AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

OK

Vol. 48 No. 97
Pages 22287-22498

federal register

Wednesday
May 18, 1983

Selected Subjects

Administrative Practice and Procedure
Pension Benefit Guaranty Corporation

Air Carriers
Civil Aeronautics Board

Air Pollution Control
Environmental Protection Agency

Animal Diseases
Animal and Plant Health Inspection Service

Clemency
Justice Department

Coal Mining
Surface Mining Reclamation and Enforcement Office

Fisheries
National Oceanic and Atmospheric Administration

Investment Companies
Securities and Exchange Commission

Loan Programs—Agriculture
Commodity Credit Corporation

Loan Programs—Housing and Community Development
Veterans Administration

Marketing Agreements
Agricultural Marketing Service

Milk Marketing Orders
Agricultural Marketing Service

Organization and Functions (Government Agencies)
Justice Department

CONTINUED INSIDE

Selected Subjects

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

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

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

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

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

Pesticides and Pests
Environmental Protection Agency

Contents

Federal Register
Vol. 48, No. 97
Wednesday, May 18, 1983

Agency for International Development
NOTICES
Meetings:
22372 Voluntary Foreign Aid Advisory Committee
22371 Privacy Act; systems of records

Agricultural Marketing Service
RULES
22287 Cranberries grown in Mass. et al.
Milk marketing orders:
22287 Southern Michigan
PROPOSED RULES
Milk marketing orders:
22313 Ohio Valley and Eastern Ohio-Western Pennsylvania
22303 Southeastern Florida
22318 Texas et al.; hearing and proceeding cancelled

Agriculture Department
See also Agricultural Marketing Service; Animal and Plant Health Inspection Service; Commodity Credit Corporation.
NOTICES
22340 Agency forms submitted to OMB for review

Alcohol, Drug Abuse, and Mental Health Administration
NOTICES
Committees; establishment, renewals, terminations, etc.:
22363 Mental Health Institute, National; Scientific Counselors Board

Animal and Plant Health Inspection Service
RULES
Swine health protection:
22288 Rendering facilities exemption
NOTICES
Environmental statements; availability, etc.:
22340 Detroit, Mich.; animal inspection station, construction and operation
22339 Gypsy moth cooperative suppression and regulatory program, Ill. et al.

Army Department
See also Engineers Corps.
NOTICES
Meetings:
22346 Medical Research and Development Advisory Committee

Civil Aeronautics Board
PROPOSED RULES
Air carriers:
22323 Baggage liability rules
NOTICES
Hearings, etc.:
22340 Michigan Peninsula Airways; fitness investigation
22407 Meetings; Sunshine Act

Civil Rights Commission
NOTICES
Meetings; State advisory committees:
22341 District of Columbia
22341 Illinois

Commerce Department
See also Minority Business Development Agency; National Bureau of Standards; National Oceanic and Atmospheric Administration.
NOTICE
Meetings:
22344 President's Private Sector Survey on Cost Control

Commodity Credit Corporation
PROPOSED RULES
Loan and purchase programs:
22318 Peanuts; warehouse storage loans and handler operations; intent to review

Defense Department
See also Army Department; Engineers Corps.
NOTICES
Meetings:
22347 Science Board

Drug Enforcement Administration
NOTICES
Registration applications, etc.; controlled substances:
22386 Hoffmann La Roche, Inc.

Economic Regulatory Administration
NOTICES
Environmental statements; availability, etc.:
22350 Edge Moor Power Station conversion to coal; Wilmington, Del.
Natural gas; fuel oil displacement certification applications:
22352 Bethlehem Steel Corp.
22352 Burlington Industries, Inc.
22353 Central Hudson Gas & Electric Corp.
22353 J. P. Stevens & Co., Inc.
22354 Stone Container Corp.

Education Department
NOTICES
Grant applications and proposals; closing dates:
22347 Special programs staff and leadership personnel training program (postsecondary education)
Meetings:
22347 Women's Educational Programs National Advisory Council; amendment
22409 Meetings; Sunshine Act (2 documents)

Energy Department
See also Economic Regulatory Administration; Federal Energy Regulatory Commission.
NOTICES
22350 Nuclear waste; nomination of repository sites in salt deposits, etc.; hearing location changes, etc.

Engineers Corps
NOTICES
Environmental statements; availability, etc.:
22346 O'Hare System of Chicagoland Underflow Plan, Cook County, Ill.
22347 Sheepshead Bay Federal Project navigation improvements, Brooklyn, N.Y.

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
22294, 22295 Indiana (2 documents)
22297 Oklahoma
22298 Oregon
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
22335 Minnesota
Air quality planning purposes; designation of areas:
22336 Ohio
Pesticide chemicals in or on raw agricultural commodities; tolerances and exemptions, etc.:
22337 N-(Mercaptomethyl)phthalimide *S*-(*O,O*-dimethyl phosphorodithioate)
22335 Relocation assistance and land acquisition for Federal and federally assisted programs; uniform cost-effective policies and procedures
NOTICES
Meetings:
22360 Science Advisory Board
Pesticide registration, cancellation, etc.:
22358 BASF Wyandotte Corp. et al.
Pesticides; experimental use permit applications:
22360 American Cyanamid Co. et al.
Pesticides; temporary tolerances:
22361 Triforine
Toxic and hazardous substances control:
22359 Premanufacture notification requirements; test marketing exemption approvals

Federal Communications Commission
NOTICES
Radio broadcasting:
22428 Sample FM standardized, pre-printed hearing designation order and hearing notice; publication

Federal Deposit Insurance Corporation
PROPOSED RULES
22319 Regulatory agenda
NOTICES
22407, 22408 Meetings; Sunshine Act (3 documents)

Federal Emergency Management Agency
NOTICES
22467 Transportation accident planning and preparedness guidance document; availability and inquiry; republication

Federal Energy Regulatory Commission
NOTICES
Hearings, etc.:
22354 Arkansas Louisiana Gas Co.
22354 Arkansas Power & Light Co.
22355 Broad River Electric Cooperative et al.
22355 Columbia Gulf Transmission Co. et al.
22355 Houston Pipe Line Co.
22356 Natural Gas Pipeline Co. of America
22356 Northwest Pipeline Corp.
22357 Oasis Pipe Line Co.
22357, 22358 Tennessee Gas Pipeline Co. (2 documents)

Natural Gas Policy Act:
22440 Jurisdictional agency determinations

Federal Maritime Commission
NOTICES
22362 Agreements filed, etc.

Federal Reserve System
NOTICES
Applications, etc.:
22362 Glasgow Bancshares Corp. et al.

Fish and Wildlife Service
RULES
22446 Marine mammals:
State management authority transfer procedures; republication

Health and Human Services Department
See also Alcohol, Drug Abuse, and Mental Health Administration; Health Resources and Services Administration.
NOTICES
22364 Privacy Act; systems of records

Health Resources and Services Administration
NOTICES
Grants; availability, etc.:
22363 Home health services and training; implementation of emergency job appropriation act

Housing and Urban Development Department
RULES
22470 Nondiscrimination:
Handicapped in federally-assisted programs and activities; republication

Interior Department
See also Fish and Wildlife Service; Land Management Bureau; Minerals Management Service; National Park Service; Surface Mining Reclamation and Enforcement Office.
NOTICES
Organization, functions, and authority delegations:
22370 Surface Mining and Reclamation Appeals Board; functions transferred to Land Appeals Board

Internal Revenue Service
NOTICES
Committees; establishment, renewals, terminations, etc.:
22405 Form 990 Advisory Committee

International Development Cooperation Agency
See Agency for International Development.

International Trade Commission
NOTICES
Import investigations:
22372 Bicycle tires and tubes from Taiwan
22372 Forged undercarriage components from Italy

22373 Mushrooms
22372 Papermaking machine forming sections for continuous production of paper and components
22373 Stainless steel and alloy tool steel

Interstate Commerce Commission
NOTICES
Motor carriers:
22375, 22377 Finance applications (2 documents)
22377 Permanent authority applications
22384 Permanent authority applications; operating rights republication
22385 Permanent authority applications; restriction removals
Motor carriers; control, purchase, and tariff filing exemptions, etc.:
22375 Cryogenic Carriers, Inc., et al.
22375 Ericon International Corp. et al.
22384 Five Star Trucking, Inc., et al.
22376 UTF Carriers, Inc., et al.
Rail carriers:
22385 Union Pacific Railroad Co. et al.; passenger train operation
Railroad operation, acquisition, construction, etc.:
22385 Cairo Terminal Railroad Co. et al.; trackage rights exemption

Justice Department
See also Drug Enforcement Administration.
RULES
22290 Executive clemency, rules governing petitions
Organization, functions, and authority delegations:
22290 Pardon Attorney; clemency functions, etc.
NOTICES
Pollution control; consent judgments:
22386 Franklin Sewage Authority et al.
22286 Shultz Co., Inc.

Land Management Bureau
PROPOSED RULES
Recreation management:
22462 Use authorizations; republication
NOTICES
22368 Agency forms submitted to OMB for review
Exchange of public lands for private land:
22368 Utah
Leasing of public lands:
22369 Montana
Meetings:
22369 Yuma District Advisory Council
Sale of public lands:
22367 Arizona
22367 Idaho; correction

Libraries and Information Science, National Commission
NOTICES
22409 Meetings; Sunshine Act

Management and Budget Office
NOTICES
22393 Agency forms submission (FCC); inquiry

Minerals Management Service
NOTICES
22369 Agency forms submitted to OMB for review
Outer Continental Shelf; oil, gas, and sulphur operations; development and production plans:
22369 Pennzoil Exploration & Production Co.

Minority Business Development Agency
NOTICES
Financial assistance application announcements:
22342 California
22341 Massachusetts

National Aeronautics and Space Administration
NOTICES
Meetings:
22387 Aeronautics Advisory Committee

National Bureau of Standards
NOTICES
Laboratory Accreditation Program, National Voluntary:
22344 Monthly report and status of programs

National Communications System
NOTICES
Meetings
22387 National Security Telecommunications Advisory Committee

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
22299 Gulf of Alaska, Bering Sea, and Aleutian Islands groundfish; foreign fishing
22301 Northern anchovy
Marine mammals:
22446 State management authority, transfer procedures; republication
NOTICES
Meetings:
22344 North Pacific Fishery Management Council; agenda and location change

National Park Service
NOTICES
Land protection plans; availability, etc.:
22370 Appalachian National Scenic Trail
Meetings:
22370 Cape Cod National Seashore Advisory Commission

Nuclear Regulatory Commission
NOTICES
Applications, etc.:
22388 Boston Edison Co.
22389 Georgia Power Co. et al.
22390 Omaha Public Power District
22392 Public Service Electric & Gas Co.
22392 South Carolina Electric & Gas Co. et al.
22388 Export and import license applications for nuclear facilities or materials (Nissho Iwai Corp. et al.)
Meetings:
22387 Reactor Safeguards Advisory Committee

Peace Corps
NOTICES
22394 Agency forms submitted to OMB for review

Pension Benefit Guaranty Corporation
PROPOSED RULES
22330 Agency decisions, administrative review

Postal Rate Commission
NOTICES
22394 Electronic computer originated mail (ECOM) rate and classification changes; prehearing technical conference

Postal Service
NOTICES
22395 Privacy Act; systems of records

Railroad Retirement Board
NOTICES
22398 Privacy Act; systems of records

Securities and Exchange Commission
PROPOSED RULES
Investment companies:
22328 Agency cross transactions for advisory clients, investment adviser requirements
NOTICES
22400 Agency forms submitted to OMB for review
Hearings, etc.:
22400 Kidde, Inc.
22400 Union-Investment-Gesellschaft m.b.H.
Meetings:
22401 Tender Offers Advisory Committee
Self-regulatory organizations; proposed rule changes:
22401 American Stock Exchange, Inc.
Self-regulatory organizations; unlisted trading privileges:
22399 Cincinnati Stock Exchange

Small Business Administration
NOTICES
Applications, etc.:
22404 Evergreen Capital Co., Inc.
22405 Mountain Ventures, Inc.
Disaster loan areas:
22404 California
Meetings; regional advisory councils:
22404 Texas

State Department
NOTICES
22405 Agency forms submitted to OMB for review

Surface Mining Reclamation and Enforcement Office
RULES
Coal exploration on non-Federal and non-Indian lands; Federal program regulations, various States:
22291 Washington; corrections, modifications, and effective date postponed

Textile Agreements Implementation Committee
NOTICES
Cotton, wool, or man-made textiles:
22345 Mexico

Treasury Department
See Internal Revenue Service.

United States Information Agency
NOTICES
Art objects, importation for exhibitions:
22406 Arp: The Dada Reliefs

Veterans Administration
RULES
Loan Guaranty:
22292 Manufactured home, home, and condominum loans; interest rates

Separate Parts in This Issue

Part II
22428 Federal Communications Commission

Part III
22440 Department of Energy, Federal Energy Regulatory Commission

Part IV
22446 Department of the Interior, Fish and Wildlife Service; and Department of Commerce, National Oceanic and Atmospheric Administration

Part V
22462 Department of the Interior, Bureau of Land Management

Part VI
22467 Federal Emergency Management Agency

Part VII
22470 Department of Housing and Urban Development, Office of the Secretary

CFR PARTS AFFECTED IN THIS ISSUE

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

7 CFR
929.....22287
1040.....22287
Proposed Rules:
1013.....22303
1033.....22313
1036.....22313
1120.....22318
1126.....22318
1132.....22318
1138.....22318
1446.....22318

9 CFR
166.....22288

12 CFR
Proposed Rules:
Ch. III.....22319

14 CFR
Proposed Rules:
253.....22323
254.....22323

17 CFR
Proposed Rules:
275.....22328

24 CFR
8.....22470

28 CFR
0.....22290
1.....22290

29 CFR
Proposed Rules:
2606.....22330

30 CFR
947.....22291

38 CFR
36.....22292

40 CFR
52 (4 documents).....22294-22298
Proposed Rules:
4.....22335
52.....22335
81.....22336
180.....22337

43 CFR
Proposed Rule:
8370.....22462

50 CFR
18.....22446
216.....22446
403.....22446
611.....22299
662.....22301
672.....22299
675.....22299

Rules and Regulations

Federal Register
Vol. 48, No. 97
Wednesday, May 18, 1983

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 929

Cranberries Grown in the States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York; Order Directing That a Referendum Be Conducted; Determination of Representative Period for Voter Eligibility; and Designation of Referendum Agents to Conduct the Referendum

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Referendum order.

SUMMARY: This document directs that a referendum be conducted among growers of cranberries grown in the States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York, do determine whether they favor continuance of the marketing agreement and order program.

DATE: Referendum period May 18 throught 28, 1983.

ADDRESSES: See information contained in supplementary information.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, Fruit and Vegetable Division, AMS, USDA, 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. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities. This action is required to determine whether growers favor continuance of the marketing order for cranberries grown in the production area as specified in the order and will not substantially affect costs for the directly regulated handlers.

Pursuant to § 929.68(d) of the marketing agreement, as amended, and Order No. 929, as amended (7 CFR Part 929), and the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amend (7 U.S.C. 601-674), it is hereby directed that a referendum be conducted within the period May 18 through May 28, 1983, among the growers who, during the period September 1, 1982 through March 31, 1983 (which period is hereby determined to be a representative period for the purposes of such referendum), were engaged in the production area in the production of cranberries covered by the said amended marketing agreement and order to ascertain whether continuance of the said amended marketing order is favored by the growers. Section 928.68(d) specifies that such a referendum shall be held during the month of May 1975, and during the month of may every fourth year thereafter, to ascertain whether growers favor such continuance.

Ronald L. Cioffi and Jay N. Guerber, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, are hereby designated as referendum agents of the Secretary of Agriculture to conduct said referendum. The procedure applicable to the referendum shall be the "Procedure for the Conduct of Referenda in Connection With Marketing Orders for Fruits, Vegetables, and Nuts Pursuant to the Agricultural Marketing Agreement Act of 1937, as Amended" (7 CFR 900.400 *et seq.*).

Copies of the texts of the aforesaid amended marketing order may be examined in the office of the referendum agents or of the Director, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250.

Ballots to be cast in the referendum may be obtained from the referendum agents and from their appointees.

List of Subjects in 7 CFR Part 929

Marketing Agreements and orders, Cranberries, Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, New York.

Dated: May 13, 1983.

C. W. McMillan,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 83-13289 Filed 5-17-83; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 1040

[Docket No. AO-225-A35]

Milk in the Southern Michigan Marketing Area; Order Amending Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action provides handlers regulated by the Southern Michigan Federal milk order with limited transportation credits from the marketwide pool for certain Class III milk transferred to unusually distant outlets for surplus disposal. The change, which would apply only through August 31, 1983, is based on industry proposals considered at a public hearing on April 7, 1983. The amendment is needed to reflect current marketing conditions and to insure that all producers in the market share more equitably the costs of disposing of unusually large supplies of surplus milk that are expected during the months of May through August 1983. Cooperative associations representing more than two-thirds of the producers who supply the market have approved of the amended order.

EFFECTIVE DATE: May 18, 1983.

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

SUPPLEMENTARY INFORMATION:

Prior documents in this proceeding: Notice of Hearing: Issued March 22, 1983; published March 28, 1983 (48 FR 12721).

Emergency Final Decision: Issued April 29, 1983, published May 6, 1983 (48 FR 20418).

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) *Findings.* A public hearing was held upon a proposed amendment to the tentative marketing agreement and to the order regulating the handling of milk in the Southern Michigan marketing area. The hearing was held 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 (7 CFR Part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

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

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area, and the minimum prices specified in the order as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order as hereby amended regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in a marketing agreement upon which a hearing has been held.

(b) *Additional findings.* It is necessary in the public interest to make this order amending the order effective upon publication in the **Federal Register.** Any delay beyond that date would tend to disrupt the orderly marketing of milk in the marketing area.

The provisions of this order are known to handlers. The decision of the Assistant Secretary containing the amendment provision of this order was issued April 29, 1983. The changes effected by this order will not require extensive preparation or substantial alteration in method of operation for handlers. In view of the foregoing, it is hereby found and determined that good cause exists for making this order amending the order effective upon publication 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 refusal or failure of handlers (excluding cooperative associations specified in Sec. 8c(9) of the Act) of more than 50 percent of the milk, which is marketed within the marketing area, to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this order, amending the order, is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the order; and

(3) The issuance of the order amending the order is approved or favored by at least two-thirds of the producers who during the determined representative period were engaged in the production of milk for sale in the marketing area.

Order Relative to Handling

It is therefore ordered, That on and after the effective date hereof, the handling of milk in the Southern Michigan marketing area shall be in conformity to and in compliance with the following terms and conditions of the aforesaid order, as amended, and as hereby further amended, as follows:

PART 1040—MILK IN THE SOUTHERN MICHIGAN MARKETING AREA

1. In § 1040.60, add paragraph (h) to read as follows:

§ 1040.60 Handler's value of milk for computing uniform price.

* * * * *

(h) With respect to milk marketed on or after the effective date hereof through August 1983, deduct the amount obtained by multiplying the pounds of bulk fluid milk and the pounds of condensed milk (whole or skim) which were classified as Class III and were transferred to another order plant pursuant to § 1040.42(b)(3) or to a nonpool plant pursuant to § 1040.42(d)(2), both of which are located outside the State of Michigan, by a per hundredweight rate equal to 3.6 cents for each 10 miles or fraction thereof that such other order plant or nonpool plant is located more than 150 miles, as determined by the market administrator, from the pool plant from which the milk was transferred. No credit should apply to the total quantity of milk so transferred by a handler if any portion of the milk is assigned to Class I.

List of Subjects in 7 CFR Part 1040

Milk marketing orders, Milk, Dairy products.

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

Effective date: May 18, 1983.

Signed at Washington, D.C., on May 13, 1983.

C. W. McMillan,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 83-13291 Filed 5-17-83; 8:45 am]

BILLING CODE 3410-02-M

Animal and Plant Health Inspection Service

9 CFR Part 166

[Docket No. 83-024]

Swine Health Protection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This document exempts rendering facilities from the provisions of the Swine Health Protection Regulations. This action is necessary because the Deputy Administrator of Veterinary Services, APHIS, has determined that rendered products pose no disease threat to the swine industry. The effect of this action is to relieve the unnecessary burden on renderers of obtaining licenses to treat garbage which is to be fed to swine.

EFFECTIVE DATE: May 18, 1983.

FOR FURTHER INFORMATION CONTACT: Dr. L. W. Schnurrenberger, Chief Staff Veterinarian, Swine Diseases, Special Diseases Staff, Veterinary Services, APHIS, USDA, Room 841, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8438.

Background

On November 3, 1982, there was published in the **Federal Register** a new 9 CFR Part 166 (47 FR 49940–49948) which, among other things, requires the licensing of garbage treatment facilities producing edible waste of animal origin for swine consumption. Rendering facilities were included in this category since they produce animal protein supplements for animal feeds from raw animal products and by-products.

Rendering is the process of treating any fat, bone, offal, viscera or related

material derived from the carcasses of livestock, poultry, fish, or parts thereof, and used cooking greases and oils into products that include animal, poultry, or fish protein meal, grease or tallow. The material treated by rendering falls under the definition of garbage in the Swine Health Protection Act (7 U.S.C. 3801 *et seq.*) and 9 CFR Part 166. As the final rendered products are used in animal feeds, some of which are consumed by swine, renderers have been subject to regulation under the Swine Health Protection Act and the regulations in 9 CFR Part 166.

There are two main rendering processes: dry batch rendering and wet rendering. Dry rendering occurs where the material is agitated and cooked at 240°–250° F. for 1½ to 4 hours, driving off all moisture. Wet rendering occurs by injecting the container of material with live steam and cooking at 240°–310° F. for 1½ to 4 hours. The minimum final temperature of the rendered product with all rendering methods is not less than 230° F. Both of these processes meet or exceed the requirements of the regulations in Part 166. Those regulations are designed to ensure that all possible disease organisms in garbage which is to be fed to swine are killed by boiling at 212° F. for ½ hour or equivalent temperature. Rendered products reach at least 230° F., and it is not necessary to require that this temperature be maintained for any minimum time period, as merely reaching this temperature has the same effect as boiling for ½ hour; that is, all possible disease organisms are killed. In addition, rendered products used in animal feeds are under the jurisdiction of the Food and Drug Administration. Therefore, in view of these facts the Deputy Administrator, Veterinary Services, has determined that rendering facilities as defined in these regulations do not pose a risk to the swine industry in the United States.

In accordance with this determination, a document was published in the **Federal Register** on December 23, 1982 (47 FR 57292–57293), which proposed exempting rendering facilities from the provisions of the Swine Health Protection Regulations. Comments regarding the proposal were solicited for 20 days after publication of the proposed regulations, and copies of the proposal were distributed to industry organizations, animal health officials, and veterinary medical societies known to be interested in the subject matter.

Comments Received

The only comment received was from a national association representing the rendering industry. It was requested that the proposed definitions of "render" and "rendered product" be amended. These terms were defined in the proposal as follows:

Render. To process garbage derived from slaughter, food service, and other sources through grinding and heating to a minimum temperature of not less than 230° F.

Rendered product. Garbage that has been rendered to make products such as, but not limited to, animal, poultry, or fish protein meal, grease or tallow.

It was requested that the term "garbage," not be used in the definitions of "render" and "rendered product." In support of this request it was asserted that the use of the term "garbage," though technically correct, mistakenly implies that the material processed by renderers is "spoiled or waste food * * * that is thrown away (as worthless)." It was further pointed out that the materials that are processed come from the fresh meat industry and are neither spoiled nor thrown away, but in fact are highly desirable for use in animal feeds and fertilizers. In order to resolve what was perceived as being misleading, the association suggested substituting a portion of the definition of "garbage" for the term "garbage" itself.

