)	Gas stream volume and temperature (3)	Equipment size (Baghouse and ESP only) (4)	Estimated collection efficiency (Percent) (5)	Normal operating schedule (Hrs./year) (6)	Quantity collected annually (Pounds) (7)	Source of emissions (8)	Stack or chimney? (9)	Special problems? (10)
		Volume Temperature	Square feet ☐ N/A	% ☐ Designed ☐ Actual	Hrs./yr.	Pounds ☐ Designed ☐ Actual		☐ Yes ☐ No	
		Volume Temperature	Square feet ☐ N/A	% ☐ Designed ☐ Actual	Hrs./yr.	Pounds ☐ Designed ☐ Actual		☐ Yes ☐ No	
		Volume Temperature	Square feet ☐ N/A	% ☐ Designed ☐ Actual	Hrs./yr.	Pounds ☐ Designed ☐ Actual		☐ Yes ☐ No	
		Volume Temperature	Square feet ☐ N/A	% ☐ Designed ☐ Actual	Hrs./yr.	Pounds ☐ Designed ☐ Actual		☐ Yes ☐ No	
		Volume Temperature	Square feet ☐ N/A	% ☐ Designed ☐ Actual	Hrs./yr.	Pounds ☐ Designed ☐ Actual		☐ Yes ☐ No	
		Volume Temperature	Square feet ☐ N/A	% ☐ Designed ☐ Actual	Hrs./yr.	Pounds ☐ Designed ☐ Actual		☐ Yes ☐ No	

(11) Estimate the percent of plant exhaust air that is treated by the equipment listed above _____ %

Continuation of item answers

EPA Form 7710-36 (6-12-82)

BILLING CODE 6560-50-C

Instruction Booklet—Reporting Commercial and Industrial Uses of Asbestos, EPA Form 7710-36

I. Introduction and Reporting Schedule

A. Introduction

These instructions are for companies that mine and/or mill commercial asbestos, or process or import an asbestos product, and are required to submit EPA Form 7710-36 under 40 CFR Part 763, Subpart D. Data must be reported to the extent that they are known to or reasonably ascertainable by the submitter based on factual information that either is available in company files, or can be obtained without unreasonable burden or cost. Importers must report information in their possession, but need not contact foreign manufacturers for missing information.

1. *Fill in all blocks.* Fill in all blocks in the portions of the form that must be completed. Write "N/A" (not applicable) in large, bold letters on the first line of any section that does not have to be completed.

If data for a portion of the form that must be completed are not available, consult part II of these instructions, "Missing Information."

EPA will check all forms for completeness. Incomplete forms may be returned for completion. If only a few items are incomplete, EPA may call the designated Technical Contact to determine the correct answer rather than return the form.

2. *Relevant Definitions.* Reporting requirements are determined by the company's asbestos activity in 1981 (i.e., miner and/or miller, importer of bulk asbestos, primary processor of asbestos, secondary processor of asbestos, importer of asbestos mixtures, or importer of articles containing asbestos components). Definitions for reporting activities and other terms used in this form may be found in Appendix A.

3. *Appropriate Number of Forms.* A separate form must be submitted for each *site.* For example, a miner and/or miller at one site who is a primary processor at a different site must submit a form for each site.

All asbestos activities conducted at each site must be reported. A primary processor who also imports asbestos at a single site must report both the primary processing and importing activities on the same form.

4. *Additional Space.* If additional space is needed to report all required information, responses can be entered on a reproduction of the pertinent portion of the form and the continuation should be noted on that part of the form.

B. Portions of the Form To Complete and Reporting Schedule

1. *Miners and/or Millers.* Miners and/or millers must complete parts A, B(1), G, H, I, J, and K of the form. Complete B(3) if applicable. Report for each plant site on a separate EPA Form 7710-36 and submit within 90 days of the effective date of the rule.

2. *Primary Processors of Asbestos.* Primary processors must complete parts A, C, G, H, I, J, and K of the form. Complete B(3) if applicable. If a facility processes an asbestos mixture that is made at a different plant site, part D must also be completed. Report for each plant site on a separate EPA Form 7710-36 within 90 days of the effective date of the rule.

3. *Secondary Processors of Asbestos.* Persons who are *solely* secondary processors must submit EPA Form 7710-37, "Reporting Secondary Processing and Importation of Asbestos Mixtures" within 60 days of the effective date of the rule. If the company is selected and notified by certified letter to complete EPA Form 7710-36, complete parts A, D, G, H, I, J, and K of the form for submission within 90 days of receiving notification.

4. *Importers of Bulk Asbestos.* Importers of Bulk Asbestos must complete *at least* parts A and B(2) of the form. Complete B(3) if applicable. Report all activities that involve asbestos on EPA Form 7710-36 within 90 days of the effective date of the rule.

5. *Importers of Asbestos Mixtures.* Importers of Asbestos Mixtures must submit EPA Form 7710-37 "Reporting Secondary Processing and Importation of Asbestos Mixtures," within 60 days of the effective date of the rule. If the company is selected and notified by certified letter to complete EPA Form 7710-36, complete parts A and E of the form and submit within 90 days of receiving notification.

6. *Importers of Article(s) Containing Asbestos Component(s).* Importers of Article(s) Containing Asbestos Component(s) must submit EPA Form 7710-37 "Reporting Secondary Processing and Importation of Asbestos Mixtures," within 60 days of the effective date of the rule. If the company is selected and notified by certified letter to complete EPA Form 7710-36, complete parts A and F of the form and submit within 90 days of receiving notification.

II. Missing Information

It is important to fill in all blocks in the portions of the form that must be completed. If the required information either cannot or need not be provided, enter one of the notations described below. Write "N/A" (not applicable) in large bold letters on the first line of any section that is not required. Only use "0" to report a quantity of zero.

Enter the following notations if the requested data are unknown, previously submitted to EPA or CPSC, or submitted as a corporate report.

UNK—The requested data are *unknown* and not reasonably ascertainable; or, not in the possession of the importer. This may be the case for information from a specific year or about a specific type of data that is required.

CPSC—The requested data have been previously reported to the Consumer Product Safety Commission (CPSC) in response to the December 22, 1980 Federal Register notice "Consumer Product Containing Asbestos; General Order for Submission of Information," (45 FR 84384). Use this notation only for the specific items of information that were submitted to CPSC. *Do not* use this notation in lieu of reporting of CPSC was instructed not to share the submitted information with EPA at the time of response to the CPSC General Order.

CORP—The requested data have been submitted for sections B(2) and B(3) (importation and exportation), in a corporate consolidated report. Inform the plant site management that a corporate consolidated report has been submitted and instruct those plant site(s) to enter "CORP" in sections B(2) and B(3).

EPA—The requested data have already been submitted to EPA in the format of the reporting form as proposed or promulgated.

III. Specific Instructions for Form 7710-36

A(1). Respondent Identification

1. Enter company name, and name and complete address of plant site.

2. Enter name, job title, and telephone number of the principal technical contact person to be contacted by the EPA for answers to any questions about the submitted form.

3. Miners must record the mine identification number assigned by the Mining Safety and Health Administration.

4. Enter name and address of the parent corporation responsible for fiscal management of the reporting site.

5. Enter the total number of years asbestos has been manufactured or processed at this plant site, through the date of this report.

A(2). Respondent Activity

Review the definitions in Appendix A of these instructions to ascertain required reporting activity(ies). Check the appropriate activity(ies) that is performed at this site. Complete the portions of the form listed next to the activities checked.

For example, a primary processor who makes an asbestos mixture and then processes the asbestos mixture at the same site to make a different end product should report the production of the final end product in part C. Only complete part D of the form if the facility processes an asbestos mixture that is made elsewhere.

A(3). Confidential Business Information

Any reported information may be claimed as confidential business information. When submitting the form, mark (X) in the space provided on each line of the form that contains confidential information. Additionally, an authorized company official must sign the "Certification for Claims of Confidentiality" to certify that the four statements on the form apply to all information claimed as confidential.

B(1). Production of Bulk Asbestos

Enter, in short tons, the amount of bulk asbestos produced (mined or milled), in 1979, 1980, and 1981.

B(2). Importation of Bulk Asbestos

Enter, in short tons, the amount of bulk asbestos imported in 1979, 1980, and 1981. Report all imports entering the U.S. Customs territory that are declared under Tariff Schedule of the United States, Annotated (TSUSA) Number 518.1110–518.1160. Mark in the appropriate box the source of this information.

B(3). Exportation of Bulk Asbestos

Enter, in short tons, the amount of bulk abestos exported in 1979, 1980, and 1981. Mark in the appropriate box the source of this information.

C. Primary Processor Production

Individually list the product subcategories made and shipped from the plant site in 1979, 1980, and 1981 that incorporate bulk abestos as a starting material. Read instructions for items 1, 2, and 3 before completing this section to ensure sufficient space for entries.

(1) *End Product Shipped.* Locate on the list of "Asbestos Mixture Product Subcategories" the most specific name that describes the end product(s) shipped from the plant site. Enter the corresponding code number for each product subcategory being reported. If the listed product subcategory name is not adequately descriptive, write in a generic name next to the code number. If the product is not listed, write in the appropriate code for "other" and a generic name for the product. *Do not* enter a trade name as a generic name. Do not report anything more specific than a product subcategory.

(2) *Type of Asbestos Fiber Consumed.* Mark (X) the fiber type(s) that is, or has been, used in production of reported product subcategory. Use one block for each fiber type incorporated into each product subcategory. If more than one type of fiber(s) is used for a product, mark (X) the additional fiber in the next block and mark (X) the continuation box in column 1. *Do not* list the same product subcategory twice.

(3) *Quantity of Asbestos Consumed.* For each type of asbestos, enter, in short tons, quantity consumed in 1979, 1980, and 1981.

(4) *Total Annual Production.* Record the total annual production quantity of each reported product subcategory in 1979, 1980, and 1981. Production quantities will be expressed in the units of measure indicated on the form next to the listed end product, as used by the Bureau of Census. If census units are not applicable, report production in short tons.

(5) *Value Shipped.* Record the total annual value shipped (in thousands of U.S. dollars) for each reported product subcategory in 1979, 1980, and 1981. These figures must be separated to show domestic sales and export sales (i.e., sales distributed outside the U.S. Customs Territory). If the breakdown is unknown, report total sales as "Domestic" sales, and write "UNK" under "Exports."

The valuation of products shipped should be based on the net selling value, f.o.b. plant, after discounts and allowances, and exclusive of freight charges and excise taxes.

When reporting products transferred to other establishments within the same company, the shipping plant should assign the full economic value to the transferred products. Include *all* direct costs of production and a reasonable proportion of all other costs and profits.

(6) *Percentage of Total Value Shipped.* Estimate the percentage of end products shipped that reflect primary processing of asbestos in 1981.

D. Secondary Processor Production

Individually list the product subcategories made and shipped from the plant site in 1979, 1980, and 1981 that incorporated an asbestos mixture as a starting material. Read the instructions for items 1, 2, and 3 before completing this section to ensure sufficient space for entries.

(1) *End Product Shipped.* Locate on the list of "Typical Terms for Products Made from Asbestos Mixtures" the most specific subcategory name that describes the product. Enter the corresponding code number for each product subcategory being reported. If the product name listed is not adequately descriptive, write in a generic name next to the code number. If the product is not listed, enter the appropriate code for "other" and write in a generic name for the product. *Do not* enter a trade name as a generic name. Do not report anything more specific than a product subcategory.

(2) *Total Annual Production (Quantity by Census Unit of Measure).* Record the total production of the reported product subcategory at this plant site in 1979, 1980, and 1981. Production quantities should be reported in the unit of measure used by the U.S. Department of Commerce, Bureau of the Census, for the 1977 Census of Manufacturers.

(3) *Asbestos Mixture Consumed and Form.* Locate and enter from the list of "Asbestos Mixture Product Subcategories" the code number of the asbestos mixture processed to produce the product subcategory. If the material processed is not listed, then enter the appropriate code for "other" and write the generic name of the asbestos material you process. Indicate the form in which the asbestos starting material is purchased (e.g., roll of paper, 3'x5' sheets, reams of 8"x11" sheets).

Use one block for each asbestos mixture incorporated into the product subcategory. If there is more than one asbestos mixture per product subcategory, list the mixture(s) in the next block(s) and mark (X) the continuation box in column 1. *Do not* list the same product subcategory twice.

(4) *Function of the Asbestos in Product.* Briefly describe the function of the asbestos in the product. Examples of possible asbestos functions are: rot resistance, heat insulation, fire shield, electrical insulation, dimensional stability, filler, or tensile strength.

(5) *Annual Consumption of Asbestos Mixtures.* Record the total annual quantity and specify Census Bureau unit of measure and the total annual cost (in thousands of U.S. dollars) of the asbestos mixtures consumed in 1979, 1980, and 1981.

The value of the materials consumed should be based on the delivered cost, i.e., the *amount paid or payable* after discounts and including freight and other direct charges incurred in acquiring the materials. Charges include purchases, transfers from other establishments of the company, and withdrawals from inventories.

Materials transferred to the plant site from other plants within the company should be assigned their full economic value, as assigned by the shipping plant, plus cost of freight and handling charges.

(6) *Percentage of Total Value Shipped.* Estimate the percentage of end products shipped that reflect secondary processing of asbestos in 1981.

E. Importation of Asbestos Mixtures

Individually list the asbestos mixtures imported to the plant site in 1979, 1980, and 1981. Read the instructions for items 1, 2, and 3 before completing this section to ensure sufficient space for entries.

(1) *Asbestos Mixture.* Locate on the list of "Asbestos Mixture Product Subcategories" the most specific name that describes the mixture imported. Enter the corresponding code number of each product subcategory being reported. If the name of the product subcategory is not adequately descriptive, write in a generic name next to the code number. If the imported product subcategory is not listed, enter the appropriate code for "other" and write in a generic name for the product. List each product subcategory on a separate line. *Do not* enter a trade name as a generic name. Do not report anything more specific than a product subcategory.

(2) *Asbestos Fiber Content.* Mark (X) the type of asbestos fiber in the imported asbestos mixture and enter the total quantity of asbestos per unit of the mixture (the unit used to report quantity imported). The quantity of asbestos should be reported in *pounds.* If these data are not available, mark (X) "UNK."

Use one block for each type of fiber that is in the imported mixture. If the mixture contains more than one type of asbestos fiber, list the additional fiber(s) in the next block(s) and note the continuation in column 1. *Do not* list the same mixture twice.

(3) *Total Annual Imports.* Record the total annual quantity of each listed product subcategory imported in 1979, 1980, and 1981.

Quantities will be expressed in the units of measure used by the U.S. Bureau of the Census or according to the unit used to report importation to the U.S. Customs Service.

Record the total annual value imported (U.S. dollars) for each product in 1979, 1980, and 1981. This figure can be drawn from the U.S. Customs Service entry forms as the "Entered Value in U.S. Dollars" or "Value."

F. Importation of Article(s) Containing Asbestos Component(s)

Individually list the articles containing an asbestos component that were imported in 1979, 1980, and 1981. Only report information relating to imported product subcategories listed under "Typical Terms for Products Made from Asbestos Mixtures." If the component was reported on EPA Form 7710–37 during Phase 1, use the same code(s) and generic name(s) as reported on that form. Read the instructions for items 1, 2, and 3 before completing this section to ensure sufficient space for entries.

(1) *Article Name.* Locate on the list of "Typical Terms for Products Made from Asbestos Mixtures" the most specific name that describes your product. If the listed product name does not adequately describe your product, write in a generic name next to the code number. List each product on a separate line. If the imported product is not listed, enter the appropriate code number for "other" and write in a generic name. *Do not* enter a trade name as a generic name.

(2) *Total Annual Imports.* Record the total number of units that were imported in 1979,

1980, and 1981. Quantities will be reported in the unit of measure that was used to declare the merchandise upon entry into the U.S. or by the U.S. Bureau of Census for the 1977 Census of Manufacturers. Enter the value of the imported merchandise in U.S. dollars.

(3) *Asbestos Component(s).* List all asbestos components contained in the imported article by name, or by describing the mixture making up the component. Use one block for each asbestos component. If the imported article contains more than one asbestos component, list the component in the next block and note the continuation in column 1. *Do not* list the same article twice.

G. Employees

Classify all employees as of January 1981 into the following categories. In items 2–5, COUNT EACH EMPLOYEE IN ONLY ONE CATEGORY. In this section, report numbers of individuals without regard to the number of hours worked.

(1) *Total Number of Employees.* Enter the total number of employees (the sum of items 2, 3, 4, and 5) who worked at the reporting plant site as of January 1981. If you employed seasonal workers in 1981, add the number of those workers to the total.

(2) *Number of Production Employees.* Enter the number of production employees who work in areas where ASBESTOS IS MANUFACTURED OR PROCESSED. Do not include plant site production employees who work in separate areas where no asbestos fiber or asbestos product is processed. This number must equal the total number of employees reported in Section H, for all product lines.

(3) *Number of Shipping, Receiving, and Moving Employees.* Enter the number of employees involved with shipping, receiving, or moving asbestos fiber or asbestos-containing products.

(4) *Number of Maintenance Employees.* Enter the number of maintenance employees who perform maintenance tasks in work areas where asbestos fiber, asbestos products, or asbestos waste are processed, stored, or moved.

(5) *Number of Other Employees.* Enter the number of other employees at the location that are not counted in items 2–4.

H. Summary of Current Worker Exposures

Report, by category of production workers, the arithmetic mean of the 8-hour time weighted average (TWA) exposure level for all employees at the reporting site for whom a TWA has been determined. Appendix B describes how to perform the calculations and includes a worksheet.

Summarize Only *Existing Monitoring Data;* Additional Monitoring Is Not Required

Submit a single TWA value (arithmetic mean) to summarize existing monitoring data that will describe current exposure levels that employees in general production categories may experience while working on each production line. Summarize and report monitoring data separately for workers on the production line for each end product subcategory that has been reported as either "Primary Processor Production" (part C) or "Secondary Processor Production" (part D). Miners and millers, must provide a single, separate TWA value for the mine and for the mill.

For each *End Product Subcategory,* enter the number of workers who perform the production operations listed below. Only count employees who were counted as production workers in item 2 of part G of the form. Each employee is to be counted *only one time,* in the operation and product line that is the employee's primary assignment.

After grouping the 8-hour TWAs, follow the detailed instructions in Appendix B to find the mean, standard deviation, number of measurements, and ceiling ranges for each group.

Note.—The sum of all production employees listed in column 4 *must equal* the number of production employees entered in item 2 of part G.

(1) *End Product.* Primary or secondary processors must enter the same code number(s) and generic name(s) they listed in part C or D of the form. Miners and/or millers *do not* complete this block.

(2) *Respondent Activity.* Determine applicable category of activity.

(3) *Production Work Category.* Divide production employees into the Production Work Categories for each end product subcategory. Count mine workers under *Mine Operations* and mill workers under *Mill Operations.*

Fiber Introduction Operations are operations where bulk (raw) asbestos is mixed with or added to a combination of other materials. Primary processors will list employees who handle bulk or raw abestos fiber. Secondary processors do not use bulk asbestos as a starting material.

Wet Mechanical Operations are operations where asbestos fiber, asbestos mixtures, or asbestos-containing materials are fabricated, modified, or altered, and the asbestos component is wetted to reduce the release of airborne asbestos fiber. This category includes such activities as: machining, sawing, drilling, cutting, grinding, or pulverizing. Count employees whose principal job is to control or work with the tool or machinery performing the operation. Count all asbestos textile workers involved with wet operations here, whether involved in spinning, twisting, or weaving operations.

Dry Mechanical Operations are operations where asbestos fiber, asbestos mixtures, or asbestos-containing materials are fabricated, modified, or altered without any intentional wetting of the material during the operation. This category includes activities such as: machining, sawing, drilling, cutting, grinding, or pulverizing. Count employees whose principal job is to control or work with the tool or machinery performing the operation. Count all asbestos textile workers in dry operations here, whether involved in spinning, twisting, or weaving operations.

Other Production Employees are production employees involved in operations that require handling of asbestos fiber or materials in a manner not covered in the operations described in the other categories. This category will include workers who perform an operation that involves handling an asbestos mixture, such as bonding asbestos-felt-backing for vinyl sheet flooring or injecting asbestos-reinforced plastic into a mold. Other production workers who are to be counted in this category include (but are not limited to) employees who take products off a production line, assemble parts, oversee drying or rolling operations, or inspect, weigh, or package asbestos mixtures or asbestos-containing products.

(4) *Number of Employees.* Enter next to the appropriate job classification the number of employees working in jobs meeting the general descriptions provided. Count employees *only one time* and only under the job description that best describes their primary duties.

(5) *Arithmetic Mean of Detectable Measurements.* Locate monitoring data for any employees counted in column 4 and group those monitoring data according to the employee's general job classification. Determine the arithmetic mean of those detectable TWA values for each work category. Calculate the mean only to the nearest one-hundredth (e.g., 0.05). The arithmetic mean is the sum of the time-weighted averages divided by the number of time-weighted averages. (See Appendix B for instructions and worksheet for determining the arithmetic mean.) If there are no measurements for workers in a particular work category, write in "No measurements."

(6) *Standard Deviation.* Enter the standard deviation for each arithmetic mean you calculate in column 5. (See Appendix B for instructions and a worksheet for determining the standard deviation.)

(7) *Number of Measurements Used.* For each work category, enter the total number of actual observations (filters) used to determine all of the employee's TWAs in the category. This includes the number of all non-detectable measurements.

(8) *Number of Non-detectable Measurements.* For each work category, enter the number of measurements that are below detectable levels. (Non-detectable levels may not be greater than 0.1 f/cc.)

(9) *Ceiling Concentration Level.* For each work category, enter the range of ceiling concentration levels that were determined. Provide the low and high measurements.

(10) *Sampling and Analyses Methods.* If the company used the NIOSH methodology to sample airborne concentrations of asbestos fibers in the workplace and to analyze measurements [DHEW (NIOSH) Pub. No. 79–127], check the corresponding box on the form.

If the company used other sampling and analysis methods, enter the appropriate codes for those methods listed in the next section of these instructions.

The reporting company has the option to describe in an attachment any additional information that will better describe work practices or other measures instituted to reduce the levels of airborne fibers or to protect workers from exposure to asbestos. Attach any additional materials to this form at the time of submission.

(11) Enter the lowest detectable level of the measurements the company expects to attain by the sampling and analysis methods. (Measurements below this level are considered "non-detectable" for the purposes of this rule.)

I. Measuring Asbestos Emissions or Fiber Release

If the plant site has applied for a water effluent discharge permit (NPDES Permit), provide the application date and the permit number that was assigned.

Summarize and report separately the results of any measurements or monitoring performed to determine the amount of asbestos fiber released during the production, use, or disposal of asbestos fiber or asbestos products (other than already reported in part H of this form). If attaching any such information for this section, check the "yes" box on the form. If not, mark "X" for no separate report. Where possible, the measurements should characterize the type of fibers found and the fiber size distribution, and should be reported according to the following ranges.

Reports submitted in response to this section should describe the methodologies used to perform any tests, to gather samples, and to analyze samples. If this information has been previously submitted to a Federal agency, do not report again here, but indicate the date and to whom the information was sent, and briefly describe the nature of the information. Where possible, summarize the sampling and analytical methodologies according to the terms and abbreviations listed below.

Fiber size distributions	Analysis methodologies
<1.0	Optical Microscopy.
1.0–2.0	PC Phase Contrast Microscopy.
2.0–3.0	PM Polarizing Microscopy.
3.0–4.0	DS Dispersion Staining.
4.0–5.0	OM Other optical microscopy techniques (specify).
5.0–10.0	
10.0–20.0	Electron Microscopy.
20.0–30.0	TEM Transmission Electron Microscopy.
<30.0	
	SEM Scanning Electron Microscopy.
Sampling Methodologies	
	ED Electron Diffraction.
	XRS X-Ray Spectrometry.
K Konimeter	EM Unknown electron microscopy results.
TP Thermal Precipitator	
I Impinger	O Any other analysis methodology (Provide specifications).
MI Midget Impinger	
MF Membrane Filter	
EPA Provisional Methodology	

EPA—"Electron Microscope Measurement of Airborne Asbestos Concentration—A Provisional Methodology," EPA-600/2-77-178 (Revised June 1978).

J. Waste and Disposal

Entries in this section will account for the waste that is not recycled and results from the production of each type of end product subcategory reported. The percentage of the total waste from the plant site that results from the production of each end product subcategory may be estimated. Report separately the data for each end product subcategory. If unable to determine quantities by product subcategory, report total quantities disposed of for each form of waste.

(1) *Product Line.* Enter the product subcategory code (and generic name if used) for each end product subcategory reported in parts B(1), C, or D. Miners and/or millers need only list the type of bulk asbestos fiber reported in section B(1). If unable to determine wastes by end product subcategory, report according to the form of the waste (see below); enter the name(s) and code(s) from parts C and D. Mark (X) in the appropriate box to indicate that the data is either an "End Product Report" or a "Form of Waste Report."

(2) *Form of Waste.* Record the form of the waste either after completion of the processing or as it leaves the plant site. Report asbestos collected in control devices, such as baghouse fines, on a separate line.

(3) *Total Annual Quantity of Asbestos Waste (Short Tons).* Enter the total quantity, in short tons, of asbestos waste generated by each reported end product production line in 1981. Asbestos waste is a waste product that contains asbestos as some of the total waste. Do not report quantities of waste recycled or reprocessed.

(4) *Average Percent Asbestos.* Record in short tons the average percentage of asbestos (by weight) in the total quantity of asbestos waste. This figure may be an estimate based on previous experience or an extrapolation of production mass balance figures.

(5) *Disposal Site(s).* (a) Type of Land Disposal Facility. Mark (X) one of the following types of land disposal facilities or the asbestos waste of each end product subcategory or form of waste. See the February 5, 1981, **Federal Register** (46 FR 11126) for comprehensive definitions of the types of facilities.

- *Surface Impoundments*—facilities at which liquid wastes or other liquids are impounded or held. Surface impoundments are generally earthen structures designed to hold an accumulation of liquids or wastes containing free liquid.
- *Waste Piles*—facilities at which wastes, usually in a solid state, are placed on the land for storage or treatment.
- *Land Treatment*—facilities at which wastes (usually in a solid, semi-solid, semi-liquid, or liquid state) are spread on the ground for the purpose of treatment.
- *Landfills*—facilities at which wastes, usually in solid or semi-solid state, are placed into or on the land for permanent disposal.
- *Seepage Facilities*—facilities at which wastes (usually in a liquid, semi-liquid, or semi-solid state) are placed into or on the land for storage, treatment, or disposal. A seepage facility is designed with the objective of discharging liquids into the land. There are four types of seepage facilities:

  —seepage lagoons
  —drying beds
  —seepage pits
  —seepage beds

- *Injection Wells*—facilities at which wastes in a fluid (usually liquid) state are injected into the land under a pressure head greater than the pressure head of the ground water into or above which they are injected for disposal.

(b) *Location of Disposal Facility*—For each end product subcategory (or form of waste), mark (X) whether wastes are disposed of at this plant site (on-site) or at another site (off-site).

(c) *Ownership of Disposal Facility*—For each end product subcategory (or form of waste), mark (X) whether this disposal facility is owned by reporting company (company), another private company (private), or a municipality (municipal).

(d) *Permitted Hazardous Waste Facility*—For each product subcategory (or form of waste), mark (X) whether the disposal facility is permitted under any applicable State or Federal hazardous waste regulation.

(6) *Method of Disposal.* Briefly describe the specific methods used to dispose of asbestos waste. For example, if you wet the waste and place it in a bag or drum prior to disposal, that should be noted here.

(7) *Additional Information.* Submit any additional information to describe any steps taken during waste disposal to reduce the release of airborne asbestos fibers. If enclosing a separate description, check "Yes" on the form; if not, check "No" in the space provided.

K. Pollution Control Equipment

In this section, provide information on all air pollution equipment located at the plant site to control or remove airborne asbestos fiber. List each piece of equipment on a separate line on the form, even though identical units may be used at the plant site. Use the codes listed in this section for each piece of equipment being reported. For additional space, fill in and attach additional copies of the form. If the company has submitted portions of the required data to EPA previously and the data are still current, enter "EPA" in place of those data, and reference the address where the data were sent and the date they were sent.

(1) *Item Number.* Number each piece of equipment consecutively (one through the total number of pieces of equipment).

(2) *Type of Equipment.* For each item number, enter the appropriate abbreviation from the following list.

- Baghouse (BH)
  - —Reverse Air (RA)
  - —Pulse Jet (PJ)
  - —Shake (S)
  - —Other (O)

For example, if the baghouse used is equipped for both reverse air and shake cleaning, enter (BH) (RA) (S).

- Scrubber (S)
  - —Venturi (V)
  - —Impingement (I)
  - —Spray (SP)
  - —Other (O)

If the scrubber used is the venturi type, also enter the pressure drop in inches of water in parentheses. For example, if the range of pressure drop, is 40–60 inches, enter (S) (V) (40–60).

- Electrostatic Precipitator (ESP)
- Cyclone (C)
- Multiple Cyclone (MC)
- Other (O)

(3) *Gas Stream Volume and Temperature.* For each piece of equipment, enter the gas volume (in cubic feet per minute) and the operating temperature (in °F). Use actual data for these entries, although estimates or design figures may be used if actual data are unavailable. Ranges (ex: 8,000–10,000 ACFM at (40–180 °F)) are also acceptable.

(4) *Equipment Size.* If electrostatic precipitators and/or baghouses are used, enter the total square feet of collecting surface area. For all other types of equipment mark (X) "N/A."

(5) *Estimated Collection Efficiency.* Enter the collection efficiency (percent), or an estimate of this value, of each piece of equipment. Mark (X) either design (D) or actual (A) to indicate basis for response.

(6) *Normal Operating Schedule.* Enter the normal number of operating hours either actual or estimated for each piece of equipment during 1981.

(7) *Quantity Collected Annually.* Estimate the quantity of material in pounds that is (or would be, given the design of the equipment) collected annually by each piece of equipment in 1981. Include all asbestos and non-asbestos materials in the total. If possible, estimate the percent (by weight) of asbestos in the collected material. Mark (X) either design (D) or actual (A) to indicate basis for response.

(8) *Source of Emissions.* Enter a brief description of the source of the emissions such as work area exhaust ventilation, curing oven, mixer, various, etc.

(9) *Stack or Chimney.* Indicate whether the air pollution control device discharges to a stack or chimney; check "Yes" or "No."

(10) *Special Problems.* If there is a special problem with particulate collection or with any specific piece of equipment, discuss it in the space provided. Be sure to indicate which piece of equipment is being discussed.

(11) Estimate the percent of plant exhaust air that is treated by the plant site's pollution control equipment.

Appendix A

Definition of Terms

Several terms are used throughout the reporting form and the instruction booklet to describe the different kinds of asbestos products and how to report them.

Asbestos Mixture: a mixture which contains bulk asbestos or another asbestos mixture as an intentional component. An asbestos mixture can be utilized as a finished product or incorporated into other products.

Bulk Asbestos (or raw asbestos): any quantity of asbestos fiber of any type or grade, or combination of types of grades, that is mined or milled with the express purpose to obtain asbestos. The term does not include asbestos that is produced or processed as a contaminant or an impurity. Asbestos is a group of naturally occurring, inorganic, highly fibrous, silicate minerals, which easily separate into long, thin, flexible fibers when crushed or processed. Included in the definition are the asbestiform varieties of: chrysotile (serpentine); crocidolite (riebeckite); amosite (cummingtonite-grunerite); anthophyllite; tremolite; and actinolite.

End Product: the product subcategory that is either shipped from the reported site or imported into the United States.