The term "garbage" is defined in both the Act and the regulations to mean, in relevant part, "waste material derived in whole or in part from the meat of any animal (including fish and poultry) or other animal material, and other refuse of any character whatsoever that has been associated with any such material, resulting from the handling, preparation, cooking, or consumption of food * * * " The Department has carefully reviewed the proposed regulations in view of the comment received. As a result of this review, the Department has amended the proposal in the following nonsubstantive ways. In the definition of the term "rendered product" the word "garbage" has been deleted and the relevant portion of the definition of the word "garbage" has been substituted therefor. This change in the definition of the term "redered product" has resulted in the word "rendered" being deleted. Since the word "render" was defined in proposed § 166.1 only because the word "rendered " was used in the definition of the term "rendered product," the definition of the word "render" is deleted as unnecessary.

Otherwise, based on the reasons set forth in the proposal, the provisions in the proposal have been adopted in the final rule as proposed.

Executive Order 12291

In accordance with Executive Order 12291 and based on information compiled by the Department of Agriculture, this rule is determined to be nonmajor. This final rule will not have a significant effect on the economy and will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

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

Certification Under the Regulatory Flexibility Act

James O. Lee, Jr., Acting Administrator of the Animal and Plant Health Inspection Service, has determined that this action will not have a significant economic impact on any entity. This action will impact on rendering facilities only. The renderers would merely not be required to obtain licenses under 9 CFR Part 166, because their activities do not pose a risk to the swine industry in the United States.

Alternatives

There were two alternatives considered:

1. Provide no exemption for rendering facilities.
2. Exempt rendering facilities.

Alternative 1 was rejected because it would have required the inspection and licensing of all rendering facilities, regardless of the fact that their activities pose no disease threat to the swine industry in the United States

Alternative 2 was selected because it was determined that rendering facilities already exceed the requirements in Part 166, and do not produce products that would transmit diseases of swine.

Therefore, the Department is amending 9 CFR 166.1, 166.2(a), and 166.10 to exempt renderers from the licensing requirements of Part 166, to allow the feeding to swine of rendered products from rendering facilities not licensed under the Swine Health Protection Act and the regulation in Part 166, and to add a definition of "rendered product."

Effective Date

The final rule relieves restrictions which have been found to be unnecessary. Accordingly, prompt action should be taken to delete the restrictions. Therefore, in accordance with the administrative procedure

provisions of 5 U.S.C. 553, good cause is found for making this final rule effective less than 30 days after publication of this document in the **Federal Register.**

List of Subject in 9 CFR Part 166

African swine fever, Animal diseases, Foot-and-mouth disease, Garbage, Hogs, Hog cholera, Swine vesicular disease, Vesicular exanthema of swine.

PART 166—SWINE HEALTH PROTECTION

Accordingly, 9 CFR Part 166, is amended as follows:

1. In § 166.1, the following definition is added in alphabetical order:

§ 166.1 Definitions in alphabetical order.

* * * * *

Rendered product. Waste material derived in whole or in part from the meat of any animal (including fish and poultry) or other animal material, and other refuse of any character whatsoever that has been associated with any such material, resulting from the handling, preparation, cooking or consumption of food that has been ground and heated to a minimum temperature of 230° F. to make products such as, but not limited to, animal, poultry, or fish protein meal, grease or tallow.

* * * * *

2. In § 166.2, paragraph (a) is revised to read:

§ 166.2 General restrictions.

(a) No person shall feed or permit the feeding of garbage to swine, except for rendered products, unless it is treated to kill disease organisms, pursuant to the regulations, at a facility operated by a person holding a valid license for the treatment of garbage.

* * * * *

3. In § 166.10, a new sentence is added at the end of paragraph (a) to read:

§ 166.10 Licensing.

(a) * * * Producers of only rendered products are so exempted from the requirements of this paragraph in States which do not have primary enforcement responsibility.

* * * * *

(Sec. 511, Pub. L. 96-592, 94 Stat. 3451 (7 U.S.C. 3803); secs. 4, 5, 9, 12, Pub. L. 96-468, 94 Stat. 222.) (7 U.S.C. 3803, 3804, 3808, 3811) 7 CFR 2.17, 2.51, and 371.2(d)

Done at Washington, D.C., this 12th day of May, 1983

William E. Ketter,

Acting Deputy Administrator, Veterinary Services.

FR Doc. 83-13361 Filed 5-17-83; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 0

[Order No. 1012-83]

Office of the Pardon Attorney

AGENCY: Office of the Attorney General, Justice.

ACTION: Final rule.

SUMMARY: Present regulations require the Pardon Attorney to submit all recommendations in clemency cases to the Attorney General. This order delegates to the Pardon Attorney those functions vested in the Attorney General under 28 CFR 1.1 through 1.8 inclusive, but directs that the Pardon Attorney submit recommendations to the President through the Associate Attorney General.

EFFECTIVE DATE: May 6, 1983.

FOR FURTHER INFORMATION CONTACT: David C. Stephenson, Acting Pardon Attorney, Office of the Pardon Attorney, Department of Justice, Washington, D.C. 20503 (301-492-5910).

List of Subjects in 28 CFR Part 0

Clemency.

By virtue of the authority vested in me by 28 U.S.C. 509, 510 and 5 U.S.C. 301, Subpart G of Part 0 of Chapter I of Title 28, Code of Federal Regulations, is amended by revising §§ 0.35 and 0.36 as follows:

§ 0.35 General functions; delegation of authority.

Under the general supervision of the Attorney General and the direction of the Associate Attorney General, the following-described matters are assigned to, and shall be conducted, handled or supervised by, the Pardon Attorney but subject to the limitation contained in section 0.36 of this Chapter.

(a) Exercise of the powers and performance of the functions vested in the Attorney General by § 1.1 through 1.8 inclusive of this Chapter.

(b) Performance of such other duties as may be assigned by the Attorney General or the Associate Attorney General.

§ 0.36 Recommendations.

The Pardon Attorney shall submit all recommendations in clemency cases through the Associate Attorney General and the Associate Attorney General shall exercise such discretion and authority as is appropriate and necessary for the handling and transmittal of such recommendations to the President.

Dated: May 6, 1983.

William French Smith,

Attorney General.

[FR Doc. 83-13360 Filed 5-17-83; 8:45 am]

BILLING CODE 4410-01-M

28 CFR Part 1

[Order No. 1011-83]

Rules Governing Petitions for Executive Clemency

AGENCY: Office of the Attorney General, Justice

ACTION: Final rule.

SUMMARY: The regulations governing petitions for Executive clemency describe the procedures involved in petitioning the President for Executive clemency and the responsibility of the Attorney General in investigating each applicant for clemency and advising the President as to the proper disposition of each application. This order simplifies and updates the present regulations, authorizes the Attorney General to delegate his responsibility in clemency matters, lengthens the eligibility waiting period for pardon applicants to a minimum of five years, with a minimum of seven required for more serious crimes, increases the categories of crimes requiring the longer eligibility waiting period, and broadens the discretionary authority to release clemency records in the public interest. Finally, the order adds a new section which describes the nature and effect of the regulations.

EFFECTIVE DATE: May 5, 1983.

FOR FURTHER INFORMATION CONTACT: David C. Stephenson, Acting Pardon Attorney, Office of the Pardon Attorney, Department of Justice, Washington, D.C. 20530 (301-492-5910).

List of Subjects in 28 CFR Part 1

Clemency.

With the approval of the President, acting in conformity with his authority as Chief Executive and Article II, Section 2, United States Constitution, and by virtue of the authority vested in me by 28 U.S.C. 509, 510 and 5 U.S.C. 301, Part 1 of Chapter I of Title 28 of the Code of Federal Regulations is revised to read as follows:

PART 1—EXECUTIVE CLEMENCY

Sec.

1.1 Submission of petition; form to be used; contents of petition.
1.2 Eligibility for filing petition for pardon.
1.3 Eligibility for filing petition for commutation of sentence.

Sec.

1.4 Offenses against the laws of possessions or territories of the United States.
1.5 Disclosure of files.
1.6 Consideration of petitions; recommendations to the President.
1.7 Notification of grant of clemency.
1.8 Notification of denial of clemency.
1.9 Delegation of authority.
1.10 Advisory nature of regulations.

Authority: U.S. Const., Art II, sec. 2, and authority of the President as Chief Executive.

§ 1.1 Submission of petition; form to be used; contents of petition.

Persons seeking Executive clemency by pardon, reprieve, commutation of sentence or remission of fine shall execute formal petitions therefor. The petitions shall be addressed to the President of the United States and shall be submitted to the Pardon Attorney, Department of Justice, Washington, D.C. 20530, except for petitions relating to military offenses. Petitions and other required forms may be obtained from the Pardon Attorney. Petition forms for commutation of sentence also may be obtained from the wardens of Federal penal institutions. A petitioner applying for Executive clemency with respect to military offenses should submit his petition directly to the Secretary of the military department which had original jurisdiction over the courtmartial trial and conviction of the petitioner. In such instance, a form furnished by the Pardon Attorney may be used but should be modified to meet the needs of the particular case. Each petition for Executive clemency should include the information required in the form prescribed by the Attorney General.

§ 1.2 Eligibility for filing petition for pardon.

No petition for pardon should be filed until the expiration of a waiting period of at least five years subsequent to the date of the release of the petitioner from confinement or, in case no prison sentence was imposed, until the expiration of a period of at least five years subsequent to the date of the conviction of the petitioner. In some cases, such as those involving violent crimes, violation of narcotics laws, gun control laws, income tax laws, perjury, violation of public trust involving personal dishonesty, fraud involving substantial sums of money, violations involving organized crime, or other crimes of a serious nature, no petition should be filed until the expiration of a waiting period of seven years. The waiting period may be waived in cases of aliens seeking a pardon to avert deportation. Generally, no petition should be submitted by a person who is on probation or parole.

§ 1.3 Eligibility for filing petition for commutation of sentence.

A petition for commutation of sentence, including remission of fine, should be filed only if no other form of relief is available, such as from a court of the United States Parole Commission, or if unusual circumstances exist, such as critical illness, severity of sentence, ineligibility for parole, or meritorious service rendered by the petitioner.

§ 1.4 Offenses against the laws of possessions or territories of the United States.

Petitions for Executive clemency shall relate only to violations of laws of the United States. Petitions relating to violations of laws of the possessions of the United States or territories subject to the jurisdiction thereof should be submitted to the appropriate official or agency of the possession or territory concerned.

§ 1.5 Disclosure of files.

Petitions, reports, memoranda and communications submitted or furnished in connection with the consideration of a petition for Executive clemency generally shall be available only to the officials concerned with the consideration of the petition. However, they may be made available for inspection, in whole or in part, when in the judgment of the Attorney General their disclosure is required by law or the ends of justice.

§ 1.6 Consideration of petitions; recommendations to the President.

(a) Upon receipt of a petition for Executive clemency the Attorney General shall cause such investigation to be made of the matter as he may deem necessary and appropriate, using the services of, or obtaining reports, from, appropriate officials and agencies of the Government, including the Federal Bureau of Investigation.

(b) The Attorney General shall review each petition and all pertinent information developed by the investigation and shall determine whether the request for clemency is of sufficient merit to warrant favorable action by the President. He shall report in writing his recommendation to the President, stating whether in his judgment the President should grant or deny the petition.

§ 1.7 Notification of grant of clemency.

When a petition for pardon is granted, the petitioner or his attorney shall be notified of such action and the warrant of pardon shall be mailed to the petitioner. When commutation of sentence is granted, the petitioner shall be notified of such action and the warrant of commutation shall be sent to the petitioner through the officer in charge of his place of confinement, or directly to the petitioner if he is on parole.

§ 1.8 Notification of denial of clemency.

(a) Whenever the President notifies the Attorney General that he is denying a request for clemency, the Attorney General shall so advise the petitioner and close the case.

(b) Whenever the Attorney General recommends that the President deny a request for clemency and the President does not disapprove or take other action with respect to that adverse recommendation within 30 days after the date of its submission to him, it shall be presumed that the President concurs in that adverse recommendation of the Attorney General, and the Attorney General shall so advise the petitioner and close the case.

§ 1.9 Delegation of authority.

The Attorney General may delegate to any officer of the Department of Justice any of his duties or responsibilities under §§ 1.1 through 1.8.

§ 1.10 Advisory nature of regulations.

The regulations contained in this part are advisory only and for the internal guidance of Department of Justice personnel. They create no enforceable rights in persons applying for Executive clemency, nor do they restrict the authority granted to the President under Article II, Section 2 of the Constitution.

Dated: April 27, 1983.
Approved:

Ronald Reagan
President.

Dated: May 5, 1983.
William French Smith,
Attorney General.

[FR Doc. 83-13359 Filed 5-17-83; 8:45 am]
BILLING CODE 4410-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 947

Surface Mining and Reclamation Operations Under a Federal Program for Washington

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

ACTION: Corrections and Modifications to the Washington Federal Program and postponement of effective date.

SUMMARY: The Office of Surface Mining (OSM) is making minor corrections and modifications to the applicability and procedural requirements of the Federal program to regulate surface coal mining and reclamation operations in Washington in response to public comments. In order to give the public the maximum time permissible for required permit applications, the effective date for the program has been postponed from May 13, 1983 to May 16, 1983.

EFFECTIVE DATE: May 16, 1983.

FOR FURTHER INFORMATION CONTACT: James M. Kress, Branch of Regulatory Programs, Office of Surface Mining, U.S. Department of the Interior, 1951 Constitution Avenue NW., Room 204, Washington, D.C. 20240, Telephone: (202) 343-5866.

SUPPLEMENTARY INFORMATION: On February 24, 1983, the Office of Surface Mining published an interim final Federal program for Washington in the **Federal Register** to regulate coal exploration and surface coal mining and reclamation operations on non-Federal and non-Indian lands in that State. 48 FR 7870. At that time, OSM announced that the effective date of the program would be April 25, 1983, and that comments would be accepted until April 14, 1983, on whether the pending revisions to OSM's permanent program rules made it necessary or desirable for OSM to modify the Washington Federal program, since the Washington Federal program cross-references those rules.

In response to public comment, OSM postponed the effective date of the Washington Federal program until May 13, 1983, and extended the comment period until April 28, 1983. 48 FR 16058; April 14, 1983.

After considering all comments received during the comment period, OSM is today making minor corrections and modifications to the Washington Federal program published February 24, 1983. In order to give the public the maximum time permissible for required permit applications, all aspects of the corrected and modified Washington Federal program take effect May 16, 1983. OSM will acknowledge and respond to coments received during the comment period in the **Federal Register** in the near future.

List of Subjects in 30 CFR Part 947

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

Dated: May 13, 1983.

J. R. Harris,

Director, Office of Surface Mining.

30 CFR Chapter VII is amended as follows:

PART 947—WASHINGTON

1. Section 947.700 is amended by revising paragraph (g) to read as follows:

§ 947.700 Washington Federal Program

* * * * *

(g) The Secretary may grant a limited variance from the performance standards of Section 947.815 through 947.828 of this Part if the applicant for a coal exploration approval or surface coal mining reclamation permit submitted pursuant to Sections 947.770 through 947.788 of this Part can demonstrate in the application (1) that such a variance is necessary because of the nature of the terrain, climate, biological, chemical, or other relevant physical conditions in the area of the mine; and (2) if applicable, that the proposed variance is no less effective than the environmental protection requirements of the regulations in this program and is consistent with the Act.

2. Section 947.701 is amended by revising paragraph (a) and by designating the definition of Forestry (Forest land) in paragraph (b) as paragraph (b)(2) and adding a new paragraph (b)(1), to read as follows:

§ 947.701 General.

(a) Sections 700.5, 700.11, 700.12, 700.13, 700.14, 700.15, and Part 701 of this chapter shall apply to surface coal mining operations in Washington.

(b) The following modified definitions shall be applicable under § 701.5 of this chapter:

(1) *Arid and semiarid area* means, in the context of alluvial valley floors, an area of the interior western United States, west of the 100th meridian west longitude, experiencing water deficits, where water use by native vegetation equals or exceeds that supplied by precipitation. All coalfields located in North Dakota west of the 100th meridian west longitude, all coalfields in Montana, Wyoming, Utah, Colorado, New Mexico, Idaho, Nevada, and Arizona, the Eagle Pass field in Texas, and the Stone Canyon and the Ione fields in California are in arid and semiarid areas, except that all coalfields located in the State of Washington west of the crest of the Cascade Mountain Range are not in arid or semiarid areas.

(2) *Forestry (Forest Land).* Includes

* * *

* * * * *

3. Section 947.780 is amended by revising paragraph (a) to read as follows:

§ 947.780 Surface mining permit application—minimum requirements for reclamation and operation plan.

(a) Part 780 of this chapter, *Surface Mining Permit Application—Minimum Requirements for Reclamation and Operation Plan,* shall apply to any person who makes application to conduct surface coal mining and reclamation operations, except for § 780.15(a) of that Part.

* * * * *

4. Section 947.822 is revised to read as follows:

§ 947.822 Special performance standards—operations on alluvial valley floors.

Part 822 of this chapter, *Special Performance Standards—Operations on Alluvial Valley Floors,* shall apply to any person who conducts surface coal mining and reclamation operations on alluvial valley floors, except in those coalfields in Washington west of the crest of the Cascade Mountain Range.

(Pub. L. 95-87, the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 *et seq.*)

[FR Doc. 83-13383 Filed 5-16-83; 11:04 am]

BILLING CODE 4310-05-M

VETERANS ADMINISTRATION

38 CFR Part 36

Decrease in Maximum Permissible Interest Rates on Guaranteed Manufactured Home Loans, and Home and Condominium Loans

AGENCY: Veterans Administration.

ACTION: Final regulations.

SUMMARY: The VA (Veterans Administration) is decreasing the maximum interest rates on guaranteed manufactured home unit loans, lot loans, and combination manufactured home unit and lot loans. In addition, the maximum interest rate applicable to home and condominium loans is also decreased, and a different maximum interest rate for graduated payment mortgages is established for those purposes. These decreases in interest rates are possible because of recent improvements in the availability of funds in various credit markets. The decrease in the interest rates will allow eligible veterans to obtain loans at a lower monthly cost.

EFFECTIVE DATE: May 9, 1983.

FOR FURTHER INFORMATION CONTACT: Mr. George D. Moerman, Loan Guaranty Service (264), Department of Veterans Benefits, Veterans Administration, 810

Vermont Avenue, NW., Washington, D.C. 20420 (202-389-3042).

SUPPLEMENTARY INFORMATION: The Administrator is required by section 1819(f), title 38, United States Code, to establish maximum interest rates for manufactured home loans guaranteed by the VA as he finds the manufactured home loan capital markets demand. Recent market indicators—including the prime rate, the general decrease in interest rates charged on conventional manufactured home loans, and the decrease of other short-term and long-term interest rates—have shown that the manufactured home capital markets have improved. It is now possible to decrease the interest rates on manufactured home unit loans, lot loans, and combination manufactured home unit and lot loans while still assuring an adequate supply of funds from lenders and investors to make these types of VA loans.

After consultation with the Secretary of Housing and Urban Development as required by law, it has been determined that a decrease in the VA home and condominium interest rate is warranted at this time. It has also been determined that the capital markets require a higher yield on graduated payment mortgages compared to fixed-payment mortgages. To assure an adequate supply of funds for this type of mortgage at reasonable discount levels, a maximum rate ¼ percent higher than the rate for fixed payment mortgages is being established.

The decrease in the VA maximum home and condominium interest rate should not have an adverse impact on the availability of funds necessary to make VA loans. The decrease in the VA interest rate, however, should allow more veterans to purchase a home because of the lower monthly payment for principal and interest required at the lower interest rate.

Paragraphs (b), (c), and (d) of § 36.4311 have been redesignated paragraphs (c), (d), and (e). This allows the addition of a new paragraph (b) to § 36.4311 establishing a different maximum interest rate for graduated payment mortgages.

The Administrator's statutory authority to establish interest rates has been delegated by 38 CFR 2.6(b)(3) to the Chief Benefits Director, Deputy Chief Benefits Director, or person authorized to act for them.

Regulatory Flexibility Act/Executive Order 12291

For the reasons discussed in the May 7, 1981 **Federal Register** (46 FR 25443), it has previously been determined that final regulations of this type which change the maximum interest rates for loans guaranteed, insured, or made pursuant to Chapter 37 of title 38, United States Code, are not subject to the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601-612.

The amendment to allow a different interest rate for GPM (graduated payment mortage) loans is in effect only a decrease in the VA maximum interest rate for home and condominium loans amortized with graduated payment in lieu of fixed payment features. The interest differential for GPM loans is necessary because of mortgage money market pricing differences on pools of graduated payment mortgages as compared to fixed-payment mortgages.

Publication for notice and public comment is not necessary for the same reasons as discussed in the May 7, 1981, **Federal Register** (46 FR 25443). The delay necessary to publish a proposed regulation would require a minimum of 45 days which would be harmful to home buyers wishing to purchase housing with VA graduated payment mortgage loans. A delay would likely halt the closing of VA GPM mortgages pending the needed rate differential. This delay would prove costly to lenders who would be unwilling to process this type of loan pending resolution of the rate issue; to builders and developers who would be unable to sell some of their homes timely and thus incur increased construction costs; and to veterans who would be unable to obtain the homes of their choice, delaying home ownership and extending their current shelter costs. It is appropriate, therefore, to avoid these added costs to all three categories of program participants and provide a different maximum interest rate for graduated payment mortgages. This interest rate differential will be maintained as long as market conditions required the increased yield for graduated payment mortgage loans.

These regulatory amendments have also been reviewed under the provisions of Executive Order 12291. The VA finds that they are not "major rules" as defined in that Order. The existing process of informal consultation among representatives within the Executive Office of the President, OMB, the VA and the Department of Housing and Urban Development has been determined to be adequate to satisfy the intent of this Executive Order for this category of regulations. This alternative consultation process permits timely rate adjustments with minimal risk of premature disclosure. In summary, this consultation process will fulfill the intent of the Executive Order while still permitting compliance with statutory responsibilities for timely rate adjustments and a stable flow of mortgage credit at rates consistent with the market.

This final regulations come within exceptions to the general VA policy of prior publication of proposed rules as contained in 38 CFR 1.12. The publication of notice of a regulatory change in the VA maximum interest rates for VA guaranteed, insured or direct loans would deny veterans the benefit of lower interest rates pending the final rule publication date which would necessarily be more than 30 days after publication in proposed form. Accordingly, it has been determined that publication of proposed regulations prior to publication of final regulations is impracticable, unnecessary, and contrary to the public interest.

(Catalog of Federal Domestic Assistance Program numbers, 64.113, 64.114, and 64.119)

These regulations are adopted under authority granted to the Administrator by sections 210(c), 1803(c)(1), 1811(d)(1) and 1819 (f) and (g) of title 38, United States Code and delegated to the undersigned by 38 CFR 2.6(b)(3). The regulations are clearly within that statutory authority and are consistent with Congressional intent.

These decreases are accomplished by amending §§ 36.4212(a) (1), (2), and (3), 36.4311, and 36.4503(a), title 38, Code of Federal Regulations.

List of Subjects in 38 CFR Part 36

Condominiums, Handicapped, Housing, Loan programs—housing and community development, Manufactured Homes, Veterans.

Approved: May 6, 1983.

By direction of the Administrator.

Dorothy L. Starbuck,

Chief Benefits Director.

PART 36—LOAN GUARANTY

The Veterans Administration is amending 38 CFR Part 36 as follows:

1. In § 36.4212, paragraph (a) is revised to read as follows:

§ 36.4212 Interest rates and late charges.

(a) The interest rate charged the borrower on a loan guaranteed or insured pursuant to 38 U.S.C. 1819 may not exceed the following maxima except on loans guaranteed or insured pursuant to guaranty or insurance commitments issued by the Veterans Administration prior to the respective effective date: (38 U.S.C. 1819(f))

(1) Effective May 9, 1983, 13½ percent simple interest per annum for a loan which finances the purchase of a manufactured home unit only.

(2) Effective May 9, 1983, 13 percent simple interest per annum for a loan which finances the purchase of a lot only and the cost of necessary site preparation, if any.

(3) Effective May 9, 1983, 13 percent simple interest per annum for a loan which will finance the simultaneous acquisition of a manufactured home and a lot and/or the site preparation necessary to make a lot acceptable as the site for the manufactured home.

* * * * *

2. Section 36.4311 is revised as follows:

§ 36.4311 Interest rates.

(a) Excepting loans guaranteed or insured pursuant to guaranty or insurance commitments issued by the Veterans Administration which specify an interest rate in excess of 11½ per centum per annum, effective May 9, 1983, the interest rate on any home or condominium loan, other than a graduated payment mortgage loan, guaranteed or insured wholly or in part on or after such date may not exceed 11½ per centum per annum on the unpaid principal balance. (38 U.S.C. 1803(c)(1))

(b) Excepting loans guaranteed or insured pursuant to guaranty or insurance commitments issued by the Veterans Administration which specify an interest rate in excess of 11¾ per centum per annum, effective May 9, 1983, the interest rate of any graduated payment mortgage loan guaranteed or insured wholly or in part on or after such date may not exceed 11¾ per centum per annum. (38 U.S.C. 1803(c)(1)).

(c) Effective October 13, 1982, the interest rate on any loan solely for energy conservation improvements or other alterations, improvements or repairs which is guaranteed or insured wholly or in part on or after such date may not exceed 13 per centum per annum on the unpaid principal balance. (38 U.S.C. 1803(c)(1))

(d) Interest in excess of the rate reported by the lender when requesting evidence of guaranty or insurance shall not be payable on any advance, or in the event of any delinquency or default: *Provided*, That a late charge not in excess of an amount equal to 4 percent on any installment paid more than 15 days after due date shall not be considered a violation of this limitation.

(e) Refinancing loans for the purpose of an interest rate reduction (38 U.S.C. 1810(a)(8)) may specify an interest rate in excess of the rate specified in paragraphs (a), (b) and (c) of this section provided the interest rate of the refinancing loan is less than the interest rate of the current Veterans Administration loan being refinanced. (38 U.S.C. 1803(c)(1) and 1810(c))

3. In § 36.4503, paragraph (a) is revised to read as follows:

§ 36.4503 Amount and amortization.

(a) The original principal amount of any loan made on or after October 1, 1980, shall not exceed an amount which bears the same ratio to $33,000 as the amount of the guaranty to which the veteran is enrolled under 38 U.S.C. 1810 at the time the loan is made bears to $27,500. This limitation shall not preclude the making of advances, otherwise proper, subsequent to the making of the loan pursuant to the provisions of § 36.4511. Except as to home improvement loans, loans made by the Veterans Administration shall bear interest at the rate of 11½ percent per annum. Loans solely for the purpose of energy conservation improvements or other alterations, improvements, or repairs shall bear interest at the rate of 13 percent per annum. (38 U.S.C. 1811(d)(1) and (2)(A))

* * * * *

[FR Doc. 83-13314 Filed 5-17-83 8:45 am]
BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-5-FRL 2339-8]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: The EPA is approving a Marion County, Indiana, open burning regulation as a revision to the Indiana State Implementation Plan (SIP) for total suspended particulates (TSP). This regulation will decrease TSP levels in Marion County and will assist in attaining the TSP National Ambient Air Quality Standards (NAAQS) there.

EFFECTIVE DATE: This final rulemaking becomes effective on June 17, 1983.

ADDRESSES: Copies of this revision to the Indiana SIP are available for inspection at: The Office of the Federal Register, 1100 L Street, NW., Room 8401, Washington, D.C. 20408.

Copies of the SIP revision, the public comment on the notice of proposed rulemaking and other materials relating to this rulemaking are available for inspection at the following addresses: (It is recommended that you telephone Robert B. Miller at (312) 886-6031 before visiting the Region V Office).

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

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

Indiana Air Pollution Control Division, Indiana State Board of Health, 1330 West Michigan Street, Indianapolis, Indiana 46206

FOR FURTHER INFORMATION CONTACT: Robert B. Miller (312) 886-6031.

SUPPLEMENTARY INFORMATION: Under Section 107 of the Clean Air Act (Act), EPA has designated certain areas in each State, including portions of Marion County, Indiana, as not attaining the NAAQS for TSP.[1] See 43 FR 8962 (March 3, 1978) and 43 FR 45993 (October 5, 1978). For these areas, Part D of the Act requires that the State revise its SIP to provide for attaining the primary NAAQS by December 31, 1982. These SIP revisions must also provide for attaining the secondary NAAQS as soon as practicable. The requirements for an approvable SIP are described in a "General Preamble" for Part D rulemakings published at 44 FR 20372 (April 4, 1979), 44 FR 38583 (July 2, 1979), 44 FR 50371 (August 28, 1979), 44 FR 53761 (September 17, 1979), and 44 FR 67182 (November 23, 1979).

In response to Part D of the Act, on February 11, 1980, Indiana submitted its Marion County TSP SIP strategy to EPA. A supplement was submitted on October 28, 1981. The Marion County plan was based on requiring reasonably available control technology (RACT) to be placed on all existing industrial sources and studying various nontraditional fugitive dust control methods to bring Marion County into attainment. EPA conditionally approved the plan on July 16, 1982 (47 FR 30972), except for the coke battery regulation.

In its final rulemaking, EPA noted that Indiana had submitted a Marion County open burning regulation on April 16, 1982, and that EPA would rulemake on it and the coke battery regulation in subsequent **Federal Register** notices. An amended version of the Marion County open burning regulation was submitted on August 25, 1982. EPA proposed the August 25, 1982, regulation for public comment on September 9, 1982 (47 FR 39696). One comment was received in response to this proposal. After reviewing the regulation and the comment received, EPA today is

[1] The primary TSP NAAQS is violated when, in a year, either: (1) The geometric mean value of a site's TSP concentrations exceeds 75 micrograms per cubic meter of air (75 $\mu g/m^3$) (the annual standard), or (2) the maximum 24-hour concentration of TSP exceeds 260 $\mu g/m^3$ more than once (the 24-hour primary standard). The secondary TSP standard is violated when, in a year, the maximum 24-hour concentration exceeds 150 $\mu g/m^3$ more than once.

approving the August 25, 1982 Marion County open burning regulation.

EPA is approving the Marion County open burning regulation as a revision to the SIP because this regulation should lead to a reduction in particulate levels in Marion County over those levels predicted to be emitted under the present SIP. It should also lead to reductions in the hydrocarbon levels (precursors to ozone) and the carbon monoxide levels. While EPA conditionally approved the Marion County TSP plan without an open burning regulation as meeting the requirements of Part D of the Act, inclusion of an open burning regulation will assist Indiana in its goal of attaining the NAAQS in Marion County. EPA's approval today of the Marion County regulation supplements but does not replace the currently approved State regulation (325 IAC Article 4–1, which was formerly APC 2). The general State regulation will remain a part of the Marion County SIP. EPA will recognize variances to these regulations given by the State or the County only if they are submitted and approved as revisions to the SIP.

In response to the September 9, 1982, notice of proposed rulemaking (NPR), EPA received one comment from the State of Connecticut. The comment noted that, in Connecticut, no trash burning is allowed for homeowners and brush burning is severely restricted. The commenter believed that the Marion County open burning regulation is a relaxation from the existing SIP and wished to know what additional restrictions are being placed on Marion County sources in order to compensate for this relaxation.

Contrary to the commenter's contention, the Marion County open burning regulation is more stringent than the statewide regulation, 325 IAC Article 4–1, which was the only approved SIP regulation in Marion County. (As stated earlier, 325 IAC Article 4–1 remains applicable in Marion County.) Therefore, the SIP is not being relaxed.

EPA has previously reviewed Indiana's total TSP package of regulations for Marion County in relation to the Part D TSP SIP. Indiana's strategy is based on RACT plus further studies of nontraditional sources. EPA approved this package as sufficient on July 16, 1982. Because the new Marion County regulation is more stringent, today's action on this regulation should lead to more expeditious attainment of the NAAQS in Marion County.

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

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

List of Subjects in 40 CFR Part 52

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

Note.—Incorporation by reference of the State Implementation Plan for the State of Indiana was approval by the Director of the **Federal Register** on July 1, 1982.

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

Dated: May 11, 1983.

Lee L. Verstandig,

Acting Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

1. Section 52.770 is amended by adding paragraph (c)(44) as follows:

§ 52.770 Identification of plan.

* * * * *

(c) * * *

(44) On June 28, 1982, Indiana submitted new open burning regulations for Marion County. An amendment was submitted on August 25, 1982.

* * * * *

[FR Doc. 83-13333 Filed 5-17-83; 8:45 am]

BILLING CODE 6560-50-M

---

40 CFR Part 52

[A-5-FRL 2323-4]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: The EPA announces final rulemaking action on revisions to the Indiana State Implementation Plan (SIP) for ozone and total suspended particulate (TSP). The revision pertains to source specific emission limitations contained in operating permits which have been issued by the State to Jeffboat, Incorporated, located in Jeffersonville, Indiana. The operating permits set forth specific limitations on the total amount of hydrocarbon [also known as volatile organic compound (VOC)] and particulate emissions from certain paint spraying and metal cleaning operations at Jeffboat, Incorporated. The intent of today's rulemaking is to incorporate these emission limitations into the State's SIP.

EFFECTIVE DATE: This final rulemaking becomes effective on June 17, 1983.

ADDRESSES: Copies of this revision to the Indiana SIP are available for inspection at: The Office of the Federal Register, 1100 L Street, NW., Room 8401, Washington, D.C. 20408.

Copies of the SIP revision, public comments on the notice of proposed rulemaking and other materials relating to this rulemaking are available for inspection at the following addresses:

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

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

Indiana Air Pollution Control Division, Indiana State Board of Health, 1330 West Michigan Street, Indianapolis, Indiana 46206

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

SUPPLEMENTARY INFORMATION:

Background

On November 24, 1981, the Indiana Air Pollution Control Board, submitted a revision to the Indiana SIP. The revision is in the form of two operating permits for Jeffboat, Incorporated, located in Jeffersonville, Indiana, a designated nonattainment area for the pollutants ozone and TSP. The permits set forth the following emission limitations.

Source	Operation	Pollutant	Emission limit
Plate shop	Paint spraying	Ozone [1]	110 lbs/hr, 2600 lbs/day, 340 t/yr.
	Metal Cleaning	TSP	5 lbs/hr, 15 t/yr.
Structural shop	Paint spraying	Ozone	88 lbs/hr, 2100 lbs/day, 274 t/yr.
	Metal Cleaning	TSP	14 lbs/hr, 43 t/yr.

[1] Permit limits pertain to volatile organic compounds

As shown above, VOC emissions from paint spraying are limited to 198 pounds per hour, 4700 pounds per day, and 614 tons per year. TSP emissions from metal cleaning and spraying are limited to 19 pounds per hour and 58 tons per year. The technical support developed by the

State for the permits shows that these limitations represent status quo emissions.

On June 22, 1982, EPA announced direct final rulemaking action to incorporate the emission limitations contained in the permits into Indiana's SIP. EPA was subsequently advised that the Air Pollution Control District of Jefferson County, Louisville, Kentucky, wished to comment on the SIP revision. Therefore, on November 10, 1982, EPA withdrew its direct approval and began a new rulemaking action. (47 FR 50862 and 47 FR 50928). This new rulemaking action proposed to approve the revision and established a 30-day public comment period to December 10, 1982.

EPA's rationale for approving the limitations is that, under the present SIP, VOC emissions from marine vessel operations at facilities such as Jeffboat, Inc. are exempt from the control requirements of 325 Indiana Administrative Code (IAC) Article 8–2 and the federally approved Indiana SIP. Thus, "capping" the hourly, daily, and annual emissions is acceptable. With respect to TSP, EPA agrees with the State's technical analysis that the current SIP allows higher TSP emissions than the permit limitations. Thus, "capping" hourly and annual TSP emissions is also acceptable.

Public Comments

During the 30-day public comment period, EPA received one comment.

The commentor asked the following questions regarding EPA's proposed approval of the operating permits for Jeffboat, Inc. and requested that EPA include the information in response to the questions in the final approval action. Each question raised by the commentor and EPA's response are presented below.

Comment

The commentor requested that EPA identify which Reasonably Available Control Technology (RACT) Control Technique Guideline (CTG) has been applied in the determination of approval.

Response

EPA has not issued a CTG for the control of VOC emissions from the exterior surface coating of marine vessels.

Comment

The commentor requested that EPA identify what exemptions, if any, that were granted in the approval process and why.

Response

No exemptions from the SIP are being granted. Rule 325 IAC Article 8–2, which is included in Indiana's SIP strategy to control VOC emissions from surface coating operations, contains an exemption for surface coating the exterior of marine vessels. The State included this exemption in its SIP in accordance wih EPA guidance. (See Guidance to State and Local Agencies in Preparing Regulations to Control VOC From 10 Stationary Source Categories, EPA–450/2–79–004). The guidance document concludes that surface coating the exterior of marine vessels may be exempted from control requirements because, "Exterior coatings on . . . marine vessels are high performance coatings which are applied under conditions that are not easily controlled". Thus, by issuing these operating permits, the State is limiting the hourly, daily, and annual VOC emissions from a source which was previously exempt from control requirements in the existing SIP.

Comment

The commentor requested that EPA identify the current emission rates, in RACT Control Technique Guideline (CTG) equivalent units, prior to the issuance of permits and the new emission rate, in RACT CTG equivalent units, being approved.

Response

This comment is not relevant because it refers to a RACT CTG which does not exist. However, as stated earlier, the limitations contained in the permits reflect status quo emissions. By issuing these permits, the State is setting enforceable VOC emissions limitation for a source which previously had no enforceable limit.

Comment

The commentor requested that EPA identify the compliance schedule to be implemented in achieving RACT control.

Response

The operating permits were issued by Indiana on April 21, 1981, and were effective on that date. With respect to VOC, EPA makes no judgment on whether the emission limitations contained in these permits represents RACT-level of control. The State of Indiana is required to include a schedule in its 1982 Ozone SIP revision for the application of RACT control to major non-CTG sources. EPA is reviewing the schedule as a part of its review of Indiana's 1982 Ozone SIP revision. EPA recently proposed a determination on February 3, 1983 (48 FR 5106).

Comment

The commenter requested that EPA identify the specific EPA approved Indiana SIP regulation being used to enforce the permit(s).

Response

Regulation 325 IAC Article 2 requires the State to submit all discretionary actions, such as operating permits, to EPA as revisions to the SIP. EPA reviews each submittal from the State and, if items vary from the SIP, publishes notices of rulemaking actions in the **Federal Register** disapproving or approving the State's action as a SIP revision.

As noted in the Background section of this notice, the emission limitations contained in the operating permits for Jeffboat, Inc. vary from the SIP. The operating permits were issued on April 21, 1981 and, thus, are enforceable by the State. By incorporating the emission limitations into the SIP, the limitations also become enforceable at the Federal level.

In conclusion, having reviewed both the information submitted by the State and the public comment received, EPA today is approving the VOC and TSP emission limits for Jeffboat, Inc. as submitted by the State on November 24, 1981.

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

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

List of Subjects in 40 CFR Part 52

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

Note.—Incorporation by reference of the State Implementation Plan for the State of Indiana was approved by the Director of the Federal Register on July 1, 1982.

This notice is issued under authority of Sections 110 and 172 of the Clean Air Act, as amended (42 U.S.C. 7401 and 7502).

Dated: May 11, 1983.

Lee L. Verstandig,

Acting Administrator.

PART 52 APPROVAL AND PROMULGATION OF IMPLEMENTATION PLAN

Title 40 of the Code of Federal Regulations, Chapter 1, Part 52, Subpart P Indiana is amended as follows:

1. Section 52.770 is amended by adding paragraph (c)(40) as follows:

§ 52.770 Identification of Plan

* * * * *

(c) * * *

(40) On November 24, 1981, Indiana submitted site specific emission limitations for Jeffboat, Inc., Jeffersonville.

* * * * *

[FR Doc. 83-13334 Filed 5-17-83; 8:45 am]

BILLING CODE 6560-50-M

---

40 CFR Part 52

[A-6-FRL 2336-4]

Approval and Promulgation of Implementation Plans; Oklahoma Regulation 1.4 Air Resources Management-Permits Required and Major Sources-Nonattainment Areas

AGENCY: Environmental Protection Agency.

ACTION: Final rulemaking.

SUMMARY: This notice approves two parts of Regulation 1.4's revision to the Oklahoma State Implementation Plan. The revision to Air Resources Management-Permits Required (1.4.1–1.4.3) and Major Sources-Nonattainment Areas (1.4.5) was submitted by the Governor on April 12, 1982. The notice proposing approval was published in the **Federal Register** on November 3, 1982, at 47 FR 49872, and no comments were received. The section on Prevention of Significant Deterioration (PSD) Requirements (1.4.4) is being addressed in a separate **Federal Register** package.

The revision fulfills the provisions of Section 173 of the Act by incorporating the Permit requirements into the regulation. It also sets forth legally enforceable procedures for the review of new sources and modifications which would locate in a nonattainment area.

EFFECTIVE DATE: Effective on June 17, 1983.

ADDRESSES: Incorporation by reference material is available for inspection during normal business hours at the following locations:

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

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

Environmental Protection Agency, Region 6, Air and Waste Management Division, Air Branch, State Implementation Plan Section, 1201 Elm Street, Dallas, Texas 75270;

Oklahoma State Dept. of Health, Air Quality Service, N.E. 10th and Stonewall, Oklahoma City, Oklahoma 73105.

FOR FURTHER INFORMATION CONTACT: Kathryn M. Griffith, State Implementation Plan Section, Environmental Protection Agency, Region 6, Air and Waste Management Division, Air Branch, 1201 Elm Street, Dallas, Texas 75270, (214) 767–9853.

SUPPLEMENTARY INFORMATION: On April 12, 1982, the Governor of Oklahoma submitted a SIP revision to Regulation 1.4. EPA reviewed the State's submittal and developed an evaluation report [1], which is based on the minimum criteria established in 40 CFR 51.18 Review of new sources and modificatons. This evaluation report is available for inspection by interested parties during normal business hours at the EPA Region 6 Office and the other addresses listed above.

Regulation 1.4's revision and the letter of commitment from the State dated April 30, 1982, adequately provides for the preconstruction review of a major new source or major modification which would locate in a nonattainment area. The State committed that:

1. Source proposing to locate in an attainment area where monitoring data indicates the area is in fact nonattainment (1.4.5(c)(1)(C)(ii)), will be required to apply LAER, demonstrate that all other sources are in compliance, and offset:

2. Section 1.4.5(d)(2) is interpreted to mean that only secondary emissions are exempt from the conditions of 1.4.5(c)(1)(C)(vi) and 1.4.5(e)(1) (A), (B) and (C) and not the source as a totality;

3. Copies of the public notification for permits will be sent to EPA and to all other local air pollution control agencies as required by 40 CFR 51.18(h)(4); and

4. Whenever the word "enforceable" appears in a definition (1.4.5(b)(1–20)), they will interpret it to include "federally enforceable."

On August 7, 1980, at 45 FR 52728, EPA noted that many Part D SIP revisions based their attainment demonstrations on the actual emissions of the sources in a nonattainment area rather than the sources allowable emissions. This means that to be consistent with RFP, sources must reduce their actual, rather than their allowable, emissions. Otherwise, sources could claim credit for offsets in situations where the offset would actually interfere with RFP.

On December 9, 1982, the State submitted a letter of clarification stating that because they use actual emissions to demonstrate reasonable further progress (RFP) towards attainment they also use actual emissions to determine credit for emission reductions. In the 1979 SIP, EPA approved Section 1.4.5(e)(1)(D)(ii) which enables a source to use the total allowable emissions in the region for offsets and to represent RFP toward attainment. But, under the States RFP reporting section (page 4–138, 1979 SIP), it states that "The report shall contain an updated emission inventory on an actual ton-per-year basis for the entire county or nonattainment area."

On August 17, 1982, the United States Court of Appeals for the District of Columbia Circuit held that EPA may not use the plantwide definition of source in programs regulating growth in nonattainment areas in the *Natural Resources Defense Council* vs. *Gorsuch* ruling, 685 F.2d 71 D.C. Cir. 1982. Oklahoma's revision to Regulation 1.4 retains the dual definition of source and therefore is not affected by the decision.

EPA is approving Regulation 1.4's revision because it fulfills the provisions of Section 173 of the Act and adequately provides for the preconstruction review of a major new source or major modification which would locate in a nonattainment area.

EPA is taking no action on Section 1.4.5(e)(1) (D) and (E), which was fully approved on November 28, 1980 (45 FR 79051).

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

Under Section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 18, 1983. This action may not be challenged later in proceedings to enforce its requirements. (See Sec. 307(b)(2).)

This notice of proposed approval is issued under the authority of Section 110 of the Clean Air Act as amended, 42 U.S.C. 7410.

---

[1] EPA Review of Oklahoma Regulation 1.4.1–1.4.3 (Air Resources Management-Permits Required) and 1.4.5 (Major Sources-Nonattainment Areas).

List of Subjects in 40 CFR Part 52

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

Note.—Incorporation by reference of the State Implementation Plan for the State of Oklahoma was approved by the Director of the Federal Register on July 1, 1982.

Dated: May 10, 1983.

Lee L. Verstandig,

Acting Administrator.

PART 52—[AMENDED]

Part 52 of Chapter 1, Title 40 of the Code of Federal Regulations is amended as follows:

Subpart LL—Oklahoma

1. Section 52.1920 is amended by adding paragraph (c)(25) as follows:

§ 52.1920 Identification of plan.

* * * * *

(c) * * *

(25) Revision to Oklahoma Regulation No. 1.4 Air Resources Management-Permits Required (1.4.1–1.4.3) and Major Sources—Nonattainment areas (1.4.5) was submitted by the Governor on April 12, 1982. A letter of commitment and a letter of clarification for Regulation 1.4 was submitted by the State on April 30, 1982 and December 9, 1982, respectively.

[FR Doc. 83-13332 Filed 5-17-83; 8:45 am]

BILLING CODE 6560-50-M

---

40 CFR Part 52

[A-10-FRL 2345-1]

Approval and Promulgation of State Implementation Plans; Revision to Oregon State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: By this Notice EPA approves the Oregon State Implementation Plan (SIP) for lead and the Oregon ambient air quality standard for lead. These revisions were adopted to satisfy Sections 110 and 116, respectively, of the Clean Air Act, as amended in 1977 (hereinafter referred to as the Act).

EFFECTIVE DATE: This action will be effective on July 18, 1983, unless notice is received before June 17, 1983, that someone wishes to submit adverse or critical comments. If such notice is received, EPA will open a formal 30-day comment period on this action.

ADDRESSES: Copies of the materials submitted to EPA may be examined during normal business hours at:

Central Docket Section (10A–83–3), West Tower Lobby, Gallery I, Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460.

Air Programs Branch, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101.

State of Oregon, Department of Environmental Quality, 522 S.W. Fifth, Yeon Building, Portland, Oregon 97207.

Copy of the State's submittal may be examined at: The Office of the Federal Register, 1100 L Street NW., Room 8401, Washington, D.C.

Comments should be addressed to: Laurie M. Kral, Air Programs Branch, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: Richard F. White, Air Programs Branch, Environmental Protection Agency, 1200 Sixth Avenue, M/S 532, Seattle, Washington 98101, Telephone: (206) 442–4016, FTS: 399–4016.

SUPPLEMENTARY INFORMATION: On December 3, 1982 the State of Oregon Department of Environmental Quality (DEQ) submitted a draft lead SIP for EPA's review prior to public hearing and adoption. EPA's review comments are contained in a technical evaluation document, which is available at the addresses shown earlier.

EPA provided DEQ with written comments, which were considered at the public hearing on January 14, 1983. The SIP was adopted with all requested corrections on January 14, 1983 and submitted to EPA on January 24, 1983.

Technical Evaluation

Lead SIP

The requirements for an approvable lead SIP are contained in 40 CFR Part 51 Subpart E. As described in the technical evaluation document, the Oregon SIP satisfies all requirements for standard attainment demonstration, emission data and projections and air quality data and projections. In addition, the SIP provides for statewide review of all new lead sources under its Air Contaminant Discharge Permit rules (OAR 340–20–140 to 185) previously approved by EPA (47 FR 35191).