Generic Name: a term that describes the coded product subcategory better than the subcategory name given on the form. If the product subcategory name on the form is adequate, use it.

Importer: a person or facility importing asbestos, in bulk form or as part of a mixture or article, into the customs territory of the United States. This definition includes:

- The person liable for the payment of any duties on the merchandise, or
- An authorized agent on his behalf (as defined in 19 CFR 1.11). Importer also includes, as appropriate:
  - —The consignee;
  - —The importer of record;
  - —The actual owner if an actual owner's declaration and superseding bond has been filed in accordance with 19 CFR 141.20; or
  - —The transferee, if the right to draw merchandise in a bonded warehouse has been transferred in accordance with Subpart C of 19 CFR Part 144. For the purpose of this definition, the customs territory of the United States consists of the 50 states, Puerto Rico, and the District of Columbia. When two or more persons meet the same definition of "importer" for the same shipment, the principal in the transaction, not his agent or agents, should report.

Note.—If reporting company purchased in the United States an asbestos product that originated outside the United States, do not report as an importer.

For reporting purposes, there are several classes of importers:

- —An *Importer of Bulk Asbestos* imports bulk asbestos into the customs territory of the United States. Imported bulk asbestos is declared to the United States Customs Service upon entry as Tariff Schedule of the United States, Annotated, (TSUSA) numbers 518.1110–518.1160. Importers need report information only to the extent that the information is in their possession.
- —An *Importer of Asbestos Mixtures* imports asbestos mixtures into the customs territory of the United States. Imported mixtures include, but are not limited to, merchandise declared to the United States Customs Service upon entry as Tariff Schedule of the United States, Annotated, numbers (TSUSA Number) 518.2–518.5, or other TSUSA Numbers that may pertain to asbestos mixtures.
- —An *Importer of Article(s) Containing Asbestos Component(s)* imports an article that contains one or more asbestos components.

Miner and/or Miller of Asbestos: a person who either mines or mills asbestos. Mined or extracted asbestos-containing ore is further milled to produce bulk asbestos. Milling involves the separation of the fibers from the ore, grading and sorting the fibers, or fiberizing crude asbestos ore.

Primary Processor of Asbestos: a person who processes bulk asbestos to makes an asbestos mixture or a product that contains asbestos. A primary processor who make an asbestos mixture and then processes the asbestos mixture at the same site to make a different end product should report production of the final end product. Primary processing includes the mixing or repackaging of raw asbestos fiber.

Product Subcategory: the type of asbestos mixture or the type of end product listed and numbered on the form.

Secondary Processor of Asbestos: a person who processes an asbestos mixture that is then incorporated into that person's end product. Secondary processors use asbestos mixtures that are made at a site other than the site being reported. For instance, asbestos millboard may be purchased by a secondary processor, who could cut that millboard and incorporate it into an appliance.

Appendix B

How To Compute Summaries of Monitoring Data—Instructions and Worksheets

These instructions describe how to compute the arithmetic mean and standard deviation of the TWA values for each category of employees counted in column 4 of part H of the form. It is probably easier to compute the figures by working through one line at a time. For example, a primary processor who has employees working in the fiber introduction area should locate all monitoring data for those employees, and work through question 10 before beginning computations for the next production work category for that end product. A worksheet is attached to these instructions; after completing it, transfer your computations to part H of the form.

I. To compute the "mean" for the TWA values for a production work category, first list all of the TWA values for employees counted in the category. Do not include non-detectable TWA values in the following calculations.

For example, assume the following TWA values (listed in column A) for a production work category:

No.	TWA values	Squares of column (A)
1.	1.00	1.00
2.	1.50	2.25
3.	0.50	0.25
4.	1.75	3.06
5.	1.25	1.56
	6.00	8.12

After listing the TWA values in column (A) on the worksheet, square each value and enter the *square* in column (B) on the worksheet. The squares are used later to compute the standard deviation. Sum both columns.

II. Next, determine the number (N) of values. In this example, N=5.

III. The "mean" is the sum of the TWA values in column A divided by the number of values (N).

In this example:

$$\text{Mean} = \frac{\text{Sum of TWA Values}}{N} = \frac{6.00}{5} = 1.20$$

IV. To calculate the "standard deviation" of these values, first compute the "variance" according to the following formula.

In this example:

$$(V) = \frac{1}{N-1} \times \left[\text{Sum of Column B} - \frac{(\text{Sum of Column A})^2}{N}\right]$$

$$= \frac{1}{5-1} \frac{[8.12-(6.0\times 6.0)]}{5}$$

$$= \tfrac{1}{4}\,[8.12-7.2]$$

$$= \frac{.92}{4}$$

$$V = .23$$

V. Finally, the standard deviation (SD) is the square root of the variance.

In this example:

$$SD = \sqrt{V}$$

$$= \sqrt{.23}$$

$$SD = 0.48$$

The arithmetic mean is entered in column 5 on the form, and the standard deviation is entered in column 6 on the form.

BILLING CODE 6560-50-M

Worksheet

I. No.	(A) TWA Values	(B) Squares of Column (A)
1.		
2.		
3.		
4.		
5.		
Total	_____	_____

II. Number of TWA values (N) = _____

III. $\text{Mean} = \frac{\text{Sum of Column A}}{N}$

IV. $\text{Variance (V)} = \frac{1}{N-1}\left[\text{Sum of Column B} - \frac{(\text{Sum of Column A})^2}{N}\right]$

$= \frac{1}{\square}\left[\square - \frac{\square^2}{N}\right]$

$=$ _____

V. Standard Deviation (SD) $= \sqrt{V} = \sqrt{}$

$=$ _____

§ 763.77 Reporting secondary processing and importation of asbestos mixtures.

The following EPA Form 7710–37, Reporting Secondary Processing and Importation of Asbestos Mixtures, will be completed and submitted to EPA as required in §§ 763.65 and 763.71. Information must be reported on this form to the extent that it is in the possession of the respondent. Importers must report imported products only if the imported product is listed on this form.

(a) EPA Form 7710–37 (8–80)

BILLING CODE 6560–50–M

EPA

US ENVIRONMENTAL PROTECTION AGENCY

REPORTING SECONDARY PROCESSING AND IMPORTATION OF ASBESTOS MIXTURES

PART I – COMPANY INFORMATION

COMPANY NAME	FOR EPA USE ONLY	
ADDRESS *(Street, City, State & ZIP Code)*	TECHNICAL CONTACT	TELEPHONE NO.
	IMPORTER ☐ PRINCIPAL ☐ AGENT	

PART II – SECONDARY PROCESSOR END PRODUCT(S)

From the list in Section I, enter the asbestos end product produced. Opposite each product, list the asbestos mixture that you process, and the quantity of each mixture that you consumed in 1981.

END PRODUCT(S)		ASBESTOS MIXTURE(S)		QUANTITY OF ASBESTOS MIXTURE CONSUMED	
CODE	GENERIC NAME	CODE	GENERIC NAME	QUANTITY	UNIT OF MEASURE

PART III – IMPORTERS OF ASBESTOS MIXTURE(S) OR ARTICLE(S) CONTAINING ASBESTOS COMPONENTS

List the asbestos mixture(s) or article(s) that you import and the quantity of each item that you imported in 1981. Opposite each item, enter a description of the asbestos component in the mixture or article.

ASBESTOS MIXTURE(S) OR ARTICLE(S)		QUANTITY OF ASBESTOS MIXTURE(S) OR ARTICLE(S) IMPORTED		DESCRIPTION OF ASBESTOS COMPONENT(S) IN ARTICLE
CODE	GENERIC NAME	QUANTITY	UNIT OF MEASURE	

CERTIFICATION FOR CLAIMS OF CONFIDENTIAL BUSINESS INFORMATION

An authorized company official may claim any information reported on this form as confidential business information. To do this, the confidential information must be clearly circled with a red marker. In addition, an authorized company official must sign below to certify the truth and accuracy of the following four statements, which apply to all information that is claimed.

1. My company has taken measures to protect the confidentiality of the information, and it will continue to take these measures.
2. The information is not, and has not been, reasonably obtainable by other persons (other than governmental bodies) by using legitimate means (other than discovery based on a showing of special need in a judicial or quasi-judicial proceeding) without my company's consent.
3. The information is not publicly available elsewhere.
4. Disclosure of the information claimed as confidential would cause substantial harm to my company's competitive position.

SIGNATURE OF AUTHORIZED OFFICIAL	DATE

EPA Form 7710-37 (10-81)

REPORTING SECONDARY PROCESSING AND IMPORTATION OF ASBESTOS MIXTURES

INSTRUCTIONS

This form is to be completed by persons who, in 1980, were secondary processors of asbestos or importers of asbestos mixtures or articles that contain asbestos components. See "Reporting Commercial and Industrial Uses of Asbestos", 40 CFR Part 763, Subpart D, for a full description of the reporting requirement and reporting schedule.

If additional space is needed, you should use additional copies of this form.

WHO MUST COMPLETE EPA FORM 7710-37

1. Secondary processors of asbestos must complete Part I and II of the form. Each plant site or manufacturing facility must be reported separately. If you process bulk asbestos fiber to make any of your products at this plant site, then you are a PRIMARY PROCESSOR and you should report this plant site on EPA Form 7710-36.
2. Importers of asbestos mixture(s) or article(s) containing asbestos components must complete Part I and III of the form. If you import bulk asbestos fiber, then you should report all importation activities on EPA Form 7710-36.
3. Those who are both secondary processors and importers must complete Parts I, II and III of the form.

DEFINITIONS

1. Asbestos Mixture - means a mixture which contains bulk asbestos or another mixture. Section 2 below lists typical terms for asbestos mixtures.

2. Asbestos Component—means any asbestos mixture, including any finished product containing an asbestos mixture, which is incorporated into an article. Section I below lists typical terms for products made from asbestos mixtures and components. Some examples of asbestos components are: asbestos paper in a hair-dryer; asbestos-reinforced plastic cabinet of a television; asbestos textile that is part of a particular type of garment.
3. Secondary Processor of Asbestos—means a person who processes an asbestos mixture.
4. Importer of Asbestos Mixtures or Articles Containing Asbestos Component(s)—means a person who imports merchandise that contains asbestos into the customs territory of the United States. Where there are two or more "importers" for the same shipment, the Principal rather than the Agent should report if possible.

PART I COMPANY INFORMATION

Enter the name, address, and phone number of your company. Enter the name of the principal technical contact who is either responsible for the completion of this form, or has sufficient knowledge of its content to respond to questions posed by EPA. If you are reporting as an importer, check the appropriate box to indicate that you are either the Principal importer or the Agent for the Principal.

PART II SECONDARY PROCESSOR END PRODUCTS

End Products(s)—Locate in Section 1 the name of the product subcategory that most specifically describes your end product. In this column, enter the code number for the end product you make and write in the generic name for the product. If you are reporting a product that is not listed, enter the code for "other" that is listed under the most specific general category of products and write in the generic name. Report each end product on separate lines. For example, if you make appliances and are reporting toasters, enter "114" and "toaster".

Asbestos Mixture(s)—For each end product, locate in Section 2 the name of the asbestos mixture that most specifically describes the asbestos mixture that you incorporate into the end product. In this column, enter the code number for the asbestos mixture and write in the generic name. If you incorporate more than one asbestos mixture into a single end product, then use as many lines as necessary to report all asbestos mixtures in the end product. For example, if you incorporate asbestos millboard into your toaster, your entries would be as follows.

End Product	*Asbestos Mixture*
114 toaster	03 millboard

Quantity of Asbestos Mixture Consumed—Opposite each asbestos mixture that is listed, enter the quantity of each mixture that you consumed in 1980. Specify the quantity according to the unit of measure listed in Section 2. If the unit of measure is not listed, report the quantity in short tons. If your records do not permit you to list the quantities consumed for separate end products, then report the total amount of each type of asbestos mixture and enter "T" (for total) next to the figure.

PART III IMPORTERS OF ASBESTOS MIXTURE(S) OR ARTICLE(S) CONTAINING AN ASBESTOS COMPONENT

Asbestos Mixture or Article—For each type of imported product, locate in either Section 1 or Section 2 the name that most specifically describes the product you import. Enter the code number and generic name for the imported product.

Quantity of Asbestos Mixture(s) or Article(s) Imported—For each product listed, record the total annual quantity imported in 1980. Specify the quantity according to the unit of measure listed in Section 2, if possible, or according to the unit of measure as reported to the U.S. Customs Service upon entry of the merchandise into the United States.

Description of Asbestos Components in Article—List all asbestos components in the imported article by entering the name of the asbestos component opposite the name of the article. If the reported product is an asbestos mixture listed in Section 2, then you should not complete this description.

SECTION 1 - TYPICAL TERMS FOR PRODUCTS MADE OF ASBESTOS MIXTURES

AUTOMOTIVE AND FRICTION PRODUCTS
101. Drum brake lining (light-medium vehicle)
102. Disc brake pads (light-medium vehicle)
103. Disc brake pads (heavy vehicle)
104. Brake block (heavy equipment)
105. Clutch facings (all)
106. Automatic transmission friction components
107. Friction materials (industrial and commercial)
108. Custom automative body filler
109. Transmissions
110. Mufflers
111. Radiator top insulation
112. Radiator sealant
113. Other (specify generic name)

APPLIANCES
114. Applicance, industrial and consumer (specify generic name)

CONSTRUCTION PRODUCTS
115. Boiler and furnace baffles
116. Decorated building panels
117. A/C sheet
118. Flexible air conductor
119. Hoods and vents
120. Portable construction building
121. Roofing, saturated
122. Roof shingles
123. Wallboard
124. Wall roofing panels
125. Other (specify generic name)

CLOTHING
126. Aprons
127. Boots
128. Gloves and mittens
129. Hats and helmets
130. Overgaitors
131. Suits
132. Other (specify generic name)

FLOOR COVERINGS
133. Vinyl-asbestos floor tile
134. Asbestos-felt-backed sheet vinyl flooring

ELECTRICAL PRODUCTS AND COMPONENTS
135. Cable insulation
136. Electronic motor components
137. Electrical resistance supports
138. Electrical switchboard
139. Electrical switch supports
140. Electrical wire insulation
141. Motor armature
142. Other (specify generic name)

FIRE AND HEAT SHIELDING EQUIPMENT AND COMPONENTS
143. Arc deflectors
144. Fire doors
145. Fireproof absorbent paper
146. Heat shields
147. Molten metal handling equipment
148. Oven and stove insulation
149. Pipe wrap
150. Stove lining, wood and coal
151. Stove pipe rings
152. Sleeves
153. Thermal insulation
154. Other (specify generic name)

GASKETS
155. Sheet gasketing, rubber encapsulated beater addition
156. Sheet gasketing, rubber encapsulated compressed
157. Compressed sheet gasketing (other)
158. Metal reinforced gaskets
159. Automotive gaskets
160. Other (specify generic name)

MARINE EQUIPMENT AND SUPPLIES
161. Caulks, marine
162. Liners, pond or canal
163. Marine bulkheads
164. Other (specify generic name)

PAINTS, COATINGS, SEALANTS, AND COMPOUNDS
165. Asphaltic compounds
166. Automotive/truck body coatings
167. Buffing and polishing compounds
168. Caulking and patching compounds
169. Drilling fluid
170. Flashing compounds
171. Furnace cement
172. Glazing Compounds
173. Plaster and stucco
174. Pump, valve, flange, and tank sealing components
175. Roof coatings
176. Textured paints
177. Tile cement
178. Other (specify generic name)

TEXTILE AND FELT PRODUCTS (other than clothing)
179. Aluminized cloth
180. Rope or braiding
181. Yarn, lap, or roving
182. Wicks
183. Bags
184. Belting
185. Blankets
186. Carpet padding
187. Commercial/industrial dryer felts
188. Draperies
189. Drip cloths
190. Fire hoses
191. Ironing board pads and insulation
192. Mantles, lamp or catalytic heater
193. Packing and packing components
194. Piano and organ felts
195. Rugs
196. Tape
197. Theater curtains
198. Umbrella
199. Other (specify generic name)