Because the standard violations are caused by mobile source emissions, the only control strategy, the Federal program for reduction of lead in gasoline, demonstrates attainment of the standard by the end of 1983. Past violations of the lead standards were recorded in the vicinity of the Gould Battery facility, in Portland, which has since closed. The site is being cleared and covered and will be monitored to assure continued attainment. The other major point source, Bergsoe Metal Corporation, a new secondary lead smelter in St. Helens, Oregon, has not caused and is not expected to cause violations of the ambient standard. This facility was reviewed and approved by EPA in 1979 under provisions of the Prevention of Significant Deterioration regulations, which call for use of best available control technology (BACT).

Ambient Air Quality Standard

In conjunction with developing a lead SIP which demonstrates attainment of the National Ambient Air Quality Standard for lead, DEQ revised their ambient air standard from 3.0 ug/m^3 per calendar month to 1.5 ug/m^3 average per calendar quarter. By this action DEQ's standard is now consistent with the National standard.

Air Quality Monitoring

The SIP also contains a description of the current statewide lead monitoring network. Discussions between EPA and DEQ are now underway to agree on a network to meet the requirements of 40 CFR Part 58 (Ambient Air Quality Surveillance). Because the network has not yet been finalized and submitted, EPA will take separate action on it at a later date.

Final EPA Action

Based on evaluation of DEQ's submittal, the Administrator has determined that the Oregon lead SIP revision meets the requirements of the Clean Air Act and 40 CFR Part 51. Accordingly, this revision is approved as a revision to the Oregon SIP.

Pursuant to the provisions of 5 U.S.C. Section 605(b), the Administrator has certified that SIP approvals under Sections 110 and 172 of the Clean Air Act will not have a significant impact on a substantial number of small entities (46 FR 8709, January 27, 1981). This action constitutes a SIP approval under Section 110 within the terms of the January 27, 1981 certification.

Under Executive Order 12291, EPA must judge whether or not a regulation is "major" and therefore subject to the requirements of regulatory impact analysis. This regulation is not judged to be major, since it merely approves actions taken by the State and does not establish any new requirements.

The Office of Management and Budget has exempted this rule from the

requirements of Section 3 of Executive Order 12291.

This notice of final rulemaking is issued under the authority of Section 110 and 116 of the Clean Air Act, as amended (42 U.S.C. 7410(a) and 7610).

List of Subjects in 40 CFR Part 52

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

Dated: May 10, 1983.

Lee L. Verstandig,

Acting Administrator.

Note.—Incorporation by reference of the Implementation Plan for the State of Oregon was approved by the Director of the Office of Federal Register in July 1982.

PART 52—[AMENDED]

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

Subpart MM—Oregon

In § 52.1970, paragraph (c)(60) is added as follows:

§ 52.1970 Identification of plan.

* * * * *

(c) * * *

(60) On January 24, 1983 the State of Oregon Department of Environmental Quality submitted a revision to add a lead strategy to the Oregon Implementation Plan and revise the State lead ambient air quality standard to agree with the Federal standard.

[FR Doc. 83-13298 Filed 5-17-83; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611, 672, and 675

[Docket No. 30509-77]

Foreign Fishing, Groundfish of Gulf of Alaska, and Groundfish of Bering Sea and Aleutian Islands Area

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

ACTION: Rule-related notice; inseason adjustment.

SUMMARY: This document announces the apportionment of amounts of Alaska groundfish that were eligible in April 1983 for apportionment to the total allowable level of foreign fishing and to the domestic annual harvest, under provisions of the fishery management plans for Groundfish of the Bering Sea and Aleutian Islands Area and for the Groundfish of the Gulf of Alaska. Apportionment is prescribed by regulations implementing those FMPs. The intended effect of this action is to assure optimum use of groundfish resources by allowing the foreign and domestic fisheries to proceed without interruption.

EFFECTIVE DATE: May 12, 1983.

FOR FURTHER INFORMATION CONTACT: Robert W. McVey (Director, Alaska Region, National Marine Fisheries Service), 907-586-7221; or Janet Smoker (Fishery Biologist), 907-586-7230.

SUPPLEMENTARY INFORMATION:

Background

Optimum yields (OY) for various groundfish species are established by the fishery management plan (FMP) for the Groundfish of the Bering Sea and Aleutian Islands Area and by the FMP for the Groundfish of the Gulf of Alaska. The FMPs were developed under the Magnuson Fishery Conservation and Management Act, and are implemented by rules appearing at 50 CFR 611.92 and 611.93 and 50 CFR 672 and 675. The OYs are apportioned initially to domestic annual harvest (DAH), reserve, and total allowable level of foreign fishing (TALFF). Each reserve amount, in turn, is to be apportioned to DAH and/or TALFF during the fishing year, under 50 CFR 611.92(c), 611.93(b), 672.20(c), and 675.20(b). In addition, surplus amounts of the three components of DAH (DAP—domestic processed fish, DNP—fish retained for bait or consumption, and JVP—foreign processed fish) may be apportioned to TALFF during the fishing year under those same regulations. The Director, Alaska Region, National Marine Fisheries Service, announces the apportionments described below under these authorities.

The first scheduled date for the apportionment of reserves in the Bering Sea and Aleutian Islands Area was in February 1983. At that time all reserves were retained as explained in a **Federal Register** notice published on March 15, 1983 (48 FR 10846). Amounts eligible at that time are added to the amounts eligible for the scheduled April 1983 apportionment.

This action apportions certain Bering Sea, Aleutian Islands, and Gulf of Alaska reserve amounts that became eligible for apportionment in April 1983.

1. *Bering Sea and Aleutian Islands.* Although there has been little activity to-date, U.S. fisheries in this area are expected to continue expanding in 1983. Expansion of shoreside and floating processing capacity is expected to facilitate processing of DAP amounts. The execution of planned joint ventures is anticipated to result in harvests exceeding some JVP amounts. All DNP amounts are expected to be taken.

DAP: The stated capacity and intentions of domestic processors indicate the DAP amounts of sablefish in the Aleutian Islands Area, Pacific ocean perch, and Pacific cod may be insufficient. DAP amounts specified for all other species appear to be adequate.

DNP: DNP amounts for all species appear sufficient for projected U.S. harvests.

JVP: The stated intentions of U.S. fishermen planning to deliver to foreign processors indicate that JVP amounts of pollock, yellowfin sole, Pacific cod, Atka mackerel, turbots, and other rockfish are insufficient. JVP amounts specified for all other species appear to be adequate.

Reserves: Reserves of sablefish in the Aleutian Islands area and of pollock, Pacific ocean perch, yellowfin sole, Pacific cod and Atka mackerel are being retained to supplement DAP and JVP in subsequent apportionments if those amounts are insufficient as discussed above. The available reserves (50%) of all the other species are apportioned to TALFF (see Summary Table of Apportionments to TALFF). The remainders of the turbot and other rockfish reserves after this apportionment are sufficient to supplement any future shortfall in the JVP amounts of those species.

2. *Gulf of Alaska.* U.S. fisheries have already harvested large amounts of pollock in the Central Regulatory Area of the Gulf of Alaska. Additional activity by joint ventures and floating processors is expected in all three regulatory areas as are operations of shoreside processors. Apportionment of reserves is addressed by individual regulatory area.

Western Regulatory Area

DAP: The stated capacity and intentions of domestic processors indicate the DAP amounts of Pacific cod are insufficient. DAP amounts for all other species appear to be adequate.

DNP: The DNP amount for Pacific cod appears sufficient for projected U.S. harvests.

JVP: The stated intentions of U.S. fishermen planning to deliver to foreign processors indicate that JVP amounts of pollock, Pacific cod, and Atka mackerel may be insufficient. JVP amounts for all other species appear to be adequate.

Reserves: Reserves of pollock, Pacific cod, and Atka mackerel are being retained to supplement JVP in subsequent apportionments if the JVP

amounts are insufficient as discussed above. The available reserves (40%) for all other species are apportioned to TALFF (see Summary Table of Apportionments to TALFF).

Central Regulatory Area

DAP: The DAP amounts of all species appear sufficient for projected needs of U.S. processing

DNP: The DNP amount for Pacific cod appears sufficient for projected U.S. harvests.

JVP: U.S. fishing effort in joint ventures continues and large amounts of fish, mostly pollock, are being harvested. Pollock catches have far exceeded the JVP apportionment of pollock. JVP amounts for all other species appear sufficient.

Reserves: For reasons discussed above, the entire pollock reserve is allocated to JVP. For all other species, the available reserves (40%) are reapportioned to TALFF (see Summary Table of Apportionments to TALFF).

Eastern Regulatory Area

DAP: The DAP amounts of all species appear sufficient. A possible exception would be deliveries to processors in Seward and Cordova, Alaska, of sablefish caught in the Eastern Gulf of Alaska. Utilization of those processing facilities may lead to expanded U.S. fishing areas and effort in the Eastern Gulf.

DNP: The Pacific cod DNP amount appears sufficient for projected U.S. harvests.

JVP: A joint-venture longline fishery for sablefish (tentatively scheduled to begin in August) intends to catch sablefish in excess of the current JVP amount. JVP amounts for all other species appear to be adequate.

Reserves: Reserves of sablefish are being retained to supplement JVP. The reserves retained are also sufficient to provide for any DAH increases that may occur through landings in Seward or Cordova of sablefish caught in the Eastern Gulf of Alaska. For all other species, the available reserves (40%) are apportioned to TALFF (see Summary Table of Apportionments to TALFF).

Gulf of Alaska-wide

DAP: Present DAP amounts for all four Gulf-wide species appear to be sufficient for anticipated U.S. processing.

DNP: The DNP amount of "other species" appear sufficient for anticipated U.S. fisheries.

JVP: The JVP amounts initially specified for squid, thornyheads, and "other species" appear to be sufficient for projected needs of the U.S. fisheries. The amount initially specified for rockfish may be too low in view of an anticipated joint venture on rockfish; however, the total DAH appears sufficient to provide for the joint venture and domestic processed catches of rockfish combined.

Reserves: The available reserves (40%) for all four Gulf-wide species is apportioned to TALFF (see Summary Table of Apportionments to TALFF).

3. SUMMARY TABLE OF APPORTIONMENTS TO TALFF

(In metric tons)

	Source			
	Reserves	DAP	DNP	JVP
Bering Sea and Aleutians:				
Pollock:				
Bering Sea	0	0	0	0
Aleutians	0	0	0	0
Pacific ocean perch:				
Bering Sea	0	0	0	0
Aleutians	0	0	0	0
Sablefish:				
Bering Sea	175	0	0	0
Aleutians	0	0	0	0
Yellowfin sole	0	0	0	0
Atka mackerel	0	0	0	0
Other flatfish	1,525	0	0	0
Pacific cod	0	0	0	0
Turbots	2,250	0	0	0
Other species	1,933	0	0	0
Squid	250	0	0	0
Other rockfish	250	0	0	0
Gulf of Alaska:				
Pollock:				
Western	0	0	0	0
Central	0	0	0	0
Eastern	1,328	0	0	0
Pacific cod:				
Western	0	0	0	0
Central	2,583	0	0	0
Eastern	792	0	0	0
Flounders:				
Western	832	0	0	0
Central	1,176	0	0	0
Eastern	672	0	0	0
Pacific ocean perch:				
Western	216	0	0	0
Central	632	0	0	0
Eastern	70	0	0	0
Atka mackerel:				
Western	0	0	0	0
Central	1,667	0	0	0
Eastern	255	0	0	0
Sablefish:				
Western	166	0	0	0
Central	304	0	0	0
Eastern	0	0	0	0
Other rockfish	608	0	0	0
Squid	400	0	0	0
Other species	1,296	0	0	0
Thornyhead rockfish	300	0	0	0

Comments and Responses

In accordance with 50 CFR 611.92(c), 611.93(b), 672.20(c), and 675.20(b), aggregated reports on U.S. catches of Alaskan groundfish and the processing of those groundfish were available for public inspection. In addition, those provisions afforded the public an opportunity to submit timely comments on the extent to which U.S. fishermen will harvest and the extent to which U.S. processors will process Alaska groundfish. Three comments were received during the comment periods provided.

Comment: Available reserves of Pacific cod in the Central and Eastern Regulatory Areas of the Gulf of Alaska and of sablefish in the Western and Central Regulatory Areas of the Gulf of Alaska and in the Bering Sea and Aleutian Islands are excess to the needs of domestic fishermen and should be apportioned to TALFF.

Comment: Available reserves of sablefish and Pacific ocean perch in the Bering Sea and Aleutian Islands and of sablefish in the Gulf of Alaska should be apportioned to TALFF.

Response: Forty percent of the initial reserves of Pacific cod in the Central and Eastern Regulatory Areas of the Gulf of Alaska are apportioned to TALFF at this time. Forty percent of the initial reserves of sablefish in the Western and Central Regulatory Areas of the Gulf of Alaska are also apportioned to TALFF. Because of the uncertainty that currently specified DAH amounts are sufficient for Pacific ocean perch in both the Bering Sea and Aleutian Island areas and for sablefish in the Eastern Regulatory Area of the Gulf of Alaska and Aleutian area, reserves of these species for both areas are being retained at this time.

Comment: Available reserves of pollock in the Central Gulf Regulatory Area should be released to TALFF as soon as possible.

Response: Joint-venture catches of pollock in the Central Gulf Regulatory Area have already far exceeded the JVP apportionment and therefore the entire reserves must be apportioned to JVP.

Classification

This action is required by 50 CFR 611.92(c), 611.93(b), 672.20(c) and 675.20(b), and complies with E.O. 12291.

The apportionment to TALFF of reserve groundfish is announced in this notice in lieu of an amendment to the "TALFF table," which was formerly codified as Appendix 1 to 50 CFR 611.20, but which was removed by a rule appearing at 47 FR 44264 (October 7, 1982). The apportionment of groundfish reserve to DAH is announced in this document without amendment to 50 CFR § 675.20, Table 1, since that Table specifies initial rather than current DAH, DAP, JVP, DNP, reserve, and TALFF specifications (as of January 1 for the 1983 fishing year).

In view of the prior notice provided by the underlying regulation regarding the dates after which apportionment of reserves and reassessment of DAH to occur, together with the need to avoid disruption of U.S. and foreign fisheries

and the obligation to afford a reasonable opportunity to achieve OY, the Agency has determined that to delay the effectiveness of this rule would be impracticable, unnecessary, and contrary to the public interest.

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

Dated: May 11, 1983.

Carmen J. Blondin,

Acting Deputy Assistant Administrator for Fisheries Resources Management, National Marine Fisheries Service.

[FR Doc. 83-13204 Filed 5-12-83; 3:57 pm]

BILLING CODE 3510-22-M

---

50 CFR Part 662

[Docket No. 30510-80]

Northern Anchovy Fishery

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

ACTION: Emergency rule.

SUMMARY: The Secretary of Commerce issues emergency regulations amending the Northern Anchovy Fishery Management Plan and its implementing regulations. This emergency rulemaking (1) eliminates the minimum size limit for anchovies landed for reduction purposes, and (2) prescribes a reserve of the reduction harvest quota that would be withheld if scientific evidence demonstrates that the original biomass estimate was too high. The elimination of the minimum size limit will alleviate the severe economic hardship imposed on the reduction fishery in its spring fishery caused by having to curtail catches of anchovies less than 5 inches in length. The reserve quota procedures will provide an additional measure of protection to the anchovy biomass by providing a mechanism to correct any significant errors in biomass determinations identified after the establishment of the yearly quota.

EFFECTIVE DATE: Amendment 4 to the FMP and its implementing regulations are effective May 16, 1983, inspection with the Office of the Federal Register and will remain effective until August 15, 1983.

ADDRESS: Floyd S. Anders, Jr., Acting Director, Southwest Region, National Marine Fisheries Service (NMFS), 300 South Ferry Street, Room 2016, Terminal Island, California 90731.

FOR FURTHER INFORMATION CONTACT: Floyd S. Anders, Jr., 213-548-2575.

SUPPLEMENTARY INFORMATION: The Northern Anchovy Fishery Management Plan (FMP) was prepared by the Pacific Fishery Management Council (Council), was approved by the Secretary of Commerce on July 13, 1978, and implementing regulations were effective on September 15, 1978 (43 FR 40868). A basic purpose of Amendment 4 to the FMP is to remove the minimum size limit prohibiting the landing, for reduction purposes, of anchovies less than five inches in total length, with a 15 percent tolerance for undersized fish. Proposed regulations and the rationale for implementing Amendment 4 were published in the **Federal Register** on April 25, 1983 (48 FR 17627). When it approved Amendment 4 at its November 17-18, 1972 meeting, the Council intended and was given assurance that implementing regulations would be effective in time for the spring fishing season. The spring reduction fishery occurs from April 1 through June 30. In the last four years, an average of nearly 80 percent of the annual reduction landings were made during the spring fishing season. Because of administrative delay, the regulations implementing Amendment 4 were not published by April 1.

Currently, the northern anchovy population off California is apparently composed predominantly of fish less than five inches in total length. Until the present length restriction is changed as contemplated by Amendment 4, the reduction fishery cannot operate in the spring 1983 fishing season without severely limiting its catch. The resulting conflict between the actual and intended regulations is creating a severe economic hardship for the anchovy reduction fishery. This problem will be resolved by implementing portions of Amendment 4 regulations on an emergency basis as provided for by section 305(e)(1) of the Magnuson Fishery Conservation and Management Act (Magnuson Act). Due to uncertainty over the accuracy of the official biomass estimate on which harvest quotas are based, for the 1983-84 season, this emergency regulation would reserve half of the total annual reduction quota for later release if experience in harvesting the first part of the quota verifies the original biomass estimate. The second half of the reduction quota would not be released if scientific evidence of anchovy abundance, submitted to the Director, Southwest Region, NMFS, indicated that the spawning biomass would fall below one million tons (expressed in terms of a larva census or equivalent) if continued harvest in U.S. waters were allowed.

Classification

The NOAA Assistant Administrator for Fisheries has determined that this amendment to the FMP and the proposed implementing regulations comply with the national standards, other provisions of the Magnuson Act (16 U.S.C. 1981 *et seq.*), and other applicable law.

The amendment is deemed consistent with the California Coastal Zone Management Plan. Concurrence with this position has been requested from the California Coastal Commission.

An Environmental Assessment (EA) was filed with the Environmental Protection Agency on February 25, 1983. The EA concludes that implementation of this amendment would not have a significant effect on the environment. The optimum yield (OY) specified in the FMP remains unchanged. The environmental impacts are positive because the amendment is designed to reduce waste of undersized anchovy, increase efficiency of the reduction fishery, and permit in-year decrease of the reduction harvest quota in light of a revised biomass estimate.

Based on a regulatory impact review, the Administrator of NOAA has determined that the regulations implementing this amendment are not major under Executive Order 12291 and do not require a regulatory impact analysis. These regulations are designed to increase the efficiency of the anchovy reduction fishery in achieving OY without significant adverse impact. Economic impacts will be beneficial. Fishermen will be able to save the effort they previously spent dumping catches of anchovy that exceed the current size-limit tolerance factor.

The General Counsel of Commerce certified to the Small Business Administration that the regulations implementing this amendment will not have a significant economic impact on a substantial number of small entities; therefore no regulatory flexibility analysis is required under provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*)

The proposed regulations do not require any new "collection of information" as defined in the Paperwork Reduction Act; therefore, no paperwork reduction analysis is required.

List of Subjects in 50 CFR Part 662

Fish, Fisheries, Fishing.

Dated: May 13, 1983.

Carmen J. Blondin,

Acting Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

For the reasons stated in the preamble, 50 CFR Part 662 is amended as follows:

PART 662—NORTHERN ANCHOVY FISHERY

1. The authority citation for 50 CFR Part 662 reads as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 662.3, a new paragraph (f) is added to read as follows:

§ 662.3 Quota.

* * * * *

(f) Reduction harvest quotas derived according to the procedures in paragraphs (a) through (d) of this section will be allocated in two halves. The first half will be released at the beginning of the open season. When 25 percent of the total reduction harvest quota has been landed, but not later than February 1, the Regional Director will issue a public notice of the intent to release the second half and will provide the opportunity for the submission of evidence that the second half should not be released. The Regional Director will not release the second half of the reduction quota if, after consultation with the California Department of Fish and Game and the Pacific Fishery Management Council, documented indices of anchovy abundance indicate that the anchovy spawning biomass would fall below one million short tons (expressed in terms of a larva census or equivalent) if continued harvest in the U.S. waters were allowed. The second half of the reduction harvest quota will be released no later than April 1 if no evidence is submitted or if the Regional Director, in consultation with the California Department of Fish and Game and the Pacific Fishery Management Council, determines that the evidence is insufficient to warrant withholding the second half of the reduction harvest quota.

3. In § 662.5, the heading of paragraph (c) is revised and the text is removed and reserved as set forth below.

§ 662.5 Reduction fishery.

* * * * *

(c) *Minimum mesh size.* [Reserved].

* * * * *

[FR Doc. 83-13356 Filed 5-16-83; 11:32 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 48, No. 97
Wednesday, May 18, 1983

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1013

[Docket No. AO-286-A30]

Milk in the Southeastern Florida Marketing Area; Decision on Proposed Amendments to Marketing Agreement and to Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision adopts a change in the Southeastern Florida milk order which ensures that the Southeastern Florida Class I price for milk transferred for fluid use from a pool plant located outside Florida to a plant regulated under another Federal order would not be lower than the other order's Class I price at the location of the pool plant. The change, based on a proprietary handler's proposal, was considered at a public hearing held at Philadelphia, Pennsylvania, on August 24, 1982. The change is necessary to reflect current marketing conditions and to insure orderly marketing conditions in the Southeastern Florida and other marketing areas.

Cooperative associations will be polled to determine whether producers favor the issuance of the proposed amended order. The adopted amendment must be approved by at least two-thirds of the producers supplying the marketing area or by producers supplying at least two-thirds of the volume produced for the market.

FOR FURTHER INFORMATION CONTACT: Clayton H. Plumb, Chief, Order Formulation Branch, Dairy Division, Agricultural Marketing Service, United States Department of Agriculture, Washington, D.C. 20250, 202/447-6273.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities. The amendments would promote orderly marketing of milk by producers and regulated handlers.

Prior documents in this proceeding:

Notice of Hearing: Issued August 4, 1982; published August 10, 1982 (47 FR 34573).

Suspension of rule: Issued September 27, 1982; published September 30, 1982 (47 FR 42962).

Partial decision: Issued October 13, 1982; published October 18, 1982 (47 FR 46289).

Order amending the Middle Atlantic order; Issued November 12, 1982; published November 17, 1982 (47 FR 51731).

Recommended decision: Issued March 10, 1983; published March 15, 1983 (48 FR 10848).

Extension of Time for Filing Exceptions: Issued March 30, 1983; published April 5, 1983 (48 FR 14613).

Preliminary Statement

A public hearing was held upon proposed amendments to the marketing agreement and the order regulating the handling of milk in the Southeastern Florida marketing area. The hearing was held, 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 (7 CFR Part 900), at Philadelphia, Pennsylvania, on August 24, 1982. Notice of such hearing was issued on August 4, 1982 (47 FR 34573).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Deputy Administrator, Marketing Program Operations, on March 10, 1983, filed with the Hearing Clerk, United States Department of Agriculture, his recommended decision containing notice of the opportunity to file written exceptions thereto.

The material issues, findings and conclusions, rulings and general findings of the recommended decision are hereby approved and adopted and are set forth in full herein, subject to the following modifications:

Five new paragraphs are added after the next to last paragraph of the findings and conclusions in the recommended decision.

The material issue on the record of the hearing that is dealt with in this decision is the location adjustments applicable to milk received at a Southeastern Florida pool plant located outside the defined marketing area and transferred to a plant regulated under another Federal order.

Note.—The hearing record also included an issue relating to the amendment of the Middle Atlantic order that was dealt with in a decision issued October 13, 1982 (47 FR 46289).

Findings and Conclusions

The following findings and conclusions on the material issue are based on evidence presented at the hearing and the record thereof:

The plant location adjustment provision should be changed to ensure that fluid milk transferred to an other order plant for Class I use from a Southeastern Florida pool plant located outside Florida would be subject to a Class I price no lower than that which would be applicable at the transferor plant if it were regulated under the other Federal order. The effect of this change would be to limit the amount of the location adjustment credit to Southeastern Florida handlers so that the Class I price for milk moved to other order plants would be comparable to the Class I price applicable to handlers competing with the transferee plants.

For plants located outside the State of Florida, the location adjustment provisions of the Southeastern Florida order presently provide that the Class I price be adjusted downward by 1.5 cents per hundredweight for each 10 miles a plant is located from West Palm Beach, Florida. The basic purpose of this provision is to provide a transportation allowance to handlers who assemble milk at plant locations outside the marketing area and move it to plants within the marketing area for use in Class I so that handlers' cost of milk so moved is more competitive with that for milk obtained locally.

Cumberland Farms, which operates distributing plants regulated under both the Southeastern Florida and the Middle Atlantic Federal orders, since October 1981 has obtained most of its milk supply for its Southeastern Florida pool distributing plant at Riviera Beach from its supply plant located at Dover,

Delaware. The Dover plant, which is located within the Middle Atlantic, or Order 4, marketing area, delivers a large enough proportion of its receipts to the Riviera Beach plant to be an Order 13 pool plant. The remainder of the Dover plant's receipts are sent to the handler's fluid milk plant at Florence, New Jersey, an Order 4 pool plant, where the milk is allocated to Class I and Class II use according to the terms of the Middle Atlantic order. The hearing record indicates that over 75 percent of the milk transferred from Dover to Florence is classified in Class I use, on which there is a location adjustment credit under the Florida order.

The proponent of the pricing change adopted in this decision is the Southland Corporation, a handler operating fluid milk plants in both the Middle Atlantic and Southeastern Florida markets. Southland's concern is the erosion of uniform pricing of Class I milk used by handlers regulated under Order 4. According to proponent's witness, the principal basis of the problem is the severe misalignment of Class I prices at the Dover, Delaware, plant location between the Southeastern Florida and Middle Atlantic milk orders.

Class I price differentials under Federal milk orders generally increase 1.5 cents for each 10 miles of distance from Eau Claire, Wisconsin. Because the Northeast markets and the Florida markets are a substantial distance from Eau Claire, prices in those respective areas are approximately the same. The Class I differential at Philadelphia under the Middle Atlantic order is $2.78, to which is added a 6-cent direct delivery differential for a total differential cost of $2.84. Under the Southeastern Florida milk order, the Class I price differential is $3.15. However, when Class I price differentials in Federal order markets that are in different directions from Eau Claire are again adjusted 1.5 cents per 10 miles toward locations other than Eau Claire, substantial differences in Class I prices at a given plant location can result. When the Southeastern Florida order differential is adjusted to Dover, a location approximately 1,080 miles from West Palm Beach, the Order 13 Class I price differential there becomes $1.53. At Dover the Class I price differential under Order 4 is $2.66. Milk at Dover, therefore, is available to the Middle Atlantic pool plant at Florence for Class I use for $1.13 per hundredweight less than the same milk would cost if the Dover plant were pooled under Order 4. As a result, the Florence plant enjoys a competitive advantage in the Order 4 market of $1.13 per hundredweight on all milk moved from Dover to Florence which is assigned to Class I. Proponent's witness estimated the volume of such milk to be as much as 2.5 million pounds per month, and asserted that the increased number of producers pooled on the Southeastern Florida market is an indication that Cumberland is pooling increasing volumes of milk at Dover under Order 13 in order to gain a greater advantage in the Order 4 market.

An apparent misalignment between Class I prices would not necessarily lead to competitive inequities in a market if the handler with a Class I price advantage must pay more than the price required under the order under which he is pooled to attract milk from producers who would normally supply another market. Southland's witness pointed out, however, that a high percentage of Class I use in Southeastern Florida combined with a large Class I price differential result in an Order 13 blend price to producers adjusted to Dover which is often above the Order 4 price to producers for deliveries of base milk to the same location. Using June 1982 as an example, the witness calculated that the handler's obligation to the same producers who were owed $13.66 per hundredweight for all their milk delivered to Dover under the Southeastern Florida order would have been $13.50 for the portion of production that was base milk and $12.19 for excess milk under the Middle Atlantic order. The handler operating the Dover plant under Order 13 is, therefore, able to attract a sufficient quantity of producer milk by paying its producers a price at least equivalent to prices paid to neighboring producers by Order 4 handlers without giving up any of the price advantage it enjoys on the portion of its receipts which are used in Class I in the Order 4 area.

The witness stated that the cost of operating the Dover plant as an Order 13 supply plant should be viewed as outside the purview of the order program and irrelevant to consideration of the price advantage in question. He also asserted that the modification of the Order 13 location adjustment provisions offered by proponent would maintain competitive equity in the Middle Atlantic area while continuing to accommodate the movement of milk from Dover to Florida.

A post-hearing brief submitted by Southland supported amendment of Order 13 as the best solution to the problem of price uniformity to handlers under Order 4. The Florida orders were described as lending themselves more readily than others to such pricing inequities largely because of their high Class I differentials and utilization. It is the Southeastern Florida location adjustment provisions which Southland sees as the source of the problem. In addition, the handler indicated that the occurrence of nonuniform prices to handlers in markets other than Middle Atlantic would be likely to spread if the location adjustment provisions are not corrected in the Southeastern Florida order. The Southland brief pointed out that handlers in other markets might not become aware of such a problem even if it did develop. It was noted that correction of the problem in a number of other markets would involve multiple hearing proceedings and time to carry them out.

Southland argued that although its proposed amendment to Order 13 may be a departure from provisions generally found in Federal milk orders, provisions must be tailored to meet marketing conditions in order to assure equitable treatment to competing handlers. The brief concluded that Order 13 is the appropriate order to amend under the particular circumstances of the present situation.

The manager of Independent Dairy Farmers' Association (IDFA), the cooperative association supplying 92 percent of the producer milk pooled under the Southeastern Florida milk order, testified in favor of the proposed amendment as assuring uniform pricing to regulated handlers distributing milk in the Middle Atlantic marketing area. He stated that uniform pricing of milk for similar uses at similar locations has been one of the most consistently adhered-to principles of the Federal order program, and that the lack of such uniformity disrupts the market and erodes confidence in the Federal milk order program. He asserted that the continued existence of a $1.13 price difference at Dover is not in the best interests of orderly milk marketing.

The cooperative spokesman cited the example of a distributing plant located in one of the Florida markets which sold enough packaged fluid milk into another Federal order market to become regulated under the other order, thereby becoming subject to a minus 16-cent location adjustment. The plant then possessed a 16-cent per hundredweight advantage in its local market. As a result of the 1972 hearing held to correct that pricing inequity, the Department established a pricing structure for all three Florida orders within which location pricing was adjusted to assure that Class I prices at a given plant location in Florida would be the same under each of the orders. The witness expressed his belief that the situation

corrected by that proceeding and the marketing conditions under consideration at the present hearing are similar and that the proposal under consideration in this proceeding supports the same principle followed in that Florida decision.

In a post-hearing brief, the IDFA representative argued that the proposal would not deny equitable treatment to handlers regulated under Order 13, but would assure equitable treatment to Order 4 handlers. He also pointed out that one-third of the Federal milk orders contain provisions which limit the amount of price adjustment which may be allowed for location. In such cases the 1.5-cent per 10-mile rate is not allowed to operate fully in order that unrealistic price relationships with adjacent areas may be avoided. Milk orders cited as containing limits on location adjustments include Orders 7, 11, 30, 68, and 124 (Georgia, Tennessee Valley, Chicago Regional, Upper Midwest, and Oregon-Washington).

A witness representing two associations consisting of some 25 milk distributors which process and/or distribute more than half of the Class I milk within the State of New Jersey and the Philadelphia metropolitan area testified in favor of the proposal. He stated that competition for milk sales between handlers within the New Jersey-Philadelphia area is keen, and introduced evidence to show that the margin between prices paid to producers for raw milk and prices paid by consumers for processed milk is narrower in this area than in many other major U.S. metropolitan areas. He testified that winning bids by handlers for sales to suppermarkets and institutions are often determined by prices per unit carried out to four or five decimal places, with the Class I cost of milk constituting by far the greatest cost element in such a bid price. The witness asserted that a competitor's regulated buying advantage affects the ability of even the associations' members who are vertically integrated to compete at the retail level.

The representative of the dealers' associations voiced their position that the Federal order program requires equity of raw milk costs among competing handlers. He observed that the situation considered in this proceeding, i.e., milk being available for Class I use in the Middle Atlantic market which is regulated by an order for a market located more than 1,000 miles to the south, never could have been visualized when the appropriate Class I location adjustments for these markets were considered and adopted. The witness stated that Federal milk orders must be amended in response to changing marketing conditions to provide continuing equity among regulated handlers.

The witness testified that sales by handlers in order areas other than those in which they are regulated are quite common, but that substantial price inequities are not a problem between most orders. The large volume of sales by Order 4 handlers in the adjacent New York-New Jersey (Order 2) marketing area and by Order 2 handlers in the Order 4 area was cited as an example of inter-order sales which do not disrupt orderly marketing. The witness expressed an apprehension that inequity of pricing in the Order 4 market would be likely to have an unstabilizing effect on marketing conditions in the Order 2 market, given the interrelationship between the two markets. He then referred to a provision formerly incorporated in the New York-New Jersey Federal order which required Order 2 handlers to pay the Order 2 Class I price for milk used in Class I which was received from handlers regulated under the Connecticut order. The proposal under consideration in this proceeding was characterized as a method similar to that "Connecticut differential" for dealing with inter-order price misalignment.

A witness for Dairymen, Inc. (DI), a cooperative association marketing a significant volume of producer milk in the Order 4 market, testified in favor of the proposed change. He stated that because only 50 percent of the milk received at Dover must be moved to the Order 13 distributing plant to qualify the Dover plant for pooling under Order 13, the amount of milk available at Dover for sale to Order 4 distributing plants at $1.13 under the Order 4 Class I price could represent a significant volume of sales. Such a volume at a $1.13 lower price would, he considered, lead to disorderly marketing in the Order 4 area. The witness characterized the situation as an obvious misalignment of prices between Federal milk order markets which must be corrected if the objective of orderly marketing is to be achieved.

A representative of a handler operating a pool plant in the Order 13 area and a plant in Kentucky under the Louisville order testified in favor of the proposed change to Order 13. He observed that if no action were taken to rectify the price alignment problem, it could expand to other order areas such as Louisville.

Cumberland Farms was represented by an experi witness who described the nature of Cumberland's business as complete vertical integration. He stated that Cumberland processes a limited product line which is sold only through its own stores, and asserted that not only could such an operation involve lower costs than those incurred by most conventional handlers but that it should have only a minimal impact in competition with other handlers. Since Cumberland does not compete directly for wholesale accounts with other handlers, he claimed, a lower raw product cost would not affect other handlers' ability to compete in the market. He did admit, however, that the existence of a lower-cost operator may force others to meet his price if they are to remain competitive.

The witness attributed the decision to move milk to Florida from Dover to the sizable premiums over the minimum order prices which were being charged by the predominant cooperative association in the Southeastern Florida ares. He ascribed the cooperative's ability to exact such premiums to its domination of the market, and Cumberland's decision to obtain milk elsewhere to a desire to avoid an over-order price it regarded as excessive. The witness stated that the Dover plant qualifies as a pool supply plant under the terms of the Southeastern Florida milk order by shipping more than 50 percent of the milk received at the Dover plant to the Order 13 distributing plant at Riviera Beach, and characterized the milk moved from Dover to Florence as surplus to the needs of the Riviera Beach plant. The Florence plant was described as a pool plant under the Middle Atlantic milk order which receives milk from sources other than the Dover supply plant and distributes it through approximately 260 Cumberland Farms stores in New Jersey, Pennsylvania, and Delaware.

Cumberland's witness explained that when a handler disposes of fluid milk products from a pool plant into more than one Federal order marketing area, the plant generally is regulated by the order for the market into which it disposes of the greatest quantity of milk. Disposition by one plant into two or more marketing areas, he stated, has become a rather common occurence. Milk moved into marketing areas of orders other than the one under which it is regulated customarily is priced according to the distance of the plant disposing of it from the primary consumption center of the order under which the plant is pooled.

Although he recognized that in the early days of the Federal milk order program a few orders provided for

differentials on Class I sales outside the marketing area, the witness expressed his veiw that such a differential is neither specifically authorized by the Agricultural Marketing Agreement Act of 1937, nor is it reasonable to contend that any such pricing policy is necessary to effectuate the other provisions of the Federal order program.

The witness described the alignment of prices between orders as determined by distance from Eau Claire, Wisconsin, to permit milk to move freely between markets without creating advantages or disadvantages for handlers in the markets involved. He stated that price misalignment between markets can only occur when location differentials are substantially different from actual hauling costs, and denied that the term "price misalignment" could be applied accurately to the existing price structures of Order 4 and Order 13. Instead, he claimed, the marketing condition which proponents wish to have corrected is caused by the existence of large premiums over the Order 13 Class I price which are exacted by the principal cooperative supplying the Order 13 market. Using data published by USDA, the witness showed that the over-order price in Order 13 ranged from $1.58 per hundredweight in May 1981 to $1.89 in November 1981, dropping to approximately $1.20 for April–July 1982. He stated that the decline in over-order prices from the time Cumberland began obtaining its milk supply from Dover was probably related to Cumberland's change in supply, and argued that the Secretary of Agriculture has no authority to amend an order to strengthen the effectiveness of cooperative pricing over the minimum order level.

The witness stated that the costs of operating the Dover plant as a supply plant for Southeastern Florida, which are additional to the minimum prices required by the order, are factors which the Secretary must consider in reaching a decision on an appropriate method of pricing milk received there. He observed that although the cost of moving milk from Dover to Riviera Beach is offset by the 1.5-cent per 10-mile location adjustment on milk used in Class I, milk assigned to Class II is not subject to location adjustments and is therefore moved entirely at Cumberland's expense. In a similar manner, the differential pricing for location between Dover and Florence under Order 4, which is 12 cents on milk used in Class I with an additional 6 cents on all milk, is not a great enough allowance to cover the costs of receiving milk at Dover and moving it to Florence. The witness pointed out that in a recent amendment to the New England order, handlers were allowed a total of 22 cents per hundredweight to cover fixed hauling costs and reload costs. Such costs, he asserted, are of the type incurred in Cumberland's operations and serve to offset any price advantage over Order 4 handlers which Cumberland might enjoy by being pooled under Order 13.

Another offsetting factor pointed out by the witness was the allocation of the milk transferred to Florence. Under the allocation provisions of Order 4, receipts at Cumberland's Florence plant from the other order supply plant at Dover are assigned the Order 4 marketwide utilization (limited to the actual Class II use availale in the receiving handler's plant). The witness claimed that because the Class I utilization percentage of the Middle Atlantic market is substantially lower than that at the Florence plant, a disproportionate share of the other other receipts at Florence are allocated to Class II, eliminating applicability of the 12-cent location adjustment from the Dover milk assigned to Class II at Florence.

The witness indicated that because the Order 13 Class II price ranges from 3 to 25 cents per hundredweight higher than the Order 4 Class II price, milk from Dover assigned to Class II at Florence is priced higher than if it were Order 4 pool milk. He also indicated that other costs involved in Cumberland's operation which he felt should not be ignored by the Secretary include contractual arrangements with producer cooperatives supplying the Dover plant which result in Cumberland paying more than order prices for its milk supply. When asked if the Secretary should not consider any savings to which the Cumberland operation might be subject, as well as offsetting costs, the witness agreed that savings from special hauling arrangements could be considered. He differed, however, with a conclusion that cost savings resulting from Cumberland's vertically integrated structure or from its avoidance of the Florida cooperative's over-order price should be included in any consideration of costs and savings.

The witness differentiated between the small over-order prices imposed by cooperatives in the Middle Atlantic and New England markets and the much larger premiums in the Southeastern Florida market by describing those in the Northeast as handling charges for services of economic value performed by the cooperatives, while the cooperative prices over the Order 13 minimum prices are a reflection of the supplier's market power. He explained that in return for over-order charges cooperatives in the New England and Middle Atlantic markets maintain manufacturing facilities and balance the supply of producer milk for the market, but indicated that he was not aware of what services the Florida cooperative might provide its customers.

In answer to questions about ways in which the situation at issue could be handled without adoption of the proposed amendment, Cumberland's witness explained that milk could not be diverted directly from producers' farms to Florence for Class I use without being pooled under Order 4. Such an approach, he conceded, would eliminate any problem of nonuniform pricing to Order 4 handlers but pointed out that that approach would result in portions of some producers' milk being pooled on both orders. He stated that such a procedure could be confusing to farmers whose milk was pooled under two orders and would make difficult the administration of the Order 4 12-month base plan. The witness responded to a hypothetical case of milk transferred to pool plants of several orders from a supply plant which failed to meet pooling qualifications of any order by stating that under all Federal milk orders such milk allocated to Class I at the transferee pool plant would be subject to a compensatory charge at the difference between the Class I and blend prices of the receiving order.

Cumberland's witness also stated that if Cumberland were to be assessed more than the present Order 13 price adjusted to Dover for milk moved from Dover to Florence and used in Class I, the Order 4 pool rather than the Order 13 pool should benefit from such a charge. In a post-hearing brief, a cooperative representing a large percentage of Order 4 producers argued in this regard that it would not be equitable to give the Order 13 pool the benefit of adjustments resulting from milk used for Class I in Order 4 pool plants. The brief asserted that since Order 4 producers bear the principal responsibility for balancing milk supplies for the Middle Atlantic market it would be only equitable for any benefits to follow those burdens. It was argued that payment of a higher price under Order 13 for Class I milk transferred to an Order 4 plant would benefit Order 13 producers without those producers assuming any responsibility for servicing the Order 4 market. The cooperative urged that if the proposal were adopted, the benefits of the higher price should accrue to the Middle Atlantic pool rather than to Southeastern Florida producers.

An employee of Cumberland Farms gave testimony relative to Cumberland's actual costs of operating the Dover plant. He submitted an exhibit detailing costs which offset all but 5 cents of Cumberland's $1.13 lower Class I price under Order 13 relative to Order 4 on milk moved from Dover to Florence. For Class I milk, he detailed those costs as 29.1 cents per hundredweight for hauling costs from Dover to Florence, another 29 cents for the cost of operating the Dover plant, a 9-cent contractual payment in excess of the Order 13 blend price to producer cooperatives supplying the Dover plant, and 14.2 cents per hundredweight for shrinkage at the Dover plant.

The employee indicated that costs incurred in handling Class II milk at Dover were the same as those for Class I milk except for price differences under the two Federal orders. Under the class price provisions of the Southeastern Florida order, the Class II price is the basic formula price (Minnesota-Wisconsin price at 3.5 percent butterfat) plus 15 cents, while under the Middle Atlantic order the Class II price varies seasonally from 10 cents under to 12 cents over the same basic formula price. The employee noted that this price variation results in an Order 13 Class II price for milk moved from Dover to Florence which averages 12.5 cents over the Order 4 Class II price. When offset by the 6-cent direct delivery differential which is applicable to all milk received at Florence under Order 4, the effective Class II price for milk delivered to Florence over the course of a year averages 6.5 cents per hundredweight more when the milk is pooled under Order 13 than when it is pooled under Order 4.

The costs itemized by the witness which offset the $1.13 lower price which Cumberland has on Class I milk sold in the Order 4 market amount to $.813, leaving a net price advantage of $.317. The same costs, when combined with the 6.5-cent difference in Class II prices between the two orders, result in a disadvantage to Cumberland of $.878 for milk pooled under Order 13 and allocated to Class II at the Order 4 distributing plant at Florence. Under the allocation provisions of Order 4, milk received at a pool plant from an other order plant is allocated on a marketwide utilization percentage to uses in the plant. As a result, the witness testified, 77.7 percent of the Dover milk received at Florence was allocated to Class I, and 22.3 percent to Class II, from October 1981 through June 1982. When these percentages are applied to the 31.7-cent Class I price advantage and the 87.8-cent Class II price disadvantage, the net result, the witness claimed, is a mere 5.05-cent advantage for Cumberland on all the milk moved from Dover to Florence.

The witness stated that his computations did not include the Order 4 12-cent location adjustment between the Dover and Florence locations on Class I milk or the 6-cent direct delivery differential applicable on all milk received at Florence, which would have the effect of reducing the 29.1-cent cost of hauling milk from Dover to Florence by 18 cents. He also indicated that the shrinkage costs quoted were those experienced at the Dover plant, and that additional shrinkage occurs at the Florence and Riviera Beach plants where the milk is processed.

According to Cumberland's employee, Cumberland's Class I sales out of the Middle Atlantic pool plant at Florence account for only one to two percent of Order 4 producer receipts, and probably two or three percent of Order 4 Class I sales. He also estimated that the volume of sales distributed from Florence is approximately twice the amount processed and sold from the handler's Riviera Beach plant. Considering the Order 13 requirement that a supply plant transfer at least 50 percent of its receipts to an Order 13 pool plant in order to meet pooling qualifications, the witness initially testified that no more than 25 percent of the milk processed at Florence could come from the Dover plant if the Dover plant were to remain pooled under Order 13. He agreed, however, that up to 50 percent of the milk pooled at Dover could be moved to Florence. When asked about the accuracy of the exhibit which gave estimates of the amount of milk pooled at Dover under Order 13 and moved to Florence, the witness stated that those estimates were overstated by roughly 5 to 10 percent.

Dairymen, Inc.'s post-hearing brief questioned the validity of offsetting Cumberland's Class I price advantage in the Order 4 market with the costs of operating the Dover plant. DI asserted that with the exception of moving milk from Dover to Florence, such costs are irrelevant, and have never been considered in the determination of appropriate price levels for different locations in the Federal order program.

The post-hearing brief submitted by Southland challenged the cost factors which the Cumberland employee had testified offset the $1.13 price advantage over Order 4 handlers at Dover in addition to the 18-cent price difference between Dover and Florence which should have been used to reduce the cost of hauling between those two points. Southland claimed that the 9-cent "contractual adjustment" offset should be removed from consideration because it is equivalent to service charges paid to cooperatives by other Order 4 handlers. With respect to this latter point, the exhibit introduced by Cumberland's witness shows that for January through June 1981 the cooperative price exceeded the minimum Federal order price in the cities of Baltimore, Maryland, and Washington, D.C., by 15 cents, and in Philadelphia, Pennsylvania, by 10 cents. Southland also claimed that the cost of shrinkage claimed by Cumberland should be reduced by 25 to 50 percent to allow for accounting at farm weights and tests, since that amount of shrinkage would occur no matter where the milk was first received.

Southland observed that no order requires Cumberland to operate a supply plant for Order 13 at Dover; that the costs of doing so are self-imposed and a result of actions undertaken to avoid the premium imposed by IDFA. The brief pointed out that Cumberland had supplied no analysis of costs at the Riviera Beach plant, or of advantages Cumberland may have gained in the Southeastern Florida market as a result of operating the Dover supply plant.

A representative of Eastern Milk Producers' Cooperative Association, Inc., which supplies the Cumberland plant at Dover, testified in opposition to the proposal. The members of the cooperative who supply milk to the Dover plant represent nearly 63 percent of the producers pooled on the Southeastern Florida market. Among the reasons for which Eastern advocated that the proposal not be adopted is that the Cumberland operation at Dover is a specific target of the proposal. The representative stated that other concerns, such as Order 13 Class I price misalignment with orders other than Order 4 and price misalignment for interorder transfers of milk classified as Class II, should have been included for consideration in the hearing procedure. He also pointed out that proponent addresses only the $1.13 difference in order prices, with no allowance for Cumberland's operating costs which serve to offset the advantage in order prices.