MISCELLANEOUS PRODUCTS
200. Aerial distress flares
201. Acoustical products
202. Ammunition wadding
203. Asbestos-reinforced plastic products
204. Ash trays
205. Baking sheets
206. Blackboards
207. Candlesticks
208. Chemical tanks and vessels
209. Filters
210. Grommets
211. Gun grips
212. Jewelry making equipment
213. Kilns
214. Lamp sockets
215. Light bulbs (all types)
216. Linings for vaults, safes humidifiers, and filing cabinets
217. Phonograph records
218. Pottery clay
219. Welding rod coatings
220. Other (specify generic name)

SECTION 2 - TYPICAL TERMS FOR ASBESTOS MIXTURES

PAPERS, FELTS, OR RELATED PRODUCTS	
01. commerical paper	short tons
02. rollboard	short tons
03. millboard	short tons
04. pipeline wrap	short tons
05. beater-add gasketing paper	short tons
06. high-grade electrical paper	short tons
07. unsaturated roofing felt	short tons
08. saturated roofing felt	short tons
09. flooring felt	short tons
10. corrugated paper	short tons
11. specialty paper (specify)	short tons
FLOOR COVERINGS	
12. vinyl-asbestos floor tile	square yards
13. asbestos-felt-backed vinyl flooring	square yards
ASBESTOS-CEMENT PRODUCTS	
14. A/C pipe and fittings	short tons
15. A/C sheet, flat	100 square feet
16. A/C sheet, corrugated	100 square feet
17. A/C shingle	squares
FRICTION MATERIALS	
18. drum brake lining (light-medium vehicle)	pieces
19. disc brake pads (light-medium vehicle)	pieces
20. disc brake pads (heavy equipment)	pieces
21. brake block (heavy equipment	pieces
22. clutch facings (all)	pieces
23. automatic transmissions friction components	pieces
24. friction materials (industrial and commerical)	pieces
TEXTILES	
25. cloth	pounds
26. thread, yarn, lap, roving, cord, rope or wick	pounds
OTHER PRODUCTS	
27. sheet asketing (other than beater-add)	square yards
28. packing	pounds
29. paints and suface coatings	gallons
30. adhesives and sealants	gallons
31. asbestos-reinforced plastics	pounds
32. insulation materials not elsewhere classified (n.e.c.)	_____
33. mixed or repackaged asbestos fiber	short tons
34. other (n.e.c.)	_____

BILLING CODE 6560-50-C

(b) [Reserved]

§ 763.78 Sunset provision.

All requirements of this rule will terminate five years after promulgation of this rule. This provision is not a defense to any enforcement action based on noncompliance which occurred during the effective period of this rule.

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federal register

Friday
July 30, 1982

Part VIII

Department of Education

National Direct Student Loan, College Work-Study, and Supplemental Educational Opportunity Grant Programs

DEPARTMENT OF EDUCATION

34 CFR Parts 674, 675, and 676

National Direct Student Loan, College Work-Study, and Supplemental Educational Opportunity Grant Programs

AGENCY: Education Department.

ACTION: Final rule and technical amendments.

SUMMARY: The secretary issues final regulations for the National Direct Student Loan, College Work-Study, and Supplemental Educational Opportunity Grant Programs (campus-based programs) that reflect two changes as the result of recent legislation. The Secretary revises both the definition of the term "PLUS program" in these regulations and the promissory note appended to the regulations for the National Direct Student Loan Program (NDSL). The Secretary also amends the text of the final regulations for each of the campus-based programs that were publish on January 19, 1981. These technical amendments are made in the regulatory language, citations of legal authority, funding formula, and charts of these regulations.

EFFECTIVE DATE: The technical amendments made in these regulations are made effective July 30, 1982. Unless Congress takes certain adjournments, the changes to "Promissory note—loan repayment", in "Appendix B" of the NDSL regulations, (34 CFR Part 674, Appendix B), and to the definition of the term "PLUS program" in each of the campus-based programs in §§674.2, 675.2, and 676.2 are expected to take effect 45 days after publication in the **Federal Register.** If you wish to know the effective date of these final rules call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Gwen Dockett, Office of Student Financial Assistance, Divison of Policy and Program Development, Campus-Based Branch, Policy Section, 400 Maryland Avenue, S.W., (Room 4018, ROB-3), Washington, D.C. 20202. Telephone: 202-245-9720.

SUPPLEMENTARY INFORMATION: On January 19, 1981 (46 FR 5241), the Secretary published final regulations for the NDSL, CWS, and SEOG programs with invitation to comment. At the same time the Secretary also issued a notice of proposed rulemaking cross-referencing those final regulations for the campus-based programs. The public was invited to submit comments until March 20, 1981 (46 FR 5295).

The Secretary now revises the definition of the PLUS program to include the statutory change that expanded the parent loan program eligibilty to independent undergraduate students and graduate and professional students in accordance with the Postsecondary Student Assistance Amendments of 1981 (Pub. L. 97-35, August 13, 1981).

The Secretary also revises the text and format of the sample promissory note that is recommended for use in the NDSL program by educational institutions in meeting the requirements of § 674.32. This note is codified as Appendix B to Part 674 of Title 34 of the Code of Federal Regulations. These changes reflect both the comments received after publication of the regulations and a recent statutory change in the applicable interest rate under the NDSL program.

In response to concerns raised by educational institutions and a comment from the Federal Trade Commission, the Secretary adds new language governing assessment of collection costs to the first paragraph of the note. Institutions intending to use collection agencies may insert this language to facilitate compliance by these agencies with the Fair Debt Collection Practices Act. In the note the Secretary also incorporates the five (5) percent interest rate made applicable to loans made on or after October 1, 1981 by section 539 of the Postsecondary Student Assistance Amendments of 1981. Finally, in response to questions from schools regarding the propriety of the release of information to credit bureaus, the Secretary adds a sentence to that section of the note governing default to clarify a school's rights and to warn the borrower that the institution can disclose information about any default on the loan to credit bureau organizations.

Before the beginning of the current school year, the Department provided institutions participating in the NDSL program with copies of the promissory note as revised in this document for use during this school year, as well as information on the statutory change in the interest rate.

Executive Order 12291

The regulations have been reviewed in accordance with Executive Order 12291. They are classified as non-major because they do not meet the criteria for major regulations established in the order.

Assessment of Educational Impact

In the final regulations with invitation to comment, the Secretary requested comments on whether the regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the absence of any comments on this matter and the Department's own review, the Secretary has determined that the regulations do not require information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects

34 CFR Part 674

Education, Loan programs—education, Student aid.

34 CFR Part 675

Colleges and universities, Education, Employment, Grant programs—education, Student aid.

34 CFR Part 676

Education, Grant programs—education, Student aid.

(Catalog of Federal Domestic Assistance Numbers 84.038 National Direct Student Loan Program; 84.033 College Work-Study Program; and 84.007 Supplemental Educational Opportunity Grant Program)

Dated: July 27, 1982.

T. H. Bell,

Secretary of Education.

The Secretary amends Parts 674, 675, and 676 of Title 34 of the Code of Federal Regulations as follows:

PART 674—NATIONAL DIRECT STUDENT LOAN PROGRAM

1. In the table of contents following Subpart D, the index references are amended by removing "Appendix E—Affidavit of Educational Purpose.".

§ 674.2 [Amended]

2. In § 674.2, following the definition of the term *"College Work-Study Program (CWS):"*, the legal citation is amended by removing "(20 U.S.C. 1141(f))".

3. In § 674.2, the footnote for the term "**Independent student (effective July 1, 1981 through June 1982):*" is revised by changing it to a definition and adding it after subparagraph (d) of the definition of the term "**Half-time undergraduate student:*".

4. In §674.2, following subparagraph (c) of the definition of the term "*Independent student (effective through June 30, 1981):*", the legal citation is amended by removing "20 U.S.C. 1087dd(e)".

5. In § 674.2, following the definition of the term "*Parent:", the legal citation "(20 U.S.C. 1141(c))" is removed.

6. In § 674.2, the definition of the term "*Parent Loans for Undergraduate Students Program (PLUS):*" is revised to read as follows:

* * * * *

PLUS program: A loan program authorized by section 428B of the Act, as amended that provides long-term educational loans to graduate and professional students, independent undergraduate students, and the parents of dependent undergraduate students. (20 U.S.C. 1078–2)

* * * * *

7. In § 674.2, following the definition of the term "*Pell Grant Program:", a legal citation is added to read: "(20 U.S.C. 1070a)".

8. In § 674.2, the definition for the term "*Regular student:" is amended by removing the word "enrolls".

9. In § 674.2, following the definition for the term "*State:", the legal citation is amended by removing "(b);" and "20 U.S.C. 1088(a)".

§ 674.7 [Amended]

10. In § 674.7, paragraph (d) is amended by adding the words "and 674.6a" after "procedures in § 674.6".

§ 674.8 [Amended]

11. In § 674.8, paragraph (b)(3) is amended by changing "486" to read: "466".

§ 674.9 [Amended]

12. In § 674.9, paragraph (a)(2) is amended by adding the words "as at least a half-time student," after "for enrollment".

13. Following § 674.9, the legal citation is amended by removing "f".

§ 674.14 [Amended]

14. Following *§ 674.14, the legal citation is revised to read "20 U.S.C. 1087–3a and 42 U.S.C. 2753(b)(3))".

§ 674.15 [Amended]

15. Following § 674.15, the legal citation is revised to read "(20 U.S.C. 1087dd(b))".

§ 674.16 [Amended]

16. In § 674.16, paragraph (a)(2)(v) is amended by changing the word "repayment" to read "prepayment"; paragraph (e)(2) is amended by adding the words "at least a portion of " after "(2) The institution must make"; and paragraph (j)(2) is amended by correcting the word "satifying" to read "satisfying" and by adding the word "solely" after "receive under the NDSL program".

17. Following § 674.16, the legal citation is revised to read "(20 U.S.C. 424, 1087cc, 1087cc–1, 1087dd, 1091, and 1094)".

§ 674.32 [Amended]

18. In § 674.32, paragraph (b)(3) is amended by changing section number "§ 674.34" to read "§ 674.34a(a), (b),".

19. Following § 674.32, the legal citation is revised to read "(20 U.S.C. 425(b)(2)(D), 1087dd(c)(1)(F), and 1087dd(c)(1)(G))".

§ 674.34 [Amended]

20. The section heading for § 674.34 is revised to read "§ 674.34 *Deferment of repayment—Defense or Direct loans made on or before September 30, 1980.*".

21. In § 674.34, paragraph (e)(3) is amended by adding the words "paragraphs (d) and" after "schedule under" and removing the words "(4), and (5) of this paragraph,".

22. Following § 674.34, the legal citation is revised to read "(20 U.S.C. 425(b)(2)(D) and 1087dd)".

§ 674.46 [Amended]

23. In § 674.46, paragraph (d)(2) is amended by changing the internal reference "subparagraph (c)(1)" to read "subparagraph (d)(1)".

§ 674.51 [Amended]

24. Following § 674.51, the legal citation is revised to read "(20 U.S.C. 425, 1087ee, 1141, and 1401(l))".

§ 674.54 [Amended]

25. In § 674.54, paragraph (a)(1)(ii) is amended by removing the words "at least" and adding the words "more than" after "determining it to be a school in which".

§ 674.55 [Amended]

26. In § 674.55, paragraph (a)(2) is amended by removing the words "school district" and by adding the words "educational agency" after "employee working in the local".

§ 674.56 [Amended]

27. In § 674.56, paragraph (b) is amended by adding the words "of hostilities" after "in an area", and paragraph (c) is amended by adding the words "or § 674.34a" after "deferment under § 674.34".

28. Appendix B—Promissory Note is revised to read as follows:

Appendix B—Promissory Note

National Direct Student Loan Program

(Bracketed clause may be included at option of institution.)

I, ———— promise to pay to ———— (hereinafter called the Lending Institution) located at ————, the sum of the amounts that are advanced to me and endorsed in the Schedule of Advances set forth below. [I promise to pay all attorney's fees and other reasonable collection costs and charges necessary for the collection of any amount not paid when due. However, if a collection agency which is subject to the Fair Debt Collection Practices Act is used, I will pay those collection costs which do not exceed 25% of the unpaid principal and interest.]

I further understand and agree that:

I. General

(1) All sums advanced under this note are drawn from a fund created under Part E of Title IV of the Higher Education Act of 1965, hereinafter called the Act, and are subject to the Act and the Federal Regulations issued under the Act. The terms of this note must be interpreted in accordance with the Act and Federal Regulations, copies of which are to be kept by the Lending Institution.

(2) I understand that if I am eligible for deferment or cancellation under Articles VI through IX, I am responsible for submitting the appropriate requests on time.

II. Interest

Interest shall accrue from the beginning of the repayment period and shall be at the ANNUAL PERCENTAGE RATE OF FIVE PERCENT (5%) on the unpaid balance except that no interest shall accrue during any deferment period described in subparagraphs VI(1)(A), (B), (C), and (D).

III. Repayment

(Bracketed clause must be included if the institution uses paragraph III(5))

(1) [Except as provided in Paragraph III(5)] I promise to repay the principal and the interest which accrues on it over a period beginning 6 months after the date I cease to be at least a half-time student at an institution of higher education, or at a comparable institution outside the United States approved for this purpose by the United States Secretary of Education (hereinafter called the Secretary), and ending, unless paragraphs III(4) or VI(1) (deferment) applies, 10 years later.

(2) I may, however, request that the repayment period start on an earlier date.

(3) I promise to repay the principal and interest over the course of the repayment period in equal monthly, bimonthly or quarterly installments, as determined by the Lending Institution. However, if I request, repayments may be made in graduated installments determined in accordance with schedules approved by the Secretary. In either case, a schedule or repayment shall be attached to and made part of this note.

(4) Notwithstanding paragraph III(1), if I qualify as a low-income individual during the repayment period, the Lending Institution may, at my request, extend the repayment period for up to an additional 10 years or adjust any repayment schedule to reflect my income, or both.

(Bracketed paragraphs may be included at option of institution)

[(5)(A) I shall repay the principal and interest on this loan at the rate of $30 per

month (which includes both principal and interest) even though the monthly rate that would be established under paragraph III(1) is less than that amount, or if the total monthly repayment rate of principal and interest on all my National Direct and National Defense Student Loans, including this loan, is less than $30 per month.

(5)(B) If I have received National Defense or National Direct Student Loans from other institutions and the total monthly repayment rate on those loans is less than $30, the $30 monthly rate established under subparagraph III(5)(A) is the rate I pay on all my outstanding National Defense and National Direct Student Loans and is not in addition to the amount I pay on those other loans.

(5)(C) If my monthly repayment rate is established under subparagraph III(5)(A) and I have received National Defense or National Direct Student Loans from other lending institutions, the amount of my monthly repayment rate attributable to this loan is the amount which represents the difference between $30 and the monthly rates I must pay on my other National Defense and National Direct Student Loans.]

(6) A schedule of repayment will be attached to and made part of this note.

(7) The Lending Institution may permit me to pay less than the rate of $30 per month for a period of not more than one year where necessary to avoid hardship to me unless that action would extend the repayment period in paragraph III(1).

IV. Prepayment

(1) I may at my option and without penalty prepay all or any part of the principal, plus the accrued interest thereon, at any time.

(2) Amounts I repay in the academic year in which the loan was made will be used to reduce the amount of the loan and will not be considered a prepayment.

(3) If I repay more than the amount due for any installment, the excess will be used to prepay principal unless I designate it as an advance payment of the next regular installment.

V. Default

(1) If I fail to make a scheduled repayment of any installment or I fail to file cancellation or deferment forms with the Lending Institution on time, the entire unpaid indebtedness, including interest due and accrued thereon, plus any applicable penalty charges, will, at the option of the Lending Institution, become immediately due and payable.

(2) I understand that if I default on my loan repayments, the Lending Institution may disclose that I have defaulted, along with other relevant information, to credit bureau organizations.