The cooperative representative claimed that price discrepancies between orders must, to warrant correction, result in substantial procurement cost differences, involves significant quantities of products, and impair competitive equity among handlers in the market. He asserted that

since none of those conditions prevail in the present situation the proposal should not be adopted. Observing that a misalignment of order prices in the Middle Atlantic area should be of concern only to Order 4 handlers, the witness questioned whether proponent actually distributes milk in the same area in which Cumberland's Order 4 stores are located or if proponent's concern relates instead to its role as a competitor with Cumberland in the Southeastern Florida area. He indicated that a problem im the Middle Atlantic market should not be remedied by amending Order 13, but had no suggestion for a means of solving the problem by amendment to Order 4.

Finally, Eastern's witness objected to the proposal as representing a major departure from the manner in which milk transferred between Federal order markets is customarily priced. He asserted that adoption of the proposal would create another class of use with its own price and could have the effect of disrupting pricing provisions throughout the order program.

In the brief filed by Eastern the proposed amendment was described as predatory discrimination against the actions of a single handler to force him to abandon a procurement operation which is economically justified. Eastern charged that the proposal is designed to disrupt Cumberland's milk supply for its Riviera Beach plant and force Cumberland to obtain its supply from IDFA at a price considerably above the minimum order price. It was claimed that such action would serve to reinforce premium pricing in an area in which both minimum order Class I prices and the cooperative's premium exceed those in any other market. In addition, an increase in the price of milk moved from Dover to Florence would, according to the brief, create a clearly illegal economic barrier to the movement of milk between markets. Eastern's brief also stated that if Cumberland is forced to abandon the Dover plant as a supply of milk for its Florida operations, 140 producers and 3.5 million pounds of milk per month currently pooled on Order 13 would be shifted onto the Order 4 market, disrupting marketing conditions in the Middle Atlantic area.

The attorney representing Cumberland Farms testified against adoption of the proposal on the basis that resale price regulation by the State of Pennsylvania limits the potential of differences in raw product costs to disrupt milk marketing in the Middle Atlantic area. He introduced an exhibit that showed retail prices for milk in North Jersey and South Jersey for July 1982, and indicated that Cumberland's price is at the lowest end of the 16-cent range for stores surveyed. He also testified that Cumberland's sales in Pennsylvania are at the minimum price allowable under Pennsylvania's retail price regulation, with some handlers' prices somewhat higher. He expressed the opinion that with such price differences already existing in the market, any raw product cost advantage Cumberland might have would result in no realistic potential for Order 4 market disruption.

The post-hearing brief filed on behalf of Cumberland Farms stressed the argument that proponent, the Southland Corporation, actually has no direct interest in the effect of Cumberland's operations on price equity in the Order 4 market. Instead, according to Cumberland, Southland has proposed this order change for the sole purpose of making Cumberland's Dover operation unprofitable and helping Independent Dairy Farmers' Association to force Cumberland back into the cooperative's superpool.

IDFA members were described as large producers who enjoy a high Class I utilization percentage and are able to exact high premiums because of their large market share. The brief denied that the IDFA members are small farmers in need of regulatory protection and speculated that due to their large estimated gross income they would not fall within the definition of small businesses with which the Regulatory Flexibility Act is concerned. Furthermore, Cumberland argued, action by the Secretary for the purpose of maintaining cooperative over-order pricing would be outside the scope of the Act.

Cumberland also argued that the nature of its business causes very little impact on competiton in the Order 4 marking area as a result of any price advange Cuumberland might have in that area. It was noted that the handler's vertically integrated structure keeps it from competing directly with other handlers for accounts. In addition, Cumberland claims that its limited-line processing operation and vertically integrated distribution system diminishes any effect on the market which a cost advantage normally would cause. According to the brief, however, extra costs incurred in operating the supply plant should be taken into account to determine whether Cumberland has any material advantage, as the costs incurred by Cumberland in shipping milk from Dover to Florence are not experienced by most Order 4 handlers.

A further argument against the adoption of the proposal is the relative insignificance of the amount of milk subject to any price advantage. According to the brief, no more than 25 percent of the milk supply at Florence can be received from the Dover plant if the Dover plant is to remain pooled under Order 13. The 25-percent limit was determined by considering the fact that route disposition from Florence is twice that from the Riviera Beach plant, and that to qualify as an Order 13 supply plant, the Dover plant must move at least 50 percent of its receipts to Southeastern Florida distributing plants. Since the quantity of milk processed at Cumberland's Florence plant represents only 1 to 2 percent of total producer receipts under Order 4 and only 25 percent of the milk received at Florence can be supplied by the Dover plant at a price advantage, the problem was described in the brief as infinitesimal.

Cumberland's briefing again emphasized that the record shows no evidence of actual marketing disorder as a result of any price advantage and claimed that there was no evidence that Order 4 handlers are concerned about handler equity. The testimony of the representative for two dealers' associations was described as a general statement in favor of handler equity, and was challenged as an inaccurate representation of the views of the associations' members.

Finally, the proposal was characterized in Cumberland's brief as a radical departure from the general Federal order policy of pricing the milk of handlers distributing in more than one regulated marketing area under the order for the area into which they distribute the largest quantity of milk.

Although opponents of the proposals deny that the price discrepancy between Orders 4 and 13 at Dover results in any substantial procurement cost advantage for Cumberland, that the advantage impairs competitive equity between handlers, or that it affects a significant amount of milk, examination of the record indicates that Cumberland has a substantial cost advantage on a significant amount of milk, and thereby has the capability of impairing competitive equity in the market.

Under the provisions of the Middle Atlantic and Southeastern Florida milk orders, there is clearly a price advantage of $1.13 at Dover for a plant pooled under Order 13. The costs of operating the Dover supply plant should not be considered as offsetting that advantage. Nearly all of the costs claimed by

Cumberland would be incurred in operating the Dover plant under any Federal order. If the Dover plant were an Order 4 supply plant, milk received there and used in Class I would be subject to the Order 4 price at that location, $1.13 more than the Class I price applicable under Order 13. No allowance would be made for the extra costs of operating a supply plant. The fact that few or no other plants regulated under order 4 are subject to the same costs as Dover is because most milk marketed in the Middle Atlantic area is delivered directly from farms to the plants where it is used. The lack of supply plants in the Order 4 market is primarily due to the proximity of producers to the locations at which milk is used. If Cumberland were not operating the Dover plant to ship milk long distance to Florida, most of the milk currently transferred to Florence could be delivered more economically by direct shipments from the farm rather than through a supply plant. The cost of operating a supply plant is one of the factors implicitly accepted by Cumberland in its decision to use that facility to supply milk to the Riviera Beach plant, and should not be considered as offsetting the Order 13 price advantage at Dover.

The fact that Cumberland incurs the cost of moving milk that is allocated to Class II use between the Dover and Florence plants should not be considered a valid offsetting cost factor. Under the terms of Federal milk orders, handlers are purposely discouraged from moving Class II milk between plants at producers' expense. Transportation allowances under the plant location adjustment provisions of orders are limited on transfers between pool plants to the amount of Class I use available at the receiving plant after direct receipts have been deducted from Class I use. With respect to milk received from a plant regulated under another order, such milk is allocated on a marketwide utilization basis (limited to the actual use available in the receiving handler's plant). This intermarket allocation is for the purpose of discouraging the uneconomic transfer of milk for Class II use. Also, it tends to assure that other order producers carry their share of the burden of the reserve milk supply for the receiving market.

With respect to the matter of the plant location adjustment provisions of Order 4 not fully reflecting Cumberland's costs of reloading and transporting Class I milk between Dover and Florence, this is an issuance that could be addressed as a possible amendment to Order 4. No such issue was included in the hearing notice with respect to Order 4. It is obvious that there are reloading and fixed transportation costs of assembling milk through supply plants. However, such costs are rarely incorporated in the transportation allowance provisions of milk orders. The 22-cent reloading and fixed transportation allowance under the New England order that was alluded to by one of Cumberland's witnesses is unique to that order and reflects the unique relative geographic locations of supply plants and distrubuting plants in that market.

The milk moved from Dover to Florence may represent a small percentage of the total marketed in the Middle Atlantic area, but when Cumberland's $1.13 price advantage is considered the potential disruptive effect of the amount of milk involved is not negligible. If proponent's estimate of the volume of milk in question is reduced by the 5 to 10 percent overestimate claimed by a Cumberland witness, an average of over 35,000 pounds of milk per day has been moved from Dover to Florence since October 1981. This volume would represent the production of approximately 30 of the producers (and ¼ of the production) pooled under Order 13 at Dover. Such an amount of milk available at a price substantially lower than the Middle Atlantic Federal order Class I price certainly affects the uniformity of pricing to handlers similarly located.

Contrary to a Cumberland witness's testimony, approximately half of the Florence plant's fluid milk needs could be received from the Dover plant with the Dover plant remaining pooled under Order 13. According to the witness, distribution by the Riviera Beach plant is approximately half that of the plant located at Florence and at least half of the milk received at Dover must be transferred to Riveria Beach if the Dover plant is to remain on Order 13 pool plant. The witness thus claimed that receipts at Florence from Dover could represent no more than 25 percent of the Florence plant's total supply. However, if all of the milk used at Riviera Beach were supplied from Dover and a nearly equal amount were moved to Florence, that amount would supply approximately half of the Florence plant's needs. The impact of the present pricing inequities on the Middle Atlantic market could, therefore, double with the use of a supply plant pooled under Order 13.

Although Cumberland witnesses asserted that Cumberland, due to its vertically integrated structure, does not compete directly with other handlers for contracts, a handler selling through its own 260 stores is as much a competitive factor in the market as one which packages milk to be sold through grocery chains. Southland, in contracting with other handlers to supply its stores in the area in which Cumberland operates, is damaged just as much by nonuniform pricing as if it were supplying those stores from its Order 4 plant at Waldorf, Maryland. Nonuniform pricing may also affect competition even when there is no obvious undercutting in store prices. In the presence of state regulation of minimum out-of-store prices, it could scarcely be expected that even a handler with a substantial competitive advantage would be able to undersell all of its competitors. Such a handler could, however, exert downward pressure on store prices when costs of obtaining and processing milk are rising, thereby making competition ruinous for handlers paying the order price. Another possibility for a handler operating in more than one area, as Cumberland does, to use a competitive advantage is to use the proceeds from the advantage possessed in one market to subsidize prices lower than those prevailing in an area in which retail prices are not regulated.

The price difference at Dover between Orders 4 and 13 is a rather extreme example of price misalignment, nearly 10 cents per gallon. Price alignment between the Middle Atlantic and Southeastern Florida marketing areas was not considered when the appropriate Class I price levels were established for the Florida markets. In a 1970 decision (35 FR 18618) increasing the Southeastern Florida Class I differential from $2.95 to its present level of $3.15, the Secretary stated that milk was imported from the Georgia and Chattanooga, Tennessee, areas to Florida. When supplemental milk was needed because of those areas' limited supplies, it generally had to come from the Minnesota-Wisconsin region. The Atlanta, Chattanooga, and Chicago prices for July 1970 adjusted for transportation to Miami by 1.5 cents per 10 miles were computed to be $7.915, $7.945, and $7.91, respectively, while the Class I price at Miami was $7.56. Although a 20-cent increase in the Order 13 Class I differential did not result in perfect alignment between these orders, it did improve the ability of plants located in Southeastern Florida to attract needed supplies of milk. Because the Middle Atlantic market was not considered a regular or even supplemental source of supply for Southeastern Florida, alignment between those two markets has not

been a factor in determining appropriate price levels for either order. Now that the Southeastern Florida market has begun to obtain a supply of milk from the Middle Atlantic area, however, price alignment between the two markets must be considered.

Price alignment between Federal milk orders is considered not only when deficit supply areas must obtain supplemental milk from other areas, but when handlers regulated under different marketing orders are competitive in the same region. A 1972 decision (37 FR 16953) made the Class I price at any given plant location within the State of Florida the same under each of the three Florida orders. Prices under the three orders had been aligned to reflect the cost of hauling milk from alternative sources, but a handler which shifted regulation from one Florida order to another obtained a 16-cent price advantage over competitors by doing so. The handler accomplished a change in regulation by distributing a slightly larger proportion of its sales in an order area other than the order area where its plant was located. The 1972 amendment corrected the order provisions which made inequitable pricing possible in that situation. Similarly, as was stated at the hearing and alluded to in certain post-hearing briefs, the location adjustment provisions of many orders limit or designate the amount of price adjustment applicable to plants located in other order areas to ensure that handlers are unable to use the pricing provisions of the orders to gain a competitive advantage over other handlers similarly located but regulated under another order. Such consideration is unsually limited to nearby or adjacent Federal order marketing areas. In the Texas order (Order No. 126), price adjustments applicable at locations within neighboring marketing areas for handlers regulated under Order 126 are specified in fixed amounts to be equivalent to the prices applicable at the same location under the other order. If the prices at those locations were determined by mileage from a given Texas city, they would be somewhat lower than the prices applicable under the orders in which those points are located. Under such location adjustment provisions, a handler whose plant is located in an order area other than the one under which he is regulated is assured that the price he pays for milk is uniform with the prices paid by handlers similarly located. Similarly, handlers regulated under the other order are assured that a handler located in their vicinity will not be able to underprice them solely because of the difference in regulation. The handler located outside his order area may, as a result, experience some competitive disadvantage in selling Class I milk into the area under which he is regulated since hauling costs may exceed the price difference between the two areas. That effect of such location adjustment provisions, however, is mitigated by the relatively small distances and price differences normally involved between adjacent areas.

Incorporation of the kind of location adjustment provision found in the Texas order and others into the Southeastern Florida order would cause all milk pooled at Dover to be subject to a price equivalent to the Middle Atlantic price at that location. Effectively, the Class I price differential at Dover under Order 13 for all milk pooled at Dover would be increased from $1.53 to $2.66 per hundredweight, or only $.49 less than the Order 13 price at Rivera Beach. It would reduce the present transportation allowance for moving milk from Dover to Rivera Beach from $1.62 to $.49 per hundredweight.

The record of this hearing does not reveal any problem with respect to the $1.62 per hundredweight location adjustment at the Dover plant with respect to milk moved to Florida. But a substantial price alignment problem exists with respect to the Class I milk disposed of in the Middle Atlantic market from the Dover plant. Use of the Order 13 location adjustment provision to obtain a supply of milk in another order market, such as the Order 4 market, at a price substantially less than the price applicable under the other order should not be allowed. It is unfair to handlers competing under the other order, and does not provide uniform prices to handlers similarly located.

It is common practice to incorporate provisions under Federal milk orders to ensure that handlers are faced with comparable costs for milk used in Class I irrespective of the source of such milk supply. In most Federal milk orders, including Orders 4 and 13, any volume of fluid milk received from unregulated sources and used in Class I at a pool plant is subject to a charge on such milk to be added to the receiving handler's pool obligation at the difference between the Class I price and the marketwide weighted average price to producers. This charge is based on the assumption that the handler has probably paid his producers the weighted average price for the unregulated milk. From October 1981 to July 1982, the Order 4 Class I-weighted average price difference averaged $1.46 per hundredweight. This is 33 cents more than the added cost to Cumberland under the proposal adopted.

Similar charges on receipts from other order plants generally are not incorporated in a handler's pool obligation under Federal orders on the basis that the Class I price has been paid for the milk at some location for which pricing is aligned with that at the receiving handler's plant. That assumption fails in the case of a plant regulated under Order 13 but located within the Order 4 area and selling Class I milk to an Order 4 handler. Additionally, if milk from the Dover plant were moved to any of the nearby markets where prices are aligned with Order 4, it would tend to disrupt competition in those markets also. It would be appropriate to solve the problem of nonuniform pricing by amending Order 13 if the solution would provide alignment to pricing on milk moved to other order handlers.

The proposal to correct the problem of inequitable pricing in an other order area by amending Order 13 to provide that the Class I price applicable on milk transferred to an other order plant be adjusted for location to a level no lower than the price applicable at that location under the other order is a reasonable and effective method of dealing with the situation. Adoption of the proposal would result in uniform prices paid by handlers regulated by Order 4 and at the same time would not create economic barriers to the movement of milk from Dover to Florida.

Adoption of the proposal would not establish a barrier to movements of milk between Federal order marketing areas. The milk transferred from Dover to Florence does not move between Federal order marketing areas but between plants regulated under different orders but located within the same marketing area. The adopted change would assure uniform pricing of milk to handlers located within the same area and by that assurance would not inhibit milk transfers between those handlers.

Cumberland Farms is not the target of the amendment adopted in this decision inasmuch as any handler with a plant located outside Florida but pooled under Order 13 who elects to sell milk for fluid use to nearby plants would be restrained from doing so at less than the local Federally regulated price. The facility at Dover, which is rented by Cumberland could be operated instead by any other handler, even one who could establish a bottling and distributing operation there. Such opportunities for use of Federal order provisions to obtain a position of

competitive advantage in the market should be eliminated.

The fact that the additional money collected under the adopted proposal would be paid into the Order 13 pool rather than into the Order 4 pool may be considered equitable even though the milk moved to Florence from Dover is considered surplus to the fluid needs of the Riviera Beach plant. The Order 13 producers are already carrying their share of the reserve supply to the Middle Atlantic market through the operation of the Order 4 allocation provisions which prorate other order receipts at Florence to Classes I and II on the basis of the Order 4 marketwide utilization. In fact, since the milk of the Dover producers is not adding to the already-large surplus of milk in the Middle Atlantic pool and is absorbing a proportionate share of Class II use at Florence, producers pooled under Order 4 are already benefitting from the pooling of the Dover milk Order 13. If the Florida plant obtained its supplemental milk supply from some other region, the milk supply now being moved to Florida from Dover would likely be added to the Order 4 pool as Class II milk.

Exceptions filed by Eastern Milk Producers Association and Cumberland Farms largely reiterated those parties' objections, expressed at the hearing, to adoption of the proposed amendment. For the most part, those objections were addressed in the recommended decision. Both Eastern and Cumberland criticized the recommended decision as using vague and speculative words rather than actual numbers, while failing themselves to cite anything concrete in the record that contradicted the conclusions reached in the recommended decision. After criticizing the decision for not being based on specific figures, Cumberland's exceptions went on the argue that the specific figures on which the decision was based were inflated or misleading. Cumberland re-asserted that the $1.13 per hundredweight price advantage at Dover under Order 13 is largely offset by the costs of operating the Dover supply plant, and that 35,000 pounds per day is an insignificant volume of milk in the Middle Atlantic market. Eastern argued that the record contained no evidence to support a finding of any threat to orderly marketing conditions in either order. Eastern and Cumberland both characterized the adopted proposal as aimed solely at Cumberland's operation. The exceptors insisted that the only purpose of the amendment, which affects only milk transferred to other order plants, is to make uneconomical the transfer of milk to Florida which Cumberland has undertaken in order to avoid the over-order charges imposed by IDFA. At the same time, Cumberland objected to the point made in the recommended decision that a competitive advantage enjoyed in one marketing area could be used to subsidize operations in another area.

The number primarily relied upon in adoption of the proposed amendment is the $1.13 per hundredweight price advantage effective at Dover under Order 13 over Order 4 handlers. The reasons for not offsetting that price advantage by Cumberland's costs of operating the Dover supply plant were explained in the recommended decision. In summary, those costs can be viewed as the cost to Cumberland of balancing the supply for the Riviera Beach distibuting plant. Balancing would be one of the function undertaken by IDFA if the cooperative were suplying Comberland's plant, and would be one of the components of the over-order price charged by IDFA. It would appear that in addition to not wanting to pay the cooperative to perform balancing and other services, Cumberland also wishes to avoid bearing the cost for supplying those services for its own plants. The effect of allowing the full location adjustment to cover the movement of milk from Dover to Florida for Class I use on milk which is instead transferred to Florence, New Jersey, is to reduce the value of the Order 13 pool at the expense of the Florida producers, who provide most of the milk in that pool. As a result, those producers are required to bear part of the cost of balancing the milk supply for the Riviera Beach Plant, for which they supply none of the milk.

The 35,000 pounds of milk per day moved from Dover to Florence was cited in the recommended decision as an indication that in addition to balancing the Cumberland plant in Florida, Cumberland is using the Dover plant as a regular source of supply for the Florence, New Jersey, plant regulated under Order 4. The milk of nearly one-quarter of the producers pooled at Dover under Order 13 is moved to the fluid milk plant at Florence rather than to Florida. That milk is subject to the location adjustment determined by the distance between West Palm Beach and Dover. As a result, the value of the Order 13 pool is reduced by a location adjustment that also results in the Class I price paid by an Order 4 handler to be $1.13 per hundredweight less than the minimum price required at the same location under that order. In this situation, there is every incentive for Cumberland to pool as much milk as possible at the Dover plant to transfer to Florence, while assuring that the supply plant remains pooled under Order 13.

The fact that 35,000 pounds of milk per day represents a small proportion of the Order 4 market is immaterial. Under Order 4, there are no provisions for exemption from full minimum Order 4 price regulation on the basis of volume of sales. The only Order 4 provision in which volume is a factor in determining regulation under Order 4 is the 10,000-pound per month limit on the amount of pool milk a producer-handler may purchase without being subject to the pricing and pooling provisions of the order. Such purchases of pool milk would, of course, be fully subject to minimum Order 4 pricing. In that context, a volume of 35,000 pounds per day available at $1.13 less than the Order 4 price certainly may be described as "substantial."

The question of Cumberland as the "target" of the amendment was discussed in the recommended decision. It is difficult to see how adoption of the amendment will discourage the movement of milk from Dover to Florida, or how the amendment could make such transfers uneconomical. The operation of the location adjustment provisions in regard to the milk moved to Florida will be unaffected by the amendment. A requirement that milk sold to an other order handler be subject to the minimum Class I price under the other order should not affect the economics of moving milk from an Order 13 supply plant to an Order 13 distributing plant. Since adoption of the amendment will not affect the pricing of intra-order movements of milk, the insistence of both Eastern and Cumberland that the amendment is designed to support IDFA's over-order pricing policy by eliminating any incentive to bring milk in from Dover strongly implies that the principal incentive for doing so is the $1.13 price advantage on milk transferred to Florence and used in Class I.

A proposal was published in the hearing notice to consider increasing the plant location adjustment rate under the order. This proposal was abandoned at the hearing by the proponent and no testimony was offered on the matter. Thus, no findings can be made with respect to the merits of the proposal on the basis of this hearing record.

Ruling on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs,

proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

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 of the previously issued amendments 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) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the tentative marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

Ruling on Exceptions

In arriving at the findings and conclusions, and the regulatory provisions of this decision, each of the exceptions received was carefully and fully considered in conjunction with the record evidence. To the extent that the findings and conclusions, and the regulatory provisions of this decision are at variance with any of the exceptions, such exceptions are hereby overruled for the reasons previously stated in this decision.

Marketing Agreement and Order

Annexed hereto and made a part hereof are two documents, a marketing agreement regulating the handling of milk, and an ORDER amending the order regulating the handling of milk in the Southeastern Florida marketing area which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered, That this entire decision, except the attached marketing agreement, be published in the **Federal Register**. The regulatory provisions of the marketing agreement are identical with those contained in the order as hereby proposed to be amended by the attached order which is published with this decision.

Determination of Producer Approval and Representative Period

January 1983 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the order, as amended and as hereby proposed to be amended, regulating the handling of milk in the Southeastern Florida marketing area is approved or favored by producers, as defined under the terms of the order (as amended and as hereby proposed to be amended), who during such representative period were engaged in the production of milk for sale within the aforesaid marketing area.

List of Subjects in 7 CFR Part 1013

Milk marketing orders, Milk, Dairy products.

Signed at Washington, D.C., on: May 13, 1983.

C. W. McMillan,

Assistant Secretary Marketing and Inspection Services.

Order [1] Amending the Order, Regulating the Handling of Milk in the Southeastern Florida Marketing Area

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 of the previously issued amendments 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.

[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

(a) *Findings.* A public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Southeastern Florida marketing area. The hearing was held 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 (7 CFR Part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

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

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area, and the minimum prices specified in the order as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order as hereby amended regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

Order relative to handling. It is therefore ordered that on and after the effective date hereof the handling of milk in the Southeastern Florida marketing area shall be in conformity to and in compliance with the terms and conditions of the order, as amended, and as hereby amended, as follows:

The provisions of the proposed marketing agreement and order amending the order contained in the recommended decision issued by the Deputy Administrator, Marketing Program Operations, on March 10, 1983, and published in the **Federal Register** on March 15, 1983, (48 FR 10848), shall be and are the terms and provisions of this order, amending the order, and are set forth in full herein.

PART 1013—MILK IN THE SOUTHEASTERN FLORIDA MARKETING AREA

In § 1013.52(a), the text preceding the table is revised to read as follows:

§ 1013.52 Plant location adjustments for handlers.

(a) The Class I price for producer milk and other source milk at a plant located

outside the State of Florida or within the State of Florida but outside of the defined marketing area shall be adjusted at the rates set forth in the following schedule: *Provided,* That the resulting adjusted price for fluid milk products transferred from a pool plant to a plant regulated under another Federal order shall not be less than the Class I price under such other Federal order that is applicable at the location of the transferor plant:

* * * * *

[FR Doc. 83-13392 Filed 5-17-83; 8:45 am]

BILLING CODE 3410-02-M

---

7 CFR Parts 1033 and 1036

[Docket Nos. AO-166-A51, AO-179-A46]

Milk in the Ohio Valley and Eastern Ohio-Western Pennsylvania Marketing Areas; Decision on Proposed Amendment to Marketing Agreements and to Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision adopts on an emergency basis temporary amendments to the Ohio Valley and Eastern Ohio-Western Pennsylvania milk orders. The order changes would provide for a reduction of 40 cents per hundredweight in the price for producer milk used to produce butter, nonfat dry milk and cheese. The changes, which would apply through July 1983, are based on evidence presented at a public hearing held on March 3 and 4, 1983, in Middleburg Heights, Ohio. The hearing was requested by a cooperative association representing a majority of the producers who supply milk to the two markets.

The adopted order changes are necessary to reflect current marketing conditions and to assure orderly marketing. Because of the limited time to complete the rulemaking procedures, a recommended decision and the opportunity to file exceptions thereto have been omitted. The proposed amended orders must be approved by at least two-thirds of the producers in the respective markets before they can become effective.

FOR FURTHER INFORMATION CONTACT: Clayton H. Plumb, Chief, Order Formulation Branch, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250 (202) 447-6273.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities. The amendments will promote more orderly marketing of milk by producers and regulated handlers.

Prior documents in this proceeding

Notice of hearing: Issued February 15, 1983; published February 22, 1983 (48 FR 7462).

Reopening of hearing: Issued March 23, 1983; published March 25, 1983 (48 FR 12552).

A public hearing was held upon proposed amendments to the marketing agreements and the orders regulating the handling of milk in the Ohio Valley and Eastern Ohio-Western Pennsylvania marketing areas. The hearing was held, 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 (7 CFR Part 900), at Middleburg Heights, Ohio, on March 3 and 4, 1983. Notice of such hearing was issued on February 15, 1983, and published February 22, 1983. Notice of reopending the hearing was issued March 23, 1983, and published March 25, 1983.

Interested parties were given until April 7, 1983, to file post-hearing briefs on the proposals as published in the notice of hearing and on whether these proposals should be considered on an expedited basis.

The material issues on the record of the hearing relate to:

1. Whether the two orders should be amended to provide handlers with price relief on producer milk used in butter, nonfat dry milk and hard cheese during April, May, June and July 1983.

2. Whether emergency marketing conditions exist in the two regulated areas to warrant the omission of a recommended decision and the opportunity to file written exceptions thereto.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. *Price relief on milk used in hard manufactured products.* The Ohio Valley and Eastern Ohio-Western Pennsylvania orders should be amended to provide a temporary price reduction of 40 cents per hundredweight to handlers for producer milk utilized in the production of butter, nonfat dry milk and cheese (except cottage cheese and cottage cheese curd). The credits should be made available as soon as possible and should continue through July 1983.

Milk Marketing, Inc. (MMI), a cooperative association of about 7,000 producers who supply about 77 percent of the milk marketed under the Ohio Valley order and about 50 percent of the milk marketed under the Eastern Ohio-Western Pennsylvania order, requested that the orders be amended to lower a handler's obligation to the pool by 40 cents per hundredweight for all producer milk used to make butter, nonfat dry milk and cheese (except cottage cheese and cottage cheese curd) during the months of April, May, June and July 1983. The cooperative indicated that the proposed amendments are needed to offset losses being incurred by handlers in marketing the recent surge in the volume of surplus milk on the markets that is processed into storable manufactured products, primarily butter, nonfat dry milk and cheese.

The MMI witness pointed out that receipts of milk from producers are up substantially while producer milk classified as Class I has declined. Consequently, with production and Class I sales moving in opposite directions, there is a substantial increase in the amount of milk in the two markets that is not needed by pool distributing plants. This milk must be disposed of to manufacturing plants with the highest volumes coming during the seasonally high production months of April, May, June and July. The witness stated that historically, the milk not needed by pool distributing plants in these markets has been moved to manufacturing plants that primarily produce butter, nonfat dry milk and cheese.

The proponent cooperative indicated that it is marketing a disproportionate share of the increased volume of milk being moved to manufacturing plants. The cooperative spokesman entered an exhibit showing the pounds of producer milk used to manufacture butter, nonfat dry milk and cheese in each of the markets and the amounts handled by MMI. The exhibit shows that for the Ohio Valley market in 1980 MMI handled 46.8 percent of the milk that was utilized to produce butter, nonfat dry milk and cheese. In 1981 this increased to 61.4 percent and in 1982, to 70.9 percent. During the period of October, November and December 1982, and January 1983, MMI handled 77.8 percent of the producer milk made into butter, nonfat dry milk and cheese. In the Eastern Ohio-Western Pennsylvania market in 1980, MMI handled 50.7 percent of the milk that was utilized to

produce butter, nonfat dry milk and cheese. In 1981 this increased to 55.4 percent and in 1982 to 64.7 percent. During the period of October, November and December 1982, and January 1983, MMI handled 71 percent of the milk used to make butter, nonfat dry milk and cheese.

The MMI witness stated that, historically handlers in the two markets have been able to dispose of milk not needed by pool distributing plants to manufacturing plants and fulfill their obligation to the pool at the Class III price with minimal loss. However, last year this situation started to change. He testified that under the Eastern Ohio-Western Pennsylvania order (Order 36) during April, May, June and July 1982, MMI diverted 257 million pounds of milk to manufacturing plants, which was 29 percent above the same period in 1981. He indicated that since the prices offered by nonpool manufacturing plants were substantially below the Class III price and because MMI incurred additional hauling costs to get milk to manufacturing plants, MMI's cost of marketing member milk pooled under Order 36 and used to manufacture butter, nonfat dry milk and cheese was over $1 million, or 39.7 cents per hundredweight during April, May, June and July 1982. In the Ohio Valley market during April, May, June and July of 1982, MMI diverted 261 million pounds of milk to manufacturing plants at a loss of $138,285, or 5.3 cents per hundredweight. The cooperative indicated that its losses on marketing surplus milk in 1982 were covered by over-order prices on Class I milk.

However, the cooperative spokesman stated that its surplus disposal problem had gotten much worse during the past several months. He entered an exhibit showing that milk used to manufacture butter, nonfat dry milk and cheese in both markets as a whole during the 3-month period of November 1982 through January 1983 had increased an average of 29,000,000 pounds per month, or 23.6 percent as compared to the same period a year ago. The exhibit indicated that for the same period MMI, on the other hand, marketed 41,000,000 more pounds per month, or an increase of 57.4 percent, to manufacturing plants. The witness stated that last year all the pool manufacturing plants were operating at nearly 100 percent of capacity and one pool manufacturing plant with a capacity of 10,000,000 pounds per month closed shortly after the 1982 spring flush. He concluded that this means that the additional surplus milk this year must be marketed through nonpool plants located both within and outside the marketing areas of these two orders.

The cooperative, during its planning process for handling the surplus this spring, contacted four major cheese plants to ascertain the quantity of milk they would receive and the price they would pay during the months of April, May, June and July 1983. The witness stated that the replies indicated that they could accept quantities somwhat in excess of what they received last year from MMI. However, they said the prices they would be paying would be less than a year ago. The cooperative"s best estimate from these replies is that the prices they will pay during this 4-month period will average about $11.45 per hundredweight, which is $1.17 below the January Class III price. MMI's witness stated that its only alternative to accepting such reduced prices is to sell the milk to manufacturing plants in the upper Midwest and incur a transportation cost of as much as $2.00 per hundredweight. On the basis of cost experienced last year and the cost of marketing additional milk this, year, MMI projected that its cost to send milk to manufacturing plants during April, May, June and July of 1983 will approximate $3.7 million or 52.7 cents per hundredweight of member milk pooled in Orders 33 and 36 and used to manufacture butter, nonfat dry milk and cheese.

In these circumstances the cooperative maintains that it will be impossible for it to fulfill its obligation to the pools at the class III price without paying its members a price substantially below the blend price, unless relief is provided by amendment to the orders.

Reiter Dairy, a proprietary handler under both of the orders with pool distributing plants in Barberton, Ohio, and Springfield, Ohio, supported MMI's proposals. The witness for this handler stated that about 75 percent of its milk supply is obtained from independent producers and during the flush season of 1982 it incurred a loss of about 40 cents per hundredweight on the disposal of surplus milk due to the prices received for such milk.

Superior Dairy, Inc., a handler operating pool distributing plant under Order 36 at Canton, Ohio, supported MMI's request for relief in the disposition of surplus milk in the months of April, May, June and July 1983. The witness for Superior Dairy stated that during those months of 1981 and 1982 it was forced to dispose of surplus milk to cheese and butter plants at substantially less than the Class III order price. He stated that, at times, the price received for surplus milk was $1.50 below the Class III price. Superior Dairy mantains this surplus milk supply in the flush production months, he said, in order to have an ample supply during the remaining eight months of the year, since most of its milk supply is from independent producers.

A handler who operates a pool supply plant under Order 33, Defiance Milk Products Company, urged that, if it is necessary to adopt MMI's proposals, the price reduction should apply to all Class III products. This handler manufactures evaporated and condensed milk and its witness pointed out that these products are interchangeable for many uses with nonfat dry milk. He contended, therefore, that all Class III products should continue to be priced on the same basis. In its post-hearing brief the company modified its position by requesting that only evaporated and condensed milk be added to the product uses to be considered for a price reduction.

Tri-County Producers' Cooperative, whose 38 members ship their milk to Superior Dairy, a pool distributing plant under Order 36, opposed MMI's proposals on the basis that the proposals would result in a reduction in the uniform price paid to producers by regulated handlers. Tri-County's witness further stated that all of Tri-County's milk is taken and paid for by Superior Dairy of Canton, Ohio, and there has been no objection by Superior to taking all the milk that Tri-County Producers' Cooperative can produce and there has been no problem selling all their milk.

Dairylea Cooperative, Inc., a cooperative of approximately 3,000 members, of whom 185 are producers under the Eastern Ohio-Western Pennsylvania order, opposed MMI's proposals to reduce the price by 40 cents per hundredweight on milk used to produce butter, nonfat dry milk and cheese. The Dairylea witness contended that the proposals, if adopted, would cause a severe misalignment of prices among Federal order markets and between order and non-order manufacturing operations. Handlers buying Order 36 milk for manufacturing use sell those manufactured products in competition with handlers regulated under markets in which Dairylea members sell milk. Consequently, he stated the proposals would put non-order and other order manufacturers at a competitive disadvantage in selling on the national market for butter, nonfat dry milk and cheese.

The National Farmers Organization (NFO), who has some members that are producers under Orders 33 and 36 and who operates a pool supply plant under

Order 33, opposed the proposals to reduce the minimum order prices by 40 cents for certain manufactured dairy products for four months. NFO's witness stated that the proposals are a drastic departure from the long established policy of uniform classification among the various Federal orders. He pointed out that the market for butter, nonfat dry milk and cheese is a national market and questioned why manufacturers of these products in the Midwest and Northeast areas of the United States should have to pay the producers more for milk being used to produce these products than manufacturers using Order 33 or Order 36 milk. NFO maintained that it has not experienced the problems of being forced to sell milk at less than the Class III price like MMI has and does not anticipate they will have the problems that MMI has stated in their testimony. Thus, NFO claims it would be inequitable to NFO producers to lower the blend price to all producers by the adoption of MMI's proposals.

Several persons representing organization outside the Order 33 and Order 36 areas testified in opposition to the proposals to reduce the order prices 40 cents on milk used to make butter, nonfat dry milk and cheese. These organizations include: Farmers Union Milk Marketing Cooperative, Madison, Wisconsin; Land O'Lakes, Inc., Arden Hills, Minnesota; Wisconsin Federation of Cooperatives, Madison, Wisconsin; Trade Association of Proprietary Plants, Baraboo, Wisconsin; Wisconsin Cheese Makers Association, Madison, Wisconsin; and Beatrice Foods Company, Chicago, Illinois (on behalf of its cheese plants). In summary, the opposition testimony of these organizations covered the following points: (1) Adoption of the proposals would disrupt the national market for manufactured dairy products; (2) problems of managing reserve milk supplies are universal in the dairy industry; (3) processing margins have been adequate to justify the addition of new capacity to handle the extra milk; (4) selling milk at a loss during part of the year is likely a profitable strategy for MMI; and (5) the costs of supply balancing services should be recovered as a service charge to Class I milk handlers.

As indicated earlier, current marketing conditions in the Ohio Valley and Eastern Ohio-Western Pennsylvania markets warrant temporary amendment action to provide more equitable sharing among all producers on the markets of the cost of disposing of surplus milk. The surplus milk is processed into storable manufactured dairy products, primarily butter, nonfat dry milk, and cheese. The amount of milk being processed into these products is up by substantial amounts in each market. Under Order 33, 54.8 million more pounds of milk were processed into these products during November and December 1982 and January 1983 than during the same 3-month perioid a year ago, up from 158 million to 212.8 million pounds, or an increase of 34.7 percent. Under Order 36, 31.2 million more pounds of milk were processed into those products during November and December 1982 and January 1983 than during the same 3-month period a year ago, up from 206 million pounds to 237.2 million pounds, or an increase of 15.1 percent.

The evidence supports MMI's claims that it is not only the major balancer of milk supplies in the two markets but that indirectly it is balancing the surplus of nonmember producers. In the Ohio Valley market, milk handled by MMI and processed into butter, nonfat dry milk and cheese amounted to 167.2 million pounds during the 3-month period of November 1982–January 1983, compared to 94.3 million pounds for the same 3 months a year ago, or up 72.9 million pounds. This represents an increase of 77.3 percent. All other handlers in the market handled a combined total of 45.6 million pounds of milk that was processed into butter, nonfat dry milk and cheese during November 1982–January 1983. This was 18.1 million pounds less than for the same 3-month period a year ago, or down 28.4 percent.

Similarly, under Order 36, MMI handled 168.6 million pounds of milk used to produce butter, nonfat dry milk and cheese during November 1982–January 1983, compared to 119 million pounds during the same 3-month period a year ago. This represents an increase of 41.7 percent. All other handlers under Order 36 handled a combined total of 68.5 million pounds of milk processed into butter, nonfat dry milk and cheese during November 1982–January 1983, compared to a total of 86.9 million pounds during the same 3-month period a year ago. This amounted to a decrease of 18.4 million pounds, or 21.2 percent less. Thus, on the basis of recent market history, it is clear that MMI currently handles a disproportionate share of the increased amounts of surplus milk on the Ohio Valley and Eastern Ohio-Western Pennsylvania markets.

The record demonstrates that MMI is currently handling a disproportionate share of the total surplus milk supplies on the two markets, also. In January 1983, MMI handled 70.1 percent of the milk used in making butter, nonfat dry milk and cheese under Order 36, but it handled only 50 percent of the total milk supply on the market. In the Ohio Valley market, MMI handled 81.7 percent of the milk used to produce butter, nonfat dry milk and cheese, but handled 75.9 percent of the total milk supply on the market.

The plants that have manufactured the majority of surplus milk on these two markets are relatively few in number. Surplus milk under Order 36 is processed primarily at the following plants: A regulated butter and nonfat dry milk plant of MMI's at Orrville, Ohio; nonpool butter and nonfat dry milk plants at Somerset, Pennsylvania; Collins Center, New York; and Batavia, New York; and nonpool cheese plants at Brewster, Ohio; Middlefield, Ohio; New Wilmington, Pennsylvania; Cleveland, Ohio; and Fremont, Ohio. Surplus milk under Order 33 is processed primarily at the following plants: Two regulated butter and nonfat dry milk plants of MMI's at Dayton, Ohio; and Goshen, Indiana; a regulated butter and nonfat dry milk plant at New Bremen, Ohio; and three nonpool cheese plants at Upper Sandusky, Ohio; Wapakonita, Ohio; and Salem, Indiana.

The outlets for surplus milk under the orders are much fewer in number and more widely dispersed geographically than are the distributing plants that take about two-thirds of the producer milk supply. In the Eastern Ohio-Western Pennsylvania market, there are 39 pool distributing plants compared to the 9 manufacturing plants scattered over a 3-state area that serve as outlets for surplus milk. In the Ohio Valley market, there are 28 pool distributing plants compared to the 5 manufacturing plants in a two-state area that serve as outlets for surplus milk. In these circumstances, it is typical for farm-to-plant hauling costs to be greater on milk moved to manufacturing plants than on milk moved to distributing plants.

In these markets, it is a practice for handlers to deduct from payments to producers the cost of hauling milk from the farm to the plant of normal receipt, which for the most part is a pool distributing plant. When part of a handler's milk supply is diverted to a manufacturing plant, the hauler typically charges an extra amount when the farm-to-plant distance is significantly greater. It is not unusual, though, for the handler to absorb such extra hauling costs. Also, if a handler first receives the surplus milk at his distributing plant and then transfers it to a manufacturing plant, he incurs the cost of transferring the milk.

Handler witnesses stated that they incur hauling costs in disposing of surplus milk. In the case of MMI, the additional hauling costs incurred by the cooperative in moving milk to manufacturing outlets amounted to $545,745 in the Order 36 market and $89,087 in the Order 33 market during the period of April-July 1982. MMI projected that its additional cost of hauling milk for use in butter, nonfat dry milk and cheese during April through July 1983 will be $2,152,000 in the two markets. This is an average of 30.6 cents per hundredweight of the projected 703,800,000 pounds of milk that the cooperative expects to market to butter, nonfat dry milk and cheese plants.

MMI's projected 30.6 cents per hundredweight loss on hauling surplus milk is a cost far above the amount of farm-to-plant hauling that manufacturing grade milk plants in Minnesota and Wisconsin could reasonably be expected to incur, and whose pay prices serve as the basic formula price for Class III milk under the orders. Moreover, handlers in the Order 33 and Order 36 markets who are not balancing the seasonal surplus supplies would not incur such cost, which places MMI at a competitive disadvantage in these markets.

The other type of loss that MMI listed in its projected cost of marketing surplus milk is the difference between the prices received for milk it sells to nonpool plants and the Class III price at which it must account to the pool. During the period April-July 1982, MMI incurred a net loss of $471,688 in the Order 36 market and a net loss of $49,198 in the Order 33 market due to the differences between prices received and MMI's obligation to the pool on milk used to manufacture butter, nonfat dry milk and cheese. Its projected loss due to prices received is $1,560,000 for the two markets over the period April-July 1983. This would amount to an average of 22.1 cents per hundredweight of the 703,800,000 pounds of milk that MMI expects to move to butter, nonfat dry milk and cheese outlets during the 4-month period.

MMI's projected loss of 22.1 cents per hundredweight due to below-order prices received and 30.6 cent per hundredweight for extra hauling costs, or a total of 52.7 cents per hundredweight on all the milk it expects to move to butter, nonfat dry milk and cheese outlets, would be an inequitable burden on the cooperative since it would not be able to pay a competitive price to its members. Moreover, proprietary handlers who balance their own supplies would have to bear the losses that they expect to incur, since they would have to pay their producers the uniform prices computed under the orders.

Unless relief is provided under the orders to alleviate the financial burden handlers are faced within handling the recent surge in the volume of surplus milk on the markets, substantial inequities among handlers and among producers will clearly exist. Handlers who are performing the balancing services in the markets will undoubtedly incur costs that other handlers will not, thus detracting from the intent of the uniform class prices to handlers under the order. Cooperatives who are performing the balancing services in the market will undoubtedly incur costs that other cooperatives will not, thus detracting from the intent of the uniform prices to producers.

Since the record indicates that the burden of handling surplus milk in these markets is not uniformly distributed among all handlers, it would be appropriate to provide price relief under the orders to cover the actual losses incurred. Also, the price reduction should be on marketings of milk in only those uses that proponent stated are the normal outlets for seasonal surplus milk on these markets, namely butter, nonfat dry milk and cheese (except cottage cheese and cottage cheese curd) plants. As proposed by MMI, the order changes should apply only through July 1983.

Opposition testimony to making any changes in the orders came primarily from organizations that were concerned about the possible disruption of finished product markets. Limiting the relief to only the amount of the extraordinary losses incurred relative to the Class III price should minimize this concern since the net cost to handlers for surplus milk would be the Class III price, which is the same under all Federal orders for milk used to produce butter, nonfat dry milk and storable cheese. Moreover, the prices of these finished products are essentially floored in effect at the levels established under the dairy price support program. Also, the price reduction applies only to storable manufactured products, for which processors are not under pressure to market because the product may spoil. It does not apply to some storable products such as canned milk and blends of margarine and butter, for which there was no demonstration on the record that handlers incur losses in marketing milk for such uses. Nor does the price reduction apply to transfers of cream, for which ice cream processors may be competing with butter makers.

A further argument by opponents is that the cost of supply balancing services should be recovered as a service charge to Class I milk handlers. To some degree, the costs of balancing the markets' supplies with demand are now being assessed to distributing plant operations by means of an over-order charge by MMI on milk sold to the distributors. The witness for MMI stated that the current over-order charge would not reduce its projected loss of 52.7 cents per hundredweight below the 40-cent per hundredweight price reduction it proposed. Thus, the rate adopted herein covers only the costs the cooperative expects will not be covered by over-order charges.

With respect to opponents' argument that the problems of managing reserve milk supplies are universal in the dairy industry, the degree of the problem for MMI is greatly different this season. The volume of surplus milk being handled by MMI is up 77 percent in the Ohio Valley market and 42 percent in the Eastern Ohio-Western Pennsylvania market. This is an unusual surge in the volume of surplus milk for any cooperative to handle.

A further point advanced by opponents was that selling milk a loss during part of the year is likely a profitable strategy for MMI relative to building plant capacity to handle the milk. This could well be the case; however, it is more equitable for such losses to be shared uniformly by all producers in the markets. The losses can be expected to amount to about 15 cents per hundredweight of all producer milk.

2. *Omission of a recommended decision and the opportunity to file exceptions thereto.* The omission of a recommended decision was requested by MMI. Proponent cooperative indicated that its cost of balancing the surplus milk supplies on the markets will increase sharply beginning in April 1983. For this reason, the cooperative requested that the Department adopt its proposals on an emergency basis to insure that all producers share as soon as possible in the high cost of marketing surplus milk supplies on the markets.

Opponents of the proposals contended that proponent should have known earlier that surplus milk supplies were increasing and made its request for a hearing in time to allow the normal procedure of issuing a recommended decision.

The evidence in the record of this proceeding strongly indicates that surplus milk supplies in the two markets will be substantially larger than usual during April, May, June and July of this year. The amendments adopts herein

are in response to these marketing conditions and are for the purpose of accommodating the handling of surplus milk under unusual circumstances. Unless amendatory action is taken on an emergency basis, the opportunity to assure producer and handler equity in these markets will be lost. The normal procedure of issuing a recommended decision and providing time to file exceptions thereto will not permit the implementation of the amendments in time for them to serve their intended purpose.