(3) Further, I understand that if I default on my loan repayment and the loan is sent to the Secretary for collection, the Secretary may disclose that I have defaulted, along with other relevant information, to credit bureau organizations.

VI. Deferment

(1) Interest will not accrue, and installments need not be paid—

(A) While I am enrolled and in attendance as at least a half-time student at an institution of higher education or at a comparable institution outside the United States approved for this purpose by the Secretary,

(B) For a period not in excess of 3 years during which I am—

(i) On full-time active duty as a member of the Armed Forces of the United States (Army, Navy, Air Force, Marine Corps, or Coast Guard) or an officer on full-time active duty in the Commissioned Corps of the U.S. Public Health Service,

(ii) In service as a Volunteer under the Peace Corps Act,

(iii) A volunteer under the Domestic Volunteer Service Act of 1973;

(iv) A full-time volunteer in a tax-exempt organization performing service comparable to the service performed in the Peace Corps or under the Domestic Volunteer Service Act of 1973 (ACTION agency programs), or

(v) Temporarily totally disabled as established by an affidavit of a qualifed physician, or unable to secure employment because I am providing care required by my spouse who is so disabled,

(C) For a period not in excess of two years during which time I am serving in an internship which is required in order that I may receive professional recognition required to begin my professional practice or service, and

(D) During any grace period. A grace period is a six-month period following (i) the date I cease to be at least a half-time student at an institution of higher education, or (ii) the date the deferments described in subparagraphs VI(1)(A), (B), or (C) expire.

(2) The Lending Institution may, upon my application, defer or reduce any scheduled repayments if, in its opinion, extraordinary circumstances such as prolonged illness or unemployment, prevent me from making such repayments. However, interest will continue to accrue.

VII. Cancellation for Teaching

(1) I am entitled to have up to 100 percent of the amount of this loan plus the interest thereon cancelled if I undertake service—

(A) As a full-time teacher in a public or other nonprofit elementary or secondary school which is in a school district of a local educational agency which is eligible for funds under Title I of the Elementary and Secondary Education Act of 1965 and which has been designated by the Secretary in accordance with the provisions of section 465(a)(2) of the Higher Education Act as a school with a high enrollment of students from low-income families, or

(B) As a full-time teacher of handicapped children (including mentally retarded, hard of hearing, deaf, speech impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, children with specific learning disabilities, or other health-impaired children who by reason thereof require special education and related services) in a public or other nonprofit elementary or secondary school system.

(2) This loan will be cancelled at the following rates:

(A) 15 percent of the total principal amount of the loan plus interest on the unpaid balance will be cancelled for the first and second complete academic years of that teaching service,

(B) 20 percent of the total principal amount plus interest on the unpaid balance for the third and fourth complete academic years of than teaching service, and

(C) 30 percent of the total principal amount plus interest on the unpaid balance for the fifth complete academic year of that teaching service.

VIII. Head Start Cancellation

(1) I am entitled to have up to 100 percent of the amount of this loan plus the interest thereon cancelled if I undertake service as a full-time staff member in a Head Start program if—

(A) That Head Start program is operated for a period which is comparable to a full school year in the locality, and

(B) My salary is not more than the salary of a comparable employee of the local educational agency.

(2) This loan will be cancelled at the rate of 15 percent of the total principal amount plus the interest on the unpaid balance for each complete school year or the equivalent of service in a Head Start program.

(3) Head Start is a preschool program carried out under section 222(a)(1) of the Economic Opportunity Act of 1964.

IX. Military Cancellation

(1) I am entitled to have up to 50 percent of the principal amount of this loan plus the interest thereon cancelled if I serve as a member of the Armed Forces of the United States in an area of hostilities that qualifies for special pay under section 310 of Title 37 of the United States Code.

(2) This loan will be cancelled at the rate of 12½ percent of the total principal amount plus interest on the unpaid balance for each complete year of such service.

X. Death and Disability Cancellation

If I should die or become permanently and totally disabled, the entire amount of this loan plus the interest thereon shall be cancelled.

XI. Change in Name, Address, and Social Security Number

I am responsible for informing the Lending Institution of any change or changes in my name, address, or social security number.

XII. Penalty Charge

(Bracketed paragraphs may be included at option of institution)

[(1) If I fail to make timely payment of all or any part of a scheduled installment, or if I am eligible for deferment or cancellation under Articles VI through IX, but fail to submit the appropriate request on time, I promise to pay the charge assessed against me by the Lending Institution.

[(2) No charge may exceed—

[(A) Where the loan is repayable in monthly installments, $1 for the first month or part of a month by which the installment or evidence is late, and $2 for each month or part of a month thereafter, or

[(B) Where the loan is repayable in bimonthly or quarterly installments, $3 and $6, respectively, for each installment interval or part thereof by which the installment or evidence is late.

[(3) If the Lending Institution elects to add the assessed charge to the outstanding principal of the loan, it must so inform me before the due date of the next installment.]

XIII. Assignment

This note may be assigned by the Lending Institution only—

(1) To another institution upon my transfer to that institution if that institution is participating in this program (or, if not so participating, is eligible to do so and is approved by the Secretary for that purpose), or

(2) To the United States or to an institution approved by the Secretary. The provisions of this note that relate to the Lending Institution shall, where appropriate, relate to an assignee.

XIV. Prior Loans

I hereby certify that I have listed below all of the National Direct Student Loans (or National Defense Student Loans) I have obtained at other institutions. (If no prior loans have been received, state "None.")

SCHEDULE OF NATIONAL DIRECT STUDENT LOANS AND NATIONAL DEFENSE STUDENT LOANS AT OTHER INSTITUTIONS

	Amount	Date	Institution
1	$		
2	$		
3	$		
4	$		

XV. Schedule of Advances

	Amount	Date	Signature of maker
1	$		
2	$		
3	$		
4	$		

Signature ———
Date ———, 19——
Permanent Address (Street or Box Number, City, State, and Zip Code)
Social Security Number ———
Caveat—This note is to be executed without security and without endorsement except that if I am a minor and this note would not, under the law of the State in which the Lending Institution is located, create a binding obligation, either security or endorsement may be required. The Lending Institution shall supply a copy of this note to me.
Signature of endorser ———
Date ———, 19——
Permanent Address ((Street or Box Number, City, State, and Zip Code)
Social Security Number ———

PART 675—COLLEGE WORK-STUDY PROGRAM AND JOB LOCATION AND DEVELOPMENT PROGRAM

1. In the table of contents, Subpart A is amended by removing the duplicated sections and titles "675.1 through 675.28".

§ 675.2 Definitions.

2. In § 675.2, the title of the definition of the term "Independent student (effective through June 30, 1981):" is italicized.

3. In § 675.2, subparagraph (a)(2) of the definition of the term "**Independent student (effective July 1, 1981, through June 30, 1982):*" is amended by changing the word "or" to read "of" after "receive financial assistance".

4. In § 675.2, the title of the definition of the term "*National Direct Student Loan Program (NDSL):*" is italicized.

5. In § 675.2, the definition of the term "**Parent Loans for Undergraduate Students Program (PLUS):*" is revised to read as follows:

* * * * *

PLUS program: A loan program authorized by section 428B of the Act, as amended that provides long-term educational loans to graduate and professional students, independent undergraduate students, and the parents of dependent undergraduate students.

(20 U.S.C. 1078–2)

* * * * *

6. In § 675.2, following the definition of the term "**Pell Grant Program:*", a legal citation is added to read "(20 U.S.C. 1070a)".

§ 675.8 [Amended]

7. Following § 675.8, the legal citation is changed by adding "(b)(7)" after "(42 U.S.C. 2753".

§ 675.14 [Amended]

8. Following § 675.14, the legal citation is revised to read "(20 U.S.C. 1087–3a; 42 U.S.C. 2753(b)(3))".

§ 675.15 [Amended]

9. Following § 675.15, the legal citation is changed by adding "(b)(3))" after "(42 U.S.C. 2753".

§ 675.16 [Amended]

10. In § 675.16, paragraph (c)(2)(iii) is amended by adding the words "according to the general standards and practices of the institution" after "satisfactory academic progress".

§ 675.18 [Amended]

11. Following § 675.18, the legal citation is revised to read "(20 U.S.C. 1095, 1096; 42 U.S.C. 2753, 2756, 2756a, and 2756b)".

§ 675.19 [Amended]

12. Following § 675.19, the legal citation is revised to read "(42 U.S.C. 2753; 20 U.S.C. 1094, and 1232f)".

13. In § 675.26, paragraph (e)(1)(i) and the legal citation are revised to read as follows:

§ 675.26 CWS Federal share limitations.

* * * * *

(e)(1) * * *

(i) Is designated as an eligible institution under the Strengthening Institutions Program, 34 CFR Part 625, or the Aid to Institutions with Special Needs Program, 34 CFR Part 626; or

* * * * *

(42 U.S.C. 2753; 20 U.S.C. 1069a)

PART 676—SUPPLEMENTAL EDUCATIONAL OPPORTUNITY GRANT PROGRAM

§ 676.1 [Amended]

1. Following § 676.1, a legal citation is added to read "(20 U.S.C. 1070b)".

§ 676.2 Definitions.

2. In § 676.2, under subparagraph (b)(3) of the definition of the term "**Independent student (effective July 1, 1981 through June 30, 1982):*" the word "determine" is amended to read "determined".

3. In § 676.2, the definition of the term "**Nonprofit institution:*" is removed.

4. In § 676.2, the definition of the term "**Parent Loans for Undergraduate Students Program (PLUS):*" is revised to read as follows:

* * * * *

PLUS program: A loan program authorized by section 428B of the Act, as amended that provides long-term educational loans to graduate and professional students, undergraduate students, and the parents of dependent undergraduate students.

(20 U.S.C. 1078–2)

* * * * *

5. In § 676.2, following the definition of the term "*Pell Grant Program:*", a legal citation is added to read "(20 U.S.C. 1070a)".

6. In § 676.2, following the definition of the term "*State;*", the legal citation is revised to read "(20 U.S.C. 1141(b))".

§ 676.6 [Amended]

7. In § 676.6, paragraph (c)(2) is amended by changing the second and third minus signs to plus signs so that, in part, it reads "(* * * attendance— (Total expected family contribution + Pell Grants + State Student Incentive Grants + 25% of institutional grants for undergraduate students.)"; paragraph (c)(3)(iii) is amended by changing the italicization that appears in the formula so that the only words italicized are "(Federal plus match)"; paragraph (d)(8) is amended by removing the last sentence: "The following charts show the income categories and calculations." and the three charts that follow, entitled: "Determination of SEOG Need for Eligible Dependent Undergraduate Students," "Determination of SEOG Need for Eligible Independent Undergraduate Students," and "Summary and Calculation of SEOG Need"; paragraph (e)(2) is amended by adding the word "State" in the formula shown after "all institutions in the State X SEOG IY funds available for"; paragraph (f)(2) is amended by adding the diagonal sign "/" in the formula shown after "Institution's IY national increase = its IY national shortfall"; and paragraph (g)(2) is amended by adding the diagonal sign "/" in the formula shown after "Institution's CY national increase = its CY national shortfall".

§ 676.9 [Amended]

8. Following § 676.9, the legal citation is amended by removing the "f" after "and 1091" and the section number "§ 675.10" is corrected to read "§ 676.10".

§ 676.14 [Amended]

9. Following § 676.14, the legal citation is revised to read "(20 U.S.C. 1070b–1)".

§ 676.16 [Amended]

10. In § 676.16, paragraph (b)(2) is amended by adding the words "at least a portion of" after "(2) The institution must make".

§ 676.18 [Amended]

11. Following § 676.18, the legal citation is revised to read "(20 U.S.C. 1095, 1096; 20 U.S.C. 1070b *et seq.*)".

§ 676.19 [Amended]

12. Following § 676.19, the legal citation is revised to read "(20 U.S.C. 1070b, 1094, and 1232f)".

§ 676.20 [Amended]

13. In § 676.20, paragraph (a) is amended by adding the word "of" after "at least one-third".

* * * * *

[FR Doc. 82-20658 Filed 7-29-82; 8:45 am]
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federal register

Friday
July 30, 1982

Part IX

Environmental Protection Agency

Certain Chemicals; Premanufacture Notices

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-59095; TSH-FRL 2179-4]

Certain Chemicals; Premanufacture Exemption Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA may upon application exempt any person from the premanufacturing notification requirements of section 5(a) or (b) of the Toxic Substances Control Act (TSCA) to permit the person to manufacture or process a chemical for test marketing purposes under section 5(h)(1) of TSCA. Requirements for test marketing exemption (TME) applications, which must either be approved or denied within 45 days of receipt, are discussed in EPA's revised statement of interim policy published in the **Federal Register** of November 7, 1980 (45 FR 74378). This notice, issued under section 5(h)(6) of TSCA, announces receipt of two applications for exemptions, provides a summary, and requests comments on the appropriateness of granting each of the exemptions.

DATE: Written comments by: August 16, 1982.

ADDRESS: Written comments, identified by the document control number "[OPTS-59095]" and the specific TME number should be sent to: Document Control Officer (TS-793), Office of Pesticides and Toxic Substances, Management Support Division, Environmental Protection Agency, Rm. E-401, 401 M Street, SW, Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: David Dull, Acting Chief, Notice Review Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-216, 401 M Street, SW, Washington, D.C. 20460.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the TME received by EPA. The complete non-confidential document is available in the public reading room E-107.

TME 82-34

Close of Review Period. September 3, 1982.

Manufacturer. Celanese Specialty Operations.

Chemical. (G) Substituted cycloaliphatic hydroxyalkyl ether ester.

Use/Production. (G) The TME substance will be used in an open use that will release less than 50 kg/yr to the environment. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a maximum of 12 workers, up to 8 hrs/da, up to 10 da/yr.

Environmental Release/Disposal. Less than 10 kg/yr expected to be released to air and water and between 10-100 kg/yr to land. Disposal by recycling, incineration and landfill.

TME 82-35

Close of Review Period. September 3, 1982.

Manufacturer. Celanese Specialty Operations.

Chemical. (G) Acrylate ester of acrylic polymer.

Use/Production. (G) The TME substance will be used in an open use that will release more than 50 kg/yr but less than 5,000 kg/yr to the environment. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a maximum of 12 workers, up to 1 hr/da, up to 100 da/yr.

Environmental Release/Disposal. Less than 10 kg/yr will be released to air and water and between 10-100 kg/yr to land. Disposal by recycling, incineration and landfill.

Dated: July 23, 1981.

Woodson W. Bercaw,

Acting Director, Management Support Division.

[FR Doc. 82-20548 Filed 7-29-82; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-51424, TSH-FRL 2179-5]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of interim policy published in the **Federal Register** of May 15, 1979 (44 FR 28558) and November 7, 1980 (45 FR 74378). This notice announces receipt of twenty-three PMNs and provides a summary of each.

DATES: Close of Review Period: PMN 82-494, 82-495, 82-496, 82-497, 82-498, 82-499 & 82-500, October 14, 1982.

PMN 82-501, 82-502 & 82-503, October 17, 1982.

PMN 82-504, 82-505, 82-506 & 82-507, October 18, 1982.

PMN 82-508, 82-509, 82-510, 82-511, 82-512, 82-513, 82-514, 82-515 & 82-516, October 19, 1982.

Written comments by: PMN 82-494, 82-495, 82-496, 82-497, 82-498, 82-499 & 82-500, September 14, 1982.

PMN 82-501, 82-502 & 82-503, September 17, 1982.

PMN 82-504, 82-505, 82-506 & 82-507, September 18, 1982.

PMN 82-508, 82-509, 82-510, 82-511, 82-512, 82-513, 82-514, 82-515 & 82-516, September 19, 1982.

ADDRESS: Written comments, identified by the document control number "[OPTS-51424]" and the specific PMN number should be sent to: Document Control Officer (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-409, 401 M St., SW., Washington, DC 20460, (202-382-3532).

FOR FURTHER INFORMATION CONTACT: David Dull, Acting Chief, Notice Review Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-216, 401 M St., SW., Washington, DC 20460, (202-382-3729).

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete non-confidential document is available in the public reading room E-107.

PMN 82-494

Manufacturer. Confidential.

Chemical. (S) 2,2-dimethyl-1,3-propanediol, polymer with 1,6-hexanediol, 1,3-dihydro-1,3-dioxo-5-isobenzofurancarboxylic acid, 1,3-benzenedicarboxylic acid, 1,4-benzenedicarboxylic acid and 1,6-hexanedioic acid.

Use/Production. (G) Open use. Prod. range: 1,500-100,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture, processing and use: dermal, a total of 14 workers, up to 8 hrs/da, up to 260 da/yr.

Environmental Release/Disposal. 10-1,000 kg/yr released to land. Disposal by landfill.

PMN 82-495

Manufacturer. Sandoz Colors and Chemicals.

Chemical. (G) Substituted naphthalene.
Use/Production. (S) Isolated intermediate. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal.
Environmental Release/Disposal. Less than 10 kg/yr released to water 1 hr/da, 2 da/yr. Disposal by on-site biological waste treatment.

PMN 82–496

Manufacturer. Confidential.
Chemical. (G) Rosin ester resin.
Use/Production. (S) Commercial paper coating resin. Prod. range: 16,000–2,000,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture and processing: dermal, a total of 22 workers, up to 16 hrs/da, up to 200 da/yr.
Environmental Release/Disposal. Less than 10 kg/yr released to land. Disposal by approved landfill.

PMN 82–497

Manufacturer. Confidential.
Chemical. (G) Rosin ester resin.
Use/Production. (S) Commercial paper coating resin. Prod. range: 16,000–2,000,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture and processing: dermal, a total of 19 workers, up to 16 hrs/da, up to 200 da/yr.
Environmental Release/Disposal. Less than 10 kg/yr released to land. Disposal by approved landfill.

PMN 82–498

Manufacturer. Confidential.
Chemical. (G) Rosin ester resin.
Use/Production. (S) Commercial paper coating resin. Prod. range: 16,000–2,000,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture and processing: dermal, a total of 19 workers up to 16 hrs/da, up to 200 da/yr.
Environmental Release/Disposal. Less than 10 kg/yr released to land. Disposal by approved landfill.

PMN 82–499

Manufacturer. Confidential.
Chemical. (G) Rosin ester resin.
Use/Production. (S) Commercial paper coating resin. Prod. range: 16,000–2,000,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture and processing: dermal, a total of 22 workers, up to 16 hrs/da, up to 200 da/yr.
Environmental Release/Disposal. Less than 10 kg/yr released to land. Disposal by approved landfill.

PMN 82–500

Manufacturer. Confidential.
Chemical. (G) Alkyl cycloalkanol alkanoate.
Use/Production. (G) Open use. Prod. range: Confidential.
Toxicity Data. No data available on the PMN substance.
Exposure. Manufacture and processing, use and disposal: accidental dermal and inhalation.
Environmental Release/Disposal. Less than 10 kg/yr released to air, water and land. Disposal by on-site effluent treatment plant.

PMN 82–501

Manufacturer. Confidential.
Chemical. (G) Substituted pentenedioate.
Use/Production. (G) Destructive use. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Accidental.
Environmental Release/Disposal. No release. Disposal by incineration and approved landfill.

PMN 82–502

Importer. Confidential.
Chemical. (G) Substituted diazo compound.
Use/Import. Confidential. Import range: Confidential.
Toxicity Data. Acute oral: 5,000 mg/kg; Skin irritation: Slight irritant; Eye irritation: Mild irritant; Skin Sensitization: Slight.
Exposure. None.
Environmental Release/Disposal. No release.

PMN 82–503

Importer. Confidential.
Chemical. (G) Water base vinyl acrylic copolymer.
Use/Import. Confidential. Import range: Confidential.
Toxicity Data. No data submitted.
Exposure. None.
Environmental Release/Disposal. No release.

PMN 82–504

Manufacturer. Minnesota Mining and Manufacturing Company.
Chemical. (S) Polymer of 2-methyl-2-propenoic acid, 1-dodecyl ester; 2-methyl-2-propenoic acid, methyl ester; 2-methyl-2-propenoic acid, 1-butyl ester.
Use/Production. Confidential. Prod. range: Confidential.
Toxicity Data. Acute oral: 5,000 mg/kg; Skin irritation: Non-irritant; Eye irritation: Non-irritant; Ames Test: Negative.
Exposure. Manufacture and processing: inhalation, a total of 8 workers.
Environmental Release/Disposal. No release. Disposal by biological treatment system and incineration.

PMN 82–505

Manufacturer. General Electric Company.
Chemical. (S) 4, 4'-bis-(2, 6-dimethylphenol) sulfone.
Use/Production. (S) Monomer for production of plastic resin. Prod. range: Confidential.
Toxicity Data. Acute oral: 10,000 mg/kg; Acute dermal: 2,000 mg/kg; Skin irritation: Non-irritant; Eye irritation: Mild; Ames Test: Negative.
Exposure. Manufacture and processing: dermal and inhalation, a total of 30 workers, up to 24 hrs/da, up to 110 da/yr.
Environmental Release/Disposal. 10–100 kg/yr released to air and water 24 hrs/da, 365 da/yr. Disposal by biological treatment system and incineration.

PMN 82–506

Manufacturer. Confidential.
Chemical. (G) Alkoxy ester of N-methylacetamide.
Use/Production. (S) Curing agent. Prod. range: Confidential.
Toxicity Data. Acute oral: 1,800 mg/kg; Acute dermal: 2,000 mg/kg; Skin irritation: Non-irritant; Eye irritation: Severe; Inhalation: No deaths at 1.05 mg/L; Ames Test: Non-mutagenic.
Exposure. Confidential.
Environmental Release/Disposal. No release.

PMN 82–507

Manufacturer. Confidential.
Chemical. (G) Substituted isothiocyanate.
Use/Production. (G) Site-limited intermediate. Prod. Range: 50–100 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture and use: minimal dermal and inhalation, a total of 5 workers, up to 2 hrs/da, up to 5 da/yr.
Environmental Release/Disposal. No release. Disposal by biological treatment system and incineration.

PMN 82–508

Manufacturer. Chattem Chemicals.
Chemical. (G) Bis alkoxylated aluminum acetoacetic ester chelate.
Use/Production. (S) Industrial printing ink additive. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture and processing: dermal, less than 100 workers, up to 8 hrs/da, up to 15–90 da/yr.
Environmental Release/Disposal. Less than 10 kg/yr released to air 8 hrs/

da, 10–20 da/yr with 10–100 kg/yr released to land. Disposal by landfill and recovery.

PMN 82–509

Manufacturer. Confidential.

Chemical. (G) Alkane diol.

Use/Production. (S) Site-limited polymer intermediate. Prod. range: Confidential.

Toxicity Data. Acute oral: males and females—4.0 g/kg; Acute dermal: males and females-8.0 g/kg; Skin irritation: Non-irritant; Eye irritation: Minor to moderate irritant.

Exposure. Manufacture and processing: dermal, a total of 10 workers, up to 2 hrs/da, up to 30 da/yr.

Environmental Release/Disposal. No release. Disposal by landfill.

PMN 82–510

Manufacturer. Confidential.

Chemical. (G) Polyether urethane.

Use/Production. (S) Coating additive. Prod. range: Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Manufacture and processing: dermal, a total of 13 workers, up to 6 hrs/da, up to 30 da/yr.

Environmental Release/Disposal. No release. Disposal by incineration.

PMN 82–511

Manufacturer. Confidential.

Chemical. (G) Phenyl derivative of a 2-hydroxypropyl methacrylate.

Use/Production. (G) Open use. Prod. range: 100–2,600 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture, processing, use and disposal: dermal and inhalation, a total of 17 workers, up to 6 hrs/da, up to 250 da/yr.

Environmental Release/Disposal. 10–100 kg/yr released to land. Disposal by licensed contractor or landfill.

PMN 82–512

Manufacturer. Confidential.

Chemical. (G) Phenyl derivative of an ethyl methacrylate.

Use/Production. (G) Open use. Prod. range: 100–10,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture, processing, use and disposal: dermal, a total of 35 workers, up to 8 hrs/da, up to 250 da/yr.

Environmental Release/Disposal. 10–100 kg/yr released to land. Disposal by incineration or landfill.

PMN 82–513

Manufacturer. Confidential.

Chemical. (G) Alkyl diol, toluene diisocyanate, alkene ester, adipic acid resin.

Use/Production. (G) Open use. Prod. range: 100–10,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture, processing, use and disposal: dermal, a total of 35 workers, up to 8 hrs/da, up to 250 da/yr.

Environmental Release/Disposal. 10–100 kg/yr released to land. Disposal by incineration or landfill.

PMN 82–514

Manufacturer. Celanese Corporation.

Chemical. (G) Substituted cycloaliphatic hydroxyalkyl ether ester.

Use/Production. Confidential. Prod. range: 1,000–10,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: dermal, a total of 12 workers, up to 8 hrs/da, up to 10 da/yr.

Environmental Release/Disposal. Less than 10 kg/yr released to air and water with 10–100 kg/yr to land. Disposal by incineration and approved landfill.

PMN 82–515

Manufacturer. Celanese Corporation.

Chemical. (G) Acrylate ester of acrylic polymer.

Use/Production. Confidential. Prod. range: 10,000–250,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: dermal, a total of 12 workers, up to 1 hr/da, up to 100 da/yr.

Environmental Release/Disposal. Less than 10 kg/yr released to air and water with 10–100 kg/yr to land. Disposal by incineration and approved landfill.

PMN 82–516

Manufacturer. American Cyanamid Company.

Chemical. (G) Aromatic amine derivative.

Use/Production. (G) Resin curing agent. Prod. range: Confidential.

Toxicity Data. Acute oral: 5 g/kg; Acute dermal: <2 g/kg; Skin irritation: Slight irritant; Eye irritation: Minimal irritant; Ames Test: Non-mutagenic.

Exposure. Manufacture: dermal and inhalation, a total of 30 workers, up to 16 hrs/da, up to 50 da/yr.

Environmental Release/Disposal. Release to water and land. Disposal by publicly owned treatment works (POTW), incineration and approved landfill.

Dated: July 23, 1981.

Woodson W. Bercaw,

Acting Director, Management Support Division.

[FR Doc. 82-20549 Filed 7-29-82; 8:45 am]

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federal register

Friday
July 30, 1982

Part X

Department of Agriculture

Commodity Credit Corporation

Price Support Loan Program for 1982-Crop Sugar Beets and Sugarcane

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1435

Price Support Loan Program for 1982-Crop Sugar Beets and Sugarcane

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Proposed Rule.

SUMMARY: The Secretary of Agriculture is preparing to make determinations and issue regulations governing the price support loan program for 1982-crop sugarcane and sugar beets. This program is mandated by the Agricultural Act of 1949, as amended by the Agricultural and Food Act of 1981. Under the program, the Commodity Credit Corporation (CCC) will support prices to domestic producers of 1982-crop sugarcane and sugar beets through nonrecourse loans made by CCC to sugar processors. Interested persons are invited to submit written comments on the proposed rule.

DATE: Comments must be received on or before August 25, 1982.

ADDRESS: Send comments to Director, Cotton, Grains, and Rice Price Support Division, Agricultural Stabilization and Conservation Service (ASCS), U.S. Department of Agriculture, P.O. Box 2415, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT: Steve Gill, Cotton, Grain, and Rice Price Support Division, ASCS, U.S. Department of Agriculture, P.O. Box 2415, Washington, D.C. 20013. Phone: (202) 382-9888. The Preliminary Regulatory Impact Analysis describing the options considered in developing this proposed rule and the impact of implementing each option is available from Thomas W. Fink, Cotton, Grain, and Rice Price Support Division, ASCS, U.S. Department of Agriculture, P.O. Box 2415, Washington, D.C. 20013.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed under USDA procedures established in accordance with provisions of Secretary's Memorandum 1512-1 and Executive Order 12291 and has been classified as a "major rule."

It has been determined that the Regulatory Flexibility Act is not applicable to this rule since CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this proposed rule.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

The title and number of the Federal Assistance Program to which this proposed rule applies are: Title—Commodity Loans and Purchases, Number 1051, as filed in the Catalog of Federal Domestic Assistance. This action will not have a significant impact specifically on area and community development. Therefore, review as established by OMB Circular A-95 was not used to assure that units of local government are informed of this action.

The comment period is limited to less than 30 days to permit an adequate review of any comments submitted on this proposed rule before a final rule is developed for publication prior to the October 1, 1982, availability date.

Also, Headnote 4 of Part 3 of the Appendix to the Tariff Schedule of the United States requires the Secretary to determine and announce a new market stabilization price (MSP) for sugar by September 1. The MSP is the basis upon which sugar import fees are calculated, and is determined, in part, by reference to certain aspects of the sugar price support program. Accordingly, the shortened comment period is necessary to permit the review and evaluation of comments prior to the announcement of the new MSP.

Statutory Requirements

Section 201 of the Agricultural Act of 1949, as amended by the Agriculture and Food Act of 1981 (hereinafter referred to as the "Act"), requires that price support be made available for the 1982 through 1985 crops of sugar beets and sugarcane. The Act requires that price support be made available through the purchase of products processed from domestically-grown sugarcane and sugar beets during the period beginning December 22, 1981, through March 31, 1982. In addition, the Act provides that, effective October 1, 1982, 1982-crop sugar as well as 1983 through 1985 crop sugar, will be eligible for price support through a price support loan program.

Major Program Provisions

The major program provisions of the proposed loan program are as follows:

(1) *Eligible Sugar.* Sugar of the 1982 crop processed from domestically-grown sugarcane or sugar beets between April 1, 1982, and June 30, 1983, would be eligible for loan under the proposed rule, if the processor agrees to pay all eligible producers at least the minimum level of support which is specified by this rule for the applicable region.

(2) *Definition of crop year.* Under the previous price support programs for sugarcane and sugar beets, the crop year was determined by the harvesting season and varied throughout the production regions. However, the statutory requirements of the Act differ substantially from the statutory requirements which were applicable to previous sugar price support programs. For example, the Act provides that sugar processed from domestically-grown sugar beets and sugarcane between the date of enactment and March 31, 1982, must be supported through a price support purchase program and that, effective October 1, 1982, domestically-grown sugarcane and sugar beets of the 1982 through 1985 crops must be supported through a price support loan program. The Act also provides that price support loans must mature within the same fiscal year that the loan was disbursed.

It would appear that the use of the traditional crop year definitions is not compatible with a fair and reasonable implementation of the price support program as mandated by the Act. To illustrate, using the traditional crop year definition, only Hawaiian and Puerto Rican sugar would have been eligible for the purchase agreement program. Conversely, under the price support loan program, Hawaiian and Puerto Rican processors would be required to hold sugar for extended periods before such sugar could be placed under price support loan.

In order to remedy this problem, it would appear appropriate, since it is practicable to conduct a price support loan program only with respect to the processed products of sugarcane and sugar beets, to provide for a definition of crop year based upon the period of time when sugar beets and sugarcane are processed into refined beet sugar and raw cane sugar.

All producers would appear to be treated equitably if the phase "crop year" would be defined in this subpart so as to encompass all sugar processed during a period from July 1 through June 30. Use of a crop year based upon processing requires a crop year in excess of 12 months for 1982 because the Act mandates both a purchase program and a loan program for 1982-crop sugar. Therefore, the 1982 crop year is applicable to sugar processed from December 22, 1981, to June 30, 1983. The 1983 crop year will apply to sugar processed from July 1, 1983, through June 30, 1984. The 1984 and 1985 crop years will apply to sugar processed during the 12-month period beginning on July 1 of the applicable year.

This definition of crop year is consistent with the definition of crop

year adopted for the price support purchase program which was published on May 28, 1982, at 47 FR 23420.

(3) *Support level and loan rates.* The support level is the minimum amount that must be paid to the grower by a processor that is participating in the price support loan program. The support levels are set forth in the proposed rule by regions. These support levels would be applicable for purposes of settling contracts between individual processors and growers for the crop of sugar beets and sugarcane harvested during the periods specified in the rule.

The loan rates paid by CCC to the processors are designed to permit processors, on the average, to pay growers the specified level of support. The national average loan rate for raw cane sugar is 17 cents per pound. The loan rate for refined beet sugar is required by the Act to be established at such level as is fair and reasonable in relation to the loan rate for raw cane sugar.

The methods which were used under previous price support programs to determine price support loan levels for refined sugar processed from sugar beets were used to determine the loan rate for refined beet sugar under this proposal. The loan rate for refined beet sugar is intended to reflect the value of the sugar taking into account its location and the relationship between refined beet sugar net selling prices and raw cane sugar prices. After adjustment to reflect the proper price relationship, the estimated 1982 crop fixed marketing costs (which are incurred by beet processors regardless of the disposition of the sugar) are added to make up the basic loan rate for refined beet sugar. The relationship between refined beet sugar net selling prices and raw cane sugar prices for the period 1965 through 1979 (1.10 to 1.00) was used to determine the loan rates for refined beet sugar under previous loan programs.

Because refined beet sugar and refined cane sugar compete in the same market, the proper support price relationship between sugarcane and sugar beets is necessary to prevent distortion of the market and to avoid disproportionate forfeiture to CCC of either type of sugar. Comments on the recently published purchase program suggested that the long term historical price relationship (1.10 to 1.00) between refined beet sugar and raw cane sugar may not accurately reflect the true price relationship. After examination of this issue, it was concluded that the base period for calculation of the percentage relationship should be changed to 1975–1980 in order to reflect more recent market relationships. This results in a percentage relationship of 1.13. This percentage relationship was, therefore, used to determine the purchase price under the previously announced purchase program. (See the discussion set forth at 47 FR 23421, May 28, 1982). If after review of the comments received on this issue it is determined that this method should be changed, a revised loan rate for refined beet sugar will be published in the final rule. Support levels required to be paid producers by processors would also be revised accordingly.

The calculation of fixed marketing costs and location differentials are discussed in the Preliminary Regulatory Impact Analysis. Comments with respect to these calculations and the data on which they are based are specifically invited.

(4) *Availability.* A request for price support may be filed no earlier than October 1, 1982, and must be filed no later than June 30, 1983.

(5) *Maturity Date.* Two loan maturity periods were considered in developing this proposed rule. Considered were a six-month and nine-month loan period. A loan maturity date of the last day of the sixth month following the month in which the loan is disbursed, but no later than September 30, appears to be in the best interest of CCC and the trade. The final date of September 30 is mandated by statute. If a nine-month loan period was offered, all loans would mature between July 31 and September 30. Experience with other commodities suggests that having all loans mature within a short time frame usually has a depressant effect upon prices. Therefore, loans for 1982-crop sugar will mature on the last day of the sixth month following the month in which the loan is disbursed. However, because of the statutory limitation, loans disbursed between April 1, 1983, and June 30, 1983, will mature on September 30, 1983. The six and nine month loan periods are discussed more fully in the Preliminary Regulatory Impact Analysis.

(6) *Obligations of the processor.* Eligible processors who execute a note, security agreement, and storage agreement as prescribed by CCC are required to pay eligible producers a minimum price for sugarcane or sugar beets delivered for processing. The minimum price applicable to specific regions is set forth in the rule. Eligible processors who elect to exercise their option to deliver sugar to CCC in settlement of the loan must remove and physically deliver the forfeited loan collateral in accordance with instructions from CCC. All loan out expenses shall be for the account of the processor. CCC shall have the right to inspect such sugar and storage facilities. The processor is obligated, at CCC's discretion, to store the sugar in the warehouse at which CCC accepted delivery for as long as it is deemed necessary by CCC.

(7) *Treatment of refined cane or specialty sugar.* In the event refined or specialty sugar made from raw cane sugar is delivered for purpose of settlement, the quantity of refined cane or specialty sugar will be converted to an equivalent quantity of cane sugar, raw value.

This settlement procedure is consistent with settlement procedures under previous price support programs. However, one issue which is raised is whether processors of sugarcane who are also refiners should be allowed to deliver refined cane sugar under the loan program at the loan rate for refined beet sugar. This would permit such processors to carry on their normal refining operations and thus would not require the processor to determine whether raw sugar should be diverted from the processor's refining operation to the price support program.

After considering this issue, it has been tentatively determined that the settlement procedures used in previous price support programs should be retained. It should be noted that the purpose of the price support program is to provide price support to growers of sugar beets and sugarcane in their capacities as growers. However, because sugar beets and sugarcane cannot be stored, this objective can only be accomplished by offering loans to processors on the processed commodity. Therefore, under the price support loan program, storable commodities which are at the nearest point to harvest, i.e., raw sugar for sugarcane and refined beet sugar for sugar beets, are eligible for loan.

Furthermore, permitting processors who are also refiners to deliver refined cane sugar under the price support program at the refined beet sugar loan rate might unfairly disadvantage independent refiners of raw sugar who would not be eligible to deliver refined cane sugar to CCC under the price support program. Thus, the approach set forth in this proposed rule would place the refining operations of processors who are also refiners in substantially the same position as independent refiners of raw sugar. This approach is also consistent with the terms of the previously announced price support purchase program.

(8) *Substitution.* The substitution of sugar under loan with other sugar of the same or a subsequent crop year would

not be permitted under this proposal. Under previous programs, the frequent removal of loan collateral before replacement collateral could be verified placed CCC's security interest in jeopardy.

(9) *Information on transportation and handling costs.* This proposed rule provides for differentials in loan rates depending upon the location of the sugar. Such location differentials are common to most of the price support programs conducted by CCC. Location differentials are generally based upon transportation costs and are essential order to prevent distortions of ordinary market relationships as the result of the price support program. It has been suggested that the data base upon which location differentials have been calculated may be inaccurate and outdated. After reviewing this matter, the Department has concluded that the proper location differentials can be developed only by using actual cost data for the shipment of sugar from the processor to the initial purchaser. This proposed rule requires sugar processors to provide to CCC information concerning freight and related shipping costs if a price support loan is obtained by the processor. CCC does not intend to request information which will place an onerous burden on the processor. The information requested will be that information which is usually retained by the processor in the normal course of business. Information provided CCC will be considered confidential. Compliance with the request is made a condition for participation in the 1982 crop price support loan program.

It should be noted that under the terms of the purchase agreement program published on May 28, 1982, at 47 FR 23420, processors are similarly required to make such information available to CCC. This information has not yet been assembled and is thus not reflected in the location differentials set forth in this proposed rule. It is anticipated that such information will be available prior to the development of the final rule. It is, therefore, likely that the location differentials will change somewhat in the final rule. The support levels which will be required to be paid growers by processors will also be modified in order to reflect any changes in the location differentials. The reporting and recordkeeping requirements of this rule have been approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (Pub. L. 96–511) and the Federal Reports Act of 1942.

Budget Requirements

The loan program will require no budget outlays in FY 1982. Budget outlays for FY 1983 will be affected by several factors, including: (1) the size of the domestic sugar crop; (2) the amount of sugar pledged as loan collateral; (3) the world price of raw sugar; and (4) the quantity of sugar actually delivered to CCC in settlement of 1982-crop loans.

The effectiveness of controls on imported sugar and, correspondingly, the domestic market price of sugar, will also have a significant impact on the ultimate cost of the program in FY 1983.

List of Subjects in 7 CFR Part 1435

Loan programs/agriculture, Price support programs, Sugar.

Proposed Rule

Accordingly, it is proposed that 7 CFR Part 1435 be amended by adding a new "Subpart—Price Support Loan Program for 1982-Crop Sugar Beets and Sugarcane" to read as follows:

PART 1435—SUGAR

* * * * *

Subpart—Price Support Loan Program for 1982-Crop Sugar Beets and Sugarcane

Sec.

1435.95 General statement.
1435.96 Administration.
1435.97 Definitions.
1435.98 Method of support and loan rates.
1435.99 Eligibility requirements.
1435.100 Availability, disbursement, and maturity of loans.
1435.101 Quantity eligible for loan.
1435.102 Loan maintenance and liquidation.
1435.103 Delivery to CCC quality, and storage facility requirements.
1435.104 Processor storage agreement.
1435.105 Interest rates.
1435.106 Miscellaneous provisions.
1435.107 Applicable forms.

Authority: Secs. 201 and 401 *et seq.* of the Agricultural Act of 1949, as amended, (7 U.S.C. 1447 *et seq.*, 1421 *et seq.*).

Subpart—Price Support Loan Program for 1982-Crop Sugar Beets and Sugarcane

§ 1435.95 General statement.

This subpart sets forth the terms and conditions of the price support loan program for the 1982 crop of sugar beets and sugarcane. The Commodity Credit Corporation (CCC) will offer to eligible processors nonrecourse loans which must be evidenced by notes and security agreements and secured by the pledge of eligible sugar in eligible storage. Only eligible sugar which is in eligible storage shall be accepted for delivery in settlement of the loan.

§ 1435.96 Administration.

(a) The Cotton, Grain, and Rice Price Support Division, Agricultural Stabilization and Conservation Service (referred to as "ASCS"), will administer this subpart under the general direction and supervision of the Deputy Administrator, State and County Operations.

(b) In the field, this subpart will be administered by the Kansas City Commodity Office and the Management Field Office (referred to as "KCCO" and "MFO," respectively), and designated State and county ASC committees (referred to as "State and county committees").

§ 1435.97 Definitions.

(a) "1982 crop" means sugar processed from domestically-produced sugar beets or sugarcane during the period from December 22, 1981, through June 30, 1983.

(b) "Eligible producer" means the owner of a portion or all of the sugar beets or sugarcane, including share rent landowners, both at the time of harvest and delivery to the processor.

(c) "Sugar" means refined beet sugar, refined cane sugar, raw cane sugar, sugarcane syrup, or edible molasses which: (1) Is processed by a processor from domestically-produced sugar beets or sugarcane, and (2) meets the quality requirements set forth in § 1435.103(b) below.

(d) "Processor" means a person or legal entity that: (1) Commercially processes sugar beets into refined sugar or sugarcane into raw sugar, cane syrup, or edible molasses; or (2) is a cooperatively-owned refiner of raw cane sugar which markets refined cane sugar and raw cane sugar on behalf of its members and non-member patrons; or (3) is a processor of sugarcane into raw cane sugar who is also a refiner.

(e) "Raw value" of any quantity of sugar means its equivalent in terms of ordinary commercial raw sugar testing 96 degrees by the polariscope.

(f) "Sugar beets of average quality" means sugar beets containing 15.61 percent sucrose.

(g) "Sugarcane of average quality" means: (1) for Florida, sugarcane containing 13.98 percent sucrose in normal juice; and (2) for Louisiana, sugarcane containing 12.89 percent sucrose in normal juice of 79.03 percent purity.

(h) "Secretary" means the Secretary of Agriculture or an official who has been designated to act on his behalf.

(i) "Eligible storage" means a storage facility meeting the requirements set forth in § 1435.103(c) below.

§ 1435.98 Method of support and loan rates.

(a) *Method of support.* Price support to domestic producers of 1982-crop sugar beets and sugarcane processed between April 1, 1982, through June 30, 1983, is available through nonrecourse loans to eligible processors.

(b) *Loan rates.* The basic (weighted average) loan rates for the 1982 crop shall be 20.10 cents per pound for refined beet sugar and 17 cents per pound for cane sugar, raw value, including the cane sugar, raw value equivalent, contained in refined cane sugar, sugarcane syrup, and edible molasses. In the case of refined or specialty sugar made from raw cane sugar, the rate shall be the appropriate regional rate applied to the raw cane sugar equivalent of the refined or specialty sugar.

(c) *Locational differentials.* (1) The loan rate applicable to eligible sugar shall be the rate specified in paragraphs (c)(2) and (3) of this section for the region in which such sugar was processed.

(2) The processing regions and applicable loan rates for refined beet sugar shall be as listed below:

Region number and description	Cents per pound
1—Michigan and Ohio	20.99
2—Minnesota and the Eastern half of North Dakota	19.99
3—Northeastern quarter of Colorado; Northwestern quarter of Kansas; Nebraska; and the Southeastern quarter of Wyoming	19.76
4—Southeastern quarter of Colorado; and Texas	20.04
5—Montana and the Northwestern quarter of Wyoming and Western half of North Dakota	19.84
6—That part of Idaho east of the Eastern boundary of Owyhee County and of such boundary extended northward; and Utah	19.41
7—That part of Idaho west of the eastern boundary of Owyhee County and of such boundary extended northward; Oregon; and Washington	19.41
8-Arizona and California	20.67

(3) The processing regions and applicable loan rates for cane sugar, raw value, shall be as listed below except that, for such sugar processed in Hawaii or Puerto Rico but placed under loan on the mainland of the United States, the applicable loan rate shall be 17 cents per pound:

Region	Cents Per pound
Florida	16.98
Louisiana	17.43
Texas	17.10
Hawaii	16.91
Puerto Rico	16.35

§ 1435.99 Eligibility requirements.

(a) The maximum quantity of sugar which is eligible to be placed under the 1982 price support loan program by an eligible processor is that quantity of domestically-produced sugar which is equivalent to the quantity of sugar processed by the processor during the period beginning April 1, 1982, through June 30, 1983, from sugar beets and sugarcane grown by eligible producers. Such sugar must be processed and owned by the eligible processor (or jointly owned by the eligible processor and eligible producer) pledging the sugar as collateral for loan and must be in eligible storage.

(b) Eligible processors for 1982-crop sugar are those processors who, as a condition of obtaining a CCC price support loan, agree to pay to all eligible producers who have delivered or will deliver to them for processing sugar beets and sugarcane of average quality in the following locations not less than:

(1) For sugar beets harvested between July 1, 1982, and June 30, 1983, in the regions described in paragraph (c)(2) of section 1435.98, the following rates per net ton: Region 1, $28.29: *Provided,* That, if (i) the sugar extracted by a processor from the 1982-crop yields, on the average, less than 232.54 pounds per net ton of sugar beets delivered and accepted by the processor or (ii) the processor's net return on byproducts per net ton of sugar beets delivered and accepted by the processor averages less than $6.53 per net ton, the required minimum price support rate per ton of sugar beets may be adjusted. The adjusted rate will be determined by (A) multiplying $.2010 (the loan rate per pound less $.0089 considered as fixed marketing costs) by the average pounds and hundredths of pounds of sugar extracted per net ton, (B) adding thereto the net return to the processor on byproducts per net ton of sugar beets delivered and accepted, and (C) multiplying the result by 53.1 percent.

Region 2, $30.76
Region 3, $30.39
Region 4, $30.84
Region 5, $30.52
Region 6, $29.84
Region 7, $29.84
Region 8, $31.83

(2) For sugarcane harvested between July 1, 1982, and June 30, 1983, in Florida, $23.00 per net ton;

(3) For sugarcane harvested between July 1, 1982, and June 30, 1983, in Louisiana, $21.05 per net ton: *Provided,* however, for sugarcane for which settlement is determined on the basis of a core sample, the minimum amount to be paid per gross ton of sugarcane shall be the amount determined by multiplying the total amount of sugar recovered per gross ton (CRS adjustement) of sugarcane delivered to the processor by 10.458 cents per pound, plus 58 cents per gross ton of sugarcane for molasses.

(4) For sugarcane harvested between July 1, 1982, and June 30, 1983, in Texas, the amount determined by mutliplying 10.26 cents times the average pounds of cane sugar, raw value, recovered per ton from the sugarcane delivered to the processor by all producers, as adjusted by the processor to reflect the quality of the juice (normal juice sucrose and normal juice purity) extracted from the individual producer's sugarcane;

(5) For sugarcane harvested in calendar year 1982 in Hawaii, the amount determined in accordance with the standard marketing contract between growers and processors of sugarcane and the cooperatively-owned refiner of raw cane sugar which markets refined and raw cane sugar on behalf of its members and non-member patrons: Provided, however, that non-members of such cooperative shall be treated no less favorably than the members of the cooperative under the terms of the standard marketing contract.

(6) For sugarcane harvested in calendar year 1982 in Puerto Rico, that price determined in accordance with the provisions of Puerto Rico Law No. 426, also known as the Puerto Rico Sugar Law, and the rules issued thereunder by the Sugar Board of Puerto Rico.

The foregoing prices may be adjusted for sugar beets or sugar of non-average quality under the method agreed upon by the producer and processor.

§ 1435.100 Availability, disbursement, and maturity of loans.

(a) *Availability.* To obtain price support on eligible sugar, an eligible processor: (1) must file a request for price support with the State committee of the State where such processor is headquartered or a county committee designated by the State committee; and (2) must execute a note and security agreement and storage agreement as prescribed by CCC. The request for price support may be filed no earlier than October 1, 1982, and must be filed no later than June 30, 1983.

(b) *Redeemed loan collateral.* A processor may, within the loan availability period, reoffer as security or repledge to CCC as collateral eligible sugar that has been previously served as loan collateral for a price support loan that has been repaid. The maturity date of the subsequent loan shall be the same as the maturity date of the original loan. In no event may the total cumulative quantity of sugar on which loans have been obtained exceed the quantity of

sugar eligible for loan, as specified in § 1435.101.

(c) *Disbursement of loans.* Disbursement will be made by means of drafts drawn on the account of CCC.

(d) *Maturity of loans.* Except as provided in § 1435.100(b), loans will mature on the last day of the sixth month following the month in which the loan is disbursed, but in no event later than September 30, 1983. Loan maturity dates may be accelerated by CCC in accordance with § 1435.102(b)(3).

§ 1435.101 Quantity eligible for loan.

Loans shall not be approved for more than the quantity of sugar which an eligible processor certifies is eligible and available to be placed under loan. Sugar pledged as collateral for a loan is not required to be stored identity-preserved. However, the total quantity of sugar which a processor may pledge as collateral for a loan may not exceed: (1) Total eligible storage capacity less ineligible sugar in storage; or (2) the quantity of eligible sugar processed from April 1, 1982, through June 30, 1983.

§ 1435.102 Loan maintenance and liquidation.

(a) *Maintenance of the commodity under loan.* A processor shall maintain in eligible storage eligible sugar of sufficient quality and quantity to cover the loan. By executing a Marketing Authorization for Loan Collateral (Form CCC–681–1), the processor may request and obtain prior written approval of the loanmaking office to remove a specified quantity of the loan collateral for the purpose of delivering it to a buyer prior to repayment of the loan. The loanmaking office shall not approve such a request unless the buyer of the sugar agrees to pay to CCC an amount, not in excess of the purchase price, necessary to satisfy the processor's loan indebtedness on the sugar purchased. Any such approval shall not: (1) Constitute a release of CCC's security interest in the sugar; or (2) relieve the processor of liability for the full amount of the loan indebtedness, including interest.

(b) *Loan Liquidation.* (1) *Redemption of loan collateral.* At the processor's option, a processor may, at any time prior to maturity of the loan, redeem all or any part of the loan collateral by paying to CCC the principal amount of the loan plus interest applicable to the quantity of sugar redeemed.

(2) *Forfeiture of loan collateral.* (i) If a processor desires to forfeit all or any part of the loan collateral to CCC, the processor must notify in writing the appropriate loan-making office of the processor's intent to forfeit the loan collateral and the amount of loan collateral which the processor intends to forfeit. Such notice must be delivered to the loan-making office no later than 30 days prior to the maturity date of the loan. CCC shall not accept delivery of sugar in settlement of a price support loan in excess of the amount specified in the notice of intent to forfeit.

(ii) Notwithstanding the fact that the processor has given notice of intent to forfeit, the processor may, at any time prior to maturity of the loan, redeem the loan collateral in accordance with paragraph (b)(1) of this section.

(iii) If the processor does not redeem any amount of the loan collateral with respect to which a notice of intent to forfeit has been properly given by the processor, the unredeemed loan collateral will, without further action by CCC or the processor, be deemed to have been delivered to CCC in-store at the processor's storage facility on the day following the maturity date of the loan. Upon delivery, title and all rights and interests with respect to the sugar shall immediately vest in CCC. Delivery of eligible sugar in eligible storage will be accepted as payment in full of the principal amount of the loan, plus interest, applicable to the quantity of sugar delivered.

(3) *Acceleration of the loan maturity date.* CCC may at any time accelerate the date for repayment of the loan indebtedness, including interest. CCC will give the processor notice of such acceleration at least 10 days in advance of the accelerated loan maturity date. In the event of any such acceleration, the processor may elect to redeem or forfeit all or any part of the loan collateral in accordance with the provisions of paragraphs (b)(1) and (b)(2) of this section. However, the required notice of intent to forfeit, as set forth in paragraph (b)(2)(i), may be given at any time prior to the accelerated maturity date.

(4) *Foreclosure.* If the loan indebtedness, including interest, is not satisfied in accordance with the provisions of this section, CCC may, upon notice, with or without removing the collateral from storage, sell it at either a public or private sale. CCC may become the purchaser. If the net proceeds are less than the amount due on the loan, the processor shall be liable to CCC for the difference.

(5) *Loss or damage of loan collateral.* The processor shall at all times be responsible for maintaining the quality and quantity of the loan collateral in storage. Notwithstanding the foregoing, the processor shall not be liable for any damage, and CCC will bear its pro rata share of any loss in the case of loan collateral sugar stored on a commingled basis, less any insurance proceeds and salvage value of the sugar to which CCC may be entitled, if the processor establishes to the satisfaction of CCC that each of the following conditions occurred: (i) The loss or damage occurred without fault or negligence on the part of the processor; (ii) the loss resulted solely from an external cause (other than insect infestation, vermin, or animals) such as theft, fire, lightning, explosion, windstorm, cyclone, tornado, flood, or other act of God; (iii) the processor gave the loanmaking office immediate notice of such loss or damage; and (iv) the processor made no fraudulent or misleading representation in the loan documents or in obtaining the loan.

(c) *Storage costs.* Storage costs through the loan maturity date shall be borne by the borrower.

(d) *Processor incorrect certification or unauthorized removal.* If CCC determines, by actual measurement or otherwise, that the actual quantity serving as collateral for price support loan is less than the loan quantity, CCC may call the loan.

§ 1435.103 Delivery to CCC, quality, and storage facility requirements.

(a) The quantity of sugar which a processor may deliver to CCC in settlement of the loan shall not exceed the quantity of sugar which is shown on the note and security agreement approved by CCC, minus any quantity that was redeemed or released for removal in accordance with a Marketing Authorization for Loan Collateral (Form CCC–681–1).

(b) In order to be eligible to be delivered to CCC, sugar must meet the following minimum quality requirements:

(1) Refined beet or cane sugar must be: (i) Dry and free flowing; (ii) free of excessive sediment; and (iii) free of any objectionable color, flavor, odor, or other characteristic which would impair the merchantability of such sugar or which would impair or prevent the use of such sugar for normal commercial purposes.

(2) Raw cane sugar must be: (i) Of reasonable grain size: (ii) free from excessive color or moisture; and (iii) free from any objectionable color, flavor, odor, or other characteristic which would impair the merchantability of such sugar or which would impair or prevent the use of such sugar for normal commercial purposes.

(3) Sugarcane syrup or edible molasses must be free from any objectionable color, flavor, odor, or other characteristic which would impair

the merchantability of such sugar or which would impair or prevent the use of such sugar for normal commercial purposes.

(4) Any type of sugar delivered to CCC must be free of any contamination by either natural or manmade substances and must not contain chemcials or other substances which are poisonous or harmful to humans or animals. In addition, all sugar which is delivered to CCC must be free and clear of any liens, mortgages, or other such encumbrances.

(c) Sugar may only be delivered to CCC in eligible storage. Eligible storage is any storage facility which: (1) Is owned or controlled by the processor; (2) is suitable for the storage and loading out of the sugar being delivered to CCC by the processor; (3) meets CCC Standards for Approval of Dry and Cold Storage Warehouses for Processed Agricultural Commodities, Extracted Honey, and Bulk Oils (7 CFR 1423); and (4) is placed under a storage contract with CCC. If the sugar is delivered in or to an ineligible storage facility, the processor shall be responsible for all costs incurred in moving the sugar to an eligible storage facility.

(d) CCC shall, at any time, have the right to inspect the loan collateral and the storage facilities in which it is situated. The processor shall also furnish to CCC such production records as CCC considers necessary to verify compliance with the quantitative limitations set forth in § 1435.99(a).

(e) The processor shall be liable to CCC for any damages suffered by CCC if: (1) The processor delivers ineligible sugar to CCC; or (2) the processor delivers sugar to CCC which is stored in ineligible storage. The processor shall be liable for such damages regardless of whether CCC inspected the sugar and storage facility prior to delivery.

§ 1435.104 Processor storage agreement.

(a) By executing a note and security agreement, the processor agrees to store any loan collateral sugar that is forfeited to CCC on behalf of CCC under the terms and conditions specified in this subpart and any storage agreement entered into between CCC and the processor. Should the terms of the storage agreement and the terms of these regulations conflict, the terms set forth in the regulations shall be applicable.

(b) The processor shall at all times be responsible for maintaining the quality and condition of the CCC-owned sugar in storage. The processor shall be liable to CCC for any damages suffered by CCC due to the failure of the processor to load out sugar meeting the eligibility criteria set forth in § 1435.103(b) of this subpart.

Notwithstanding the foregoing, the processor shall not be liable for any damage, and CCC will bear its pro rata share of any loss in the case of CCC-owned sugar stored on a commingled basis, less any insurance proceeds and salvage value of the sugar to which CCC may be entitled, if the processor establishes to the satisfaction of CCC that each of the following conditions occurred: (1) The loss or damage occurred without fault or negligence on the part of the processor; (2) the loss resulted solely from an external cause (other than insect infestation, vermin, or animals) such as theft, fire, lightning, explosion, windstorm, cyclone, tornado, flood, or other acts of God; (3) the processor gave the loanmaking office immediate notice of such loss or damage; and (4) the processor made no fradulent or misleading representation in the loan documents or in obtaining the loan.

(c) The processor shall store sugar delivered to CCC in the eligible storage where delivered for as long as deemed necessary by CCC after delivery of the sugar to CCC. However, if a sugar beet processor requires the storage space for other sugar during the period the processor is required by CCC to maintain the refined beet sugar delivered in settlement of the loan in the storage where delivered, CCC will accept bagged sugar from the current crop in substitution for the delivered bulk sugar, provided the sugar loan rate for the area where the bagged sugar is stored is equal to or exceeds the loan rate for the delivered bulk sugar.

(d) The processor shall remove and physically deliver the forfeited loan collateral in accordance with written instructions from CCC. All load out expenses shall be for the account of the processor.

(e) CCC shall make monthly storage payments to the processor for the period of time the processor stores the forfeited sugar for CCC. The storage payment rate shall be as agreed upon by CCC and the processor but in no event exceed $.00083 per pound per month.

§ 1435.105 Interest charges.

(a) Each sugar loan shall bear interest at the rate applicable to such Note and Security Agreement and such subsequent increased or decreased interest rates as determined and announced by the Secretary.

(b) Late payment charges, if applicable, shall be charged in accordance with 7 CFR Part 1403.

§ 1435.106 Miscellaneous Provisions.

(a) *Insurance.* CCC will not require the processor to insure the sugar pledge as collateral. However, if the processor insures such sugar and an indemity is paid thereon, such indemnity shall inure to the benefit of CCC to the extent of its interest after first satisfying the processor's equity in the sugar involved in the loss.

(b) *Scheme or device.* The processor shall not reduce returns to the producer below those determined in accordance with the requirements of this subpart through any scheme or device whatsoever.

(c) *Processor indebtedness.* The regulations issued by the Secretary governing setoffs and withholding, 7 CFR Part 13, shall be applicable to the program.

(d) *Liens.* Waivers of liens or encumbrances on the sugar pledged as loan security to CCC must be obtained to protect fully the interest of CCC. A lienholder, in lieu of waiving a prior lien on sugar, may execute with CCC a lienholder's Subordination Agreement (Form CCC–864) in which the Lienholder's security interest is subordinated to the rights of CCC. No liens or encumbrances shall be placed on the sugar pledged as collateral after the loan is approved.

(e) *Appeals.* A producer or processor may obtain reconsideration and review of determinations made under this subpart in accordance with the regulations at 7 CFR Part 780.

(f) *Records and Information.* (1) *Maintenance and Inspection of Records.* ASCS, the Office of the Inspector General, USDA, and the Comptroller General of the United States, shall have the right to have access to the premises of the processor, in order to inspect, examine, and make copies of the books, records, accounts, and other written data as are deemed necessary by the examining agency to verify compliance with the requirements of this subpart. Such books, records, accounts, and other written data shall be retained by the processor for not less than three years.

(2) *Information on Freight Costs and Related Shipping Expenses.* Any processor that obtains price support on eligible sugar must, upon the request of CCC, provide to CCC such information as CCC deems appropriate concerning freight and related shipping costs for the processor's most recent complete marketing year. By obtaining price support, processors are deemed to have agreed to provide such information when requested by CCC.

(g) *False certification.* Any false certification, which is made for the purpose of enabling a processor to obtain a price support loan to which it is not entitled, will subject the person making such certification to liability under applicable Federal civil and criminal statutes.

(h) *Handling payments and collections not exceeding three dollars.* In order to avoid unreasonable administrative costs incurred in making small payments and handling small accounts, amounts of $3 or less which are due the processor will be paid only upon the processor's request. Deficiencies of $3 or less, including interest, may be disregarded unless demand for payment is made by CCC.

(i) *Death, incompetency, or disappearance.* In case of death, incompetency, or disappearance of any processor who is entitled to the payment of any sum in settlement of a loan payment shall, upon proper application to the State committee, be made to the persons who would be entitled to such processor's payment under the regulations contained in 7 CFR Part 707—Payment Due Persons Who Have Died, Disappeared, Have Been Declared Incompetent.

§ 1435.107 Applicable forms.

The CCC forms for use in connection with this program will be available from the appropriate State committee or designated county committee. CCC forms have been developed for program participation by farmers and producers. When such forms are used for participation in the sugar loan program, the term "producer" shall mean "processor."

Signed at Washington, D.C., on July 27, 1982.

John R. Block,

Secretary.

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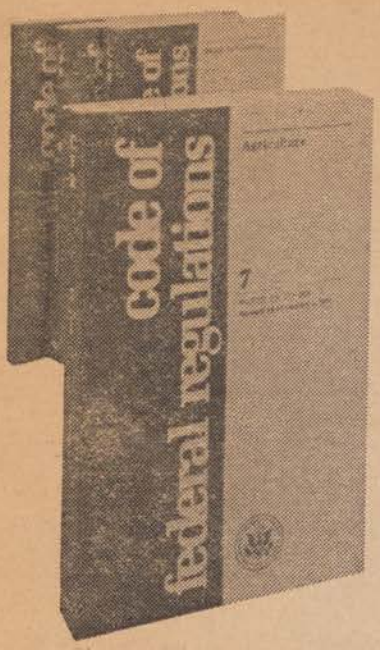
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S.J. Res. 95 / Pub. L. 97–224 To authorize and direct the Secretary of the Interior, subject to the supervision and approval of the Franklin Delano Roosevelt Memorial Commission, to proceed with the construction of the Franklin Delano Roosevelt Memorial, and for other purposes. (July 28, 1982; 96 Stat. 243) Price: $1.75.

H.J. Res. 444 / Pub. L. 97–225 To authorize and request the President to designate August 14, 1982, as "National Navaho Code Talkers Day". (July 28, 1982; 96 Stat. 244) Price: $1.75.



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