It is therefore found that due and timely execution of the Secretary's function in this proceeding imperatively and unavoidably requires omission of the recommended decision and the opportunity for filing exceptions thereto.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when the Ohio Valley and Eastern Ohio-Western Pennsylvania orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

The following findings are hereby made with respect to each of the aforesaid tentative marketing agreements and orders:

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the tentative marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

Marketing Agreement and Order

Annexed hereto and made a part hereof are two documents, a *marketing agreement* regulating the handling of milk, and an ORDER amending the orders regulating the handling of milk in the Ohio Valley and Eastern Ohio-Western Pennsylvania marketing areas, which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered, That this entire decision, except the attached marketing agreement, be published in the **Federal Register**. The regulatory provisions of the marketing agreement are identical with those contained in the orders as hereby proposed to be amended by the attached order which is published with this decision.

Determination of Producer Approval and Representative Period

January 1983 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the order, as amended and as hereby proposed to be amended, regulating the handling of milk in the Ohio Valley marketing area, is approved or favored by producers, as defined under the terms of the order (as amended and as hereby proposed to be amended), who during such representative period were engaged in the production of milk for sale within the aforesaid marketing area.

Referendum Order To Determine Producer Approval; Determination of Representative Period; and Designation of Referendum Agent

It is hereby directed that a referendum be conducted and completed on or before the 30th day from the date this decision is issued, in accordance with the procedure for the conduct of referenda (7 CFR 900.300 *et seq.*), to determine whether the issuance of the attached order as amended and as hereby proposed to be amended, regulating the handling of milk in the Eastern Ohio-Western Pennsylvania marketing area is approved or favored by producers, as defined under the terms of the order (as amended and as hereby proposed to be amended), who during the representative period were engaged in the production of milk for sale within the aforesaid marketing area.

The representative period for the conduct of such referendum is hereby determined to be January 1983.

The agent of the Secretary to conduct such referendum is hereby designated to be Myron R. McKinley.

List of Subjec'₀ in 7 CFR Parts 1033 and 1036.

Milk marketing orders, Milk, Dairy products.

Signed at Washington, D.C., on: May 13, 1983.

C. W. McMillan,

Assistant Secretary, Marketing and Inspection Services.

Order[1] Amending the Orders, Regulating the Handling of Milk in Certain Specified Marketing Areas

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when each of the aforesaid orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

The following findings are hereby made with respect to each of the aforesaid orders:

(a) *Findings.* A public hearing was held upon certain proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the Ohio Valley and Eastern Ohio-Western Pennsylvania marketing areas. The hearing was held 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 (7 CFR Part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that: Final Decision—Ohio Valley and Eastern Ohio-Western Pennsylvania.

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

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the

[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area, and the minimum prices specified in the order as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order as hereby amended regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

Order relative to handling. It is therefore ordered that on and after the effective date hereof the handling of milk in each of the specified marketing areas shall be in conformity to and in compliance with the terms and conditions of each of these orders, as amended, and as hereby amended, as follows:

PART 1033—MILK IN THE OHIO VALLEY MARKETING AREA

In § 1033.60, paragraph (h) is added to read as follows:

§ 1033.60 Computation of the net pool obligation of each handler.

* * * * *

(h) With respect to milk marketed on and after the effective date of this amendatory action through July 1983, subtract an amount determined by multiplying the pounds of producer milk used to make butter, nonfat dry milk and cheese (except cottage cheese and cottage cheese curd) by 40 cents per hundredweight.

PART 1036—MILK IN THE EASTERN OHIO-WESTERN PENNSYLVANIA MARKETING AREA

In § 1036.60, paragraph (f) is added to read as follows:

§ 1036.60 Handler's value of milk for computing uniform price.

* * * * *

(f) With respect to milk marketed on and after the effective date of this amendatory action through July 1983, subtract an amount determined by multiplying the pounds of producer milk used to make butter, nonfat dry milk and cheese (except cottage cheese and cottage cheese curd) by 40 cents per hundredweight.

[FR Doc. 83-13290 Filed 5-17-83; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Parts 1120, 1126, 1132, and 1138

[Docket Nos. AO-231-A50, et al.]

Milk in the Texas and Certain Other Marketing Areas; Cancellation of Public Hearing and Order To Terminate Proceeding on Proposed Amendments to Tentative Marketing Agreements and Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Cancellation of public hearing and order to terminate proceeding on proposed rulemaking.

7 CFR Parts	Marketing area	AO Numbers
1126	Texas	AO-231-A50.
1120	Lubbock-Plainview, Texas	AO-328-A24.
1132	Texas Panhandle	AO-262-A34.
1138	Rio Grande Valley	AO-335-A29.

SUMMARY: This action cancels a public hearing and terminates a proceeding on industry proposals to amend the orders regulating the handling of milk in the marketing areas listed above. The proposals previously noticed and scheduled for hearing on June 27, 1983, at Dallas, Texas, would have merged the four marketing areas under one order and expanded the merged area to include additional territory in the States of Texas, New Mexico and Arkansas. The cooperative association proposing the 4-market merger has decided not to pursue its merger proposal and has requested that the proceeding be terminated.

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

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Hearing—Issued March 30, 1983, published April 5, 1983 (48 FR 14613).

Notice of Rescheduled hearing—Issued April 15, 1983, published April 21, 1983 (48 FR 17104).

A notice was issued on April 15, 1983, giving notice of a rescheduled hearing to be held at the Sheraton Grand Hotel, Dallas-Ft. Worth Airport, Highway 114 and Esters Boulevard, Dallas, Texas 75261 on June 27, 1983, with respect to proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the aforesaid specified marketing areas.

Associated Milk Producers, Inc., a cooperative association which represents a substantial majority of the producers supplying these markets, has requested that no further consideration be given at this time to its proposal to merge 4 southwest milk orders and that the proceeding in this matter be terminated.

Notice is hereby given, 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) that the said rescheduled hearing is cancelled and the proceeding in this matter is terminated.

List of Subjects in 7 CFR Parts 1120, 1126, 1132, 1138

Milk marketing orders, Milk, Dairy products.

Signed at Washington, D.C. on May 12, 1983.

William T. Manley,

Deputy Administrator, Marketing Program Operations.

[FR Doc. 83-13288 Filed 5-17-83; 8:45 am]

BILLING CODE 3410-02-M

Commodity Credit Corporation

7 CFR Part 1446

General Regulations Governing 1982 Through 1985 Crops Peanut Warehouse Storage Loans and Handler Operations

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice of intent to review and request for comment.

SUMMARY: This notice and request for comment concerns whether any country should be considered ineligible to receive exports of contract additional peanuts in the form of products. This issue is important because of its potential effect with respect to net outlays by the Commodity Credit Corporation (CCC) under the peanut price support loan program, the net dollar return to producers on both quota and additional peanuts and the quantities of peanuts and peanut products which can be exported. The issue was the subject of public comment in an Interim Rule published in the **Federal Register** on June 28, 1982 (47 FR 28069), and was addressed in a Final Rule published in the **Federal Register** on April 13, 1983 (47 FR 21533). Prior to the issuance of the Final Rule, peanut processors filed comments in response to the Interim Rule asking that the Department eliminate the restriction on the exportation to Canada and Mexico of contract additional peanuts in the form of peanut products. That view was

not adopted, but the issue is one which the department has determined warrants additional comments and consideration.

DATE: Comments must be received on or before July 18, 1983, in order to be assured of consideration.

ADDRESS: Written comments should be addressed to the Director, Tobacco and Peanuts Division, ASCS, P.O. Box 2415, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT: Bruce Starnes, Agricultural Stabilization and Conservation Service, 202–382–0151.

SUPPLEMENTARY INFORMATION: The restriction on the exportation of contract additional peanuts in the form of products to Canada and Mexico was implemented to protect against the possibility of contract additional peanuts being processed into products in the United States, exported to Canada or Mexico and then imported back into the U.S. in competition with quota peanuts for a share of the domestic market.

Under the two-tiered price support program—i.e., the system where there are separate support prices for quota peanuts and additional (i.e., nonquota) peanuts—additional peanuts may be use in the domestic market only if purchased from CCC loan stocks at the quota support level plus handling costs. This means that peanut products may be offered in the domestic market only if they are: (1) processed from quota peanuts; (2) processsed from additional peanut loan stocks priced at the quota support level; or (3) processed from imported peanuts brought into the United States within applicable import quota levels. Under the provisions of § 359(j) of the Agricultural Act of 1938, as amended, additional peanuts can be used only for export or for crushing into oil and peanut meal, except in those limited instances where a substitution of additional peanuts for quota peanuts is permitted by CCC regulations. The incentive for the reentry into the United States of contract additional peanuts in the form of products has become substantial. During the 1978 through 1981 crop years, prices for contract additional peanuts were near the quota loan rates, thus making it relatively uneconomical to export, process, and import the products back into the domestic U.S. market. However, recent legislation and weak world market prices, together with the fact that certain peanut products are not covered by existing import quotas, now provide a substantial potential for the reimportation into the U.S. of peanut products made from contract additional peanuts purchased at prices lower than statutory minimum U.S. domestic edible prices.

The Agriculture and Food act of 1981 amended Section 108A of the Agicultural Act of 1949 to increase the minimum quota support level to $550 per short tone for the 1982 crop and to allow potential increases in the minimum quota support level for any crop of peanuts of up to 6 percent a year from the level which was applicable to the previous crop, depending on changes in the cost of producing peanuts. The additional support level, however, continues to be based mainly on crushing value and was established at $200 per short ton for the 1982 crop. For the 1983 crop, the support level for additional peanuts has been established at $185 per short ton. Data collected by the Department has indicated that 1982 crop contract additional peanuts were purchased for export by handlers at prices ranging from $200 to $450 per ton. Those figures are $100 to $350 per ton below the quota loan rate and this price spread is substantially wider than the $20 to $50 per ton spread experienced during 1978–1981 crop years.

Seven commentators who responded to the Interim Rule requested that the restriction on the exportation of contract additional peanuts in the form of products to Canada and Mexico, be eliminated to permit additional marketing opportunities for such products. As set forth in the supplementary information filed with the final rule, it was determined that the restriction should be continued to avoid interference with quota sales and thus to avoid potential losses of the funds committed to the program. However, this issue is one which the department believes warrants additional consideration. This notice is being issued to encourage maximum public comment.

Reconsideration will permit the question to be reviewed in light of such new information as may be forthcoming concerning sales of 1982 quota peanuts, as well as any new information concerning the present levels at which peanut products made outside the United States are entering the country. Presently, the 1982 crop is still in the process of being marketed. After reviewing the comments, the Department will consider whether action should be taken to eliminate the restriction.

List of Subjects in 7 CFR Part 1446

Loan programs—agriculture, Peanuts, Price support programs, Warehouses.

Signed at Washington, D.C., on May 13, 1983.

Everett Rank,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 83-13287 Filed 5-17-83; 8:45 am]

BILLING CODE 3410-05-M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Ch. III

Semiannual Agenda of Regulations

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Publication of Semiannual Agenda of Regulations.

SUMMARY: The Federal Deposit Insurance Corporation ("FDIC") is publishing its agenda of regulations for April 1983. The agenda includes descriptions of final rules adopted during the past six months, proposed amendments to FDIC regulations, and regulations under development.

FOR FURTHER INFORMATION CONTACT: John R. Keiper, Jr., Paperwork and Regulation Control Coordinator, Office of the Executive Secretary, telephone (202) 389–4351, or other persons identified under regulations listed in the agenda. The address for all FDIC staff identified in the agenda is Federal Deposit Insurance Corporation, 550–17th Street, N.W., Washington, D.C. 20429.

SUPPLEMENTARY INFORMATION: Twice each year, the FDIC publishes an agenda of regulations to inform the public of its regulatory actions and to enhance public participation in the rulemaking process. Publication of the agendas is in accordance with both the Regulatory Flexibility Act (sec. 3, Pub. L. No. 96–354; 94 Stat. 1166 [5 U.S.C. 602]) and the FDIC statement of policy entitled "Development and Review of FDIC Rules and Regulations" (44 FR 31007, May 30, 1979; 44 FR 32353, June 6, 1979; 44 FR 76858, December 28, 1979).

Based on an assessment by the staff, none of the regulations listed in this agenda is expected to have a significant economic impact on a substantial number of small entities, except as otherwise noted. FDIC amends its regulations under the general rulemaking authority prescribed in section 9 of the Federal Deposit Insurance Act (12 U.S.C. 1819) and under specific authority granted by the Act and other statutes.

Interested persons may petition the FDIC for the issuance, amendment or repeal of any regulation by submitting a

written petition to the Executive Secretary. Petitioners should include complete and concise statements of their interests in the subject matters and reasons why the petitions should be granted.

SECTION A—PROPOSALS OUTSTANDING

Proposed amendments to regulations listed under this heading have been published for comment and have not yet been issued in final form.

1. Applications

(12 CFR Parts 303, 304 and 347)

The FDIC has proposed changes to the information and notification requirements relating to applications for branches, remote service facilities and relocations (47 FR 29554, July 7, 1982). The changes would substantially reduce burdens on applicants.

Pursuant to the Regulatory Flexibility Act, an initial regulatory flexibility analysis was prepared.

Comments were due by September 7, 1982.

Full consideration by the FDIC staff of all the issues raised by the proposal and the comments received have required a substantial amount of time. The staff anticipates that a final regulation will be submitted to the FDIC Board of Directors for approval in the near future.

For further information, contact Robert F. Miailovich, Assistant Director, Division of Bank Supervision, telephone (202) 389–4677.

2. Credit Card Agreements and Check Guarantees

(12 CFR Parts 332 and 337)

The FDIC published a proposed amendment to its regulations that would allow banks: (1) To sponsor credit card agreements with other banks and (2) to issue check gurantee cards (46 FR 31018, June 12, 1981). The proposal would provide an exemption from prohibitions in the regulations against banks guaranteeing the obligations of third parties.

Comments were due by August 11, 1981.

FDIC has postponed final action on these amendments pending the completion of an analysis of the underlying regulations Part 332 and Part 337. Amendments to Part 332 which are being evaluated may make the proposed exemptions unnecessary.

For further information, contact Janis R. Blake, Attorney, Legal Division, telephone (202) 389–4171.

3. Special Reporting Basis for Insured Savings Banks

(12 CFR Part 350)

On May 24, 1982, the FDIC proposed a new regulation that would require current value reporting of all debt and equity securities acquired by a savings bank on or after January 1, 1983, for purposes of the reports of condition and income filed with the FDIC by savings banks, and that would permit savings banks to defer and amortize gains and losses on dispositions of financial assets acquired prior to January 1, 1983 (47 FR 23743, June 1, 1982). The regulation would provide savings banks with an opportunity to restructure their asset portfolios and place a market discipline over decisions to acquire or hold investment securities.

Comments were due August 2, 1982.

The FDIC staff and staffs of the other Federal financial institutions regulatory agencies are presently engaged in a study of current value accounting applications for all financial institutions. Final action on this proposal has, therefore, been postponed until completion of the study.

For further information, contact Paul L. Sachtleben, Project Specialist, Division of Bank Supervision, telephone (202) 389–4141.

4. Delegation of Authority To Act on Merger Applications

(12 CFR Part 303)

On October 5, 1982, the FDIC published a proposed rule delegating to the Director of the Division of Bank Supervision and to the regional directors authority to approve, but not deny, merger applications that meet certain routine characteristics (47 FR 43983, October 5, 1982). The action is expected to reduce the time and costs of processing applications.

Comments were due on or before December 6, 1982.

For further information, contact Jules E. Bernard, Senior Attorney, Legal Division, telephone (202) 389–4171, or Donald F. Pfeiffer, Supervising Review Examiner, Division of Bank Supervision, telephone (202) 389–4701.

5. Management Official Interlocks

(12 CFR Part 348)

The FDIC, the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the National Credit Union Administration and the Federal Home Loan Bank Board have proposed amendments to their regulations implementing the Depository Institution Management Interlocks Act (47 FR 47406, October 21, 1982). The proposed amendments would relax certain interlock restrictions on depository institutions and clarify certain provisions of the Act.

Comments were due by December 27, 1982.

For further information, contact Pamela E. F. LeCren, Senior Attorney, or Barbara I. Gersten, Senior Attorney, Legal Division, telephone (202) 389–4171.

6. Maximum Balance Restriction on Savings Deposits

(12 CFR Part 329)

On August 2, 1982, the FDIC published proposed amendments to its regulations that would remove the $150,000 maximum balance limitation that applies to savings deposits accepted by a commercial bank from corporations, partnerships, associations or certain other organizations (47 FR 33276, August 2, 1982). The amendment was proposed to allow commercial banks to compete for funds more effectively.

Comments were due by October 1, 1982.

The FDIC Board of Directors has decided to defer action on this amendment until the Depository Institutions Deregulation Committee (DIDC) addresses the issue of eligibility for "Super NOW" accounts. The DIDC's position on this issue may impact on FDIC's action.

For further information, contact Peter Kravitz, Senior Attorney, Legal Division, telephone (202) 389–4171.

7. Payment of Interest on Deposits Situated Outside of the Continental United States

(12 CFR Part 329)

The FDIC proposed an amendment to its regulations that would subject any deposit to interest rate ceilings if the deposit may be accessed through an account maintained within the United States or the District of Columbia, or through instruction for payment by any person who is not a resident of the extraterritorial sovereignty, possession or territory where the deposit account is maintained (48 FR 6718, February 15, 1983).

Comments were due by March 2, 1983.

For further information, contact F. Douglas Birdzell, Counsel, or Barbara Messe, Attorney, Legal Division, telephone (202) 389–4171.

8. Securities of Insured Nonmember Banks

(12 CFR Part 335)

The FDIC proposed an amendment to its securities disclosure regulation in

accordance with the Securities Exchange Act of 1934, which requires that the FDIC issue regulations substantially similar to regulations of the Securities and Exchange Commission ("SEC"), or publish reasons for not doing so (47 FR 53893, November 30, 1982). The proposed amendment conforms to recent changes to SEC regulations.

Comments were due by December 30, 1982.

For information, contact Gerald J. Gervino, Senior Attorney, telephone (202) 389–4171, or Mulford H. Smith, Senior Financial Analyst, telephone (202) 389–4651.

9. Disclosure of Deposit Information

(12 CFR Parts 304 and 309)

The FDIC has proposed an amendment to its regulations that would make information regarding size and number of deposit accounts available for public disclosure. In the past, the FDIC's position has been that this type of information, if made accessible to the public, could cause financial injury to reporting banks from competing financial institutions. Confidentiality of this type of information is now unnecessary since banks are no longer required to report different classifications of deposits in detail. Since June 1982, only an aggregate total for deposit accounts with balances exceeding $100,000, the number and size of such accounts, and an aggregate total of deposit accounts with balances of less than $100,000 has been required.

Comments are due by June 3, 1983.

For further information, contact William P. Carley, Planning and Program Development Specialist, Division of Bank Supervision, telephone (202) 389–4141.

10. Prior Approval Requirement on Insider Loans

(12 CFR Part 337)

The FDIC has proposed an amendment that would eliminate the current requirement for prior approval by a bank's board of directors of all extensions of credit exceeding, in the aggregate, $25,000 made to its insiders (directors, executive officers, principal shareholders, or any related interests of such persons). Substituted in its place would be a new formula whereby prior approval would be required for (1) extensions of credit that exceed, in the aggregate, the greater of $25,000 or five percent of the bank's capital and unimpaired surplus, and (2) all extensions of credit exceeding $500,000 in the aggregate, regardless of a bank's capital and unimpaired surplus.

Comments are due by July 5, 1983.

For further information, contact Pamela E. F. LeCren, Senior Attorney, Legal Division, telephone (202) 389–4171.

11. Unsafe and Unsound Banking Practices

(12 CFR Part 337)

In its policy statement concerning the applicability of the Glass-Steagall Act to securities activities of subsidiaries of insured nonmember banks (47 FR 38984, September 3, 1982), the FDIC Board of Directors expressed its opinion that the Act does not prohibit an insured nonmember bank from establishing an affiliate relationship with, or organizing or acquiring, an subsidiary corporation that engages in securities activities. In this connection, the FDIC has proposed for public comment an amendment to its regulations that would (1) define "bona-fide" subsidiary (2) limit a bank's permissible investment in a securities subsidiary (3) require notice of intent to invest in such a subsidiary (4) limit the permissible securties activities of nonmember bank subsidiaries, and (5) place certain other restrictions on loans, extensions of credit, and other transactions between nonmember banks and their subsidiaries or affiliates that engage in securities activities.

The staff anticipates that this proposal will have "a significant economic impact on a substantial number of small entities;" therefore, a regulatory flexibility analysis has been prepared.

Comments are due 60 days after publication in the **Federal Register**. A public hearing on the proposed amendments will be held on Friday, June 17, 1983, from 9:00 a.m.–5:00 p.m., at the FDIC Building, 550 17th Street, N.W., Washington, D.C. 20429. Requests to participate should be addressed to Hoyle L. Robinson, Executive Secretary, at the above address.

For further information, contact Pamela E.F. LeCren, Senior Attorney, Legal Division, telephone (202) 389–4171.

SECTION B—POTENTIAL ACTIONS

Entries under this heading describe regulations that are either being developed or are anticipated to be developed for consideration by FDIC's Board of Directors. Entries are the result of evaluations of present circumstances; consequently, subsequent action may be taken on matters not included or may not be taken on matters included.

1. Deposit Insurance Coverage

(12 CFR Part 330)

The FDIC is developing an amendment to its regulations which would include in the definititions of "insured deposit" for insured commercial and savings banks the amount of accrued earnings (either interest or dividends).

For further information, contact Frederic H. Karr, Senior Attorney, Legal Division, telephone (202) 389–4171.

2. Disclosure of Information

(12 CFR Part 309)

The FDIC is developing an amendment that, if adopted, would remove restrictions placed on the disclosure of information to Federal financial institutions supervisory agencies. The amendment would conform FDIC's regulations to the Right to Financial Privacy Act of 1978.

For further information, contact MaryBeth Triano, Attorney, Legal Division, telephone (202) 389–4151.

3. Employee Responsibilities and Conduct

(12 CFR Part 336)

A proposed amendment, which would modify existing restrictions on transactions between FDIC employees and FDIC-supervised banks, is under development. The amendment may be subject to consultation or negotiation wiht recognized labor organizations.

For further information, contact Margaret M. Olsen, Assistant Executive Secretary, telephone (202) 389–4446.

4. Interest Rate Differential for Stock Organizations

(12 CFR Part 329)

FDIC staff is developing an amendment that, if approved by the Board of Directors, would allow a stock savings bank that conforms to the definition of "savings bank" in 12 U.S.C. 1813(g) to pay the interest-rate differential on deposits that is available to mutual savings banks. The staff may propose that a mutual savings bank that converts to a stock organization that does not conform to the definition in Section 1813(g) would retain the right to pay the differential for deposit accoutns in existence at the time of the conversion. This amendment would remove a condition that stands in the way of a mutual savings bank improving its capital base by converting to a stock organization.

For further information, contact F. Douglas Birdzell, Counsel, Legal Division, telephone (202) 389–4171.

5. Investments in Bank Service Corporations

(12 CFR Parts 303 and 304)

The Garn-St Germain Depository Institutions Act of 1982 mandates that an insured bank must request permission from its Federal bank supervisory agency to invest in bank service corporations that engate in "banking" activities. The staff is, therefore, developing a form for use by nonmember insured banks applying for such permission.

For further information, contact Jules E. Bernard, Senior Attorney, Legal Division, Telephone (202) 389–4171.

6. Termination of Insured Status

(12 CFR Part 307)

The FDIC is proposing to amend its regulation governing the notice procedures to be followed by a bank whose insured status has been terminated other than by action of the FDIC Board of Directors. This action is intended to conform FDIC's regulations to the Garn-St Germain Depository Institutions Act of 1982 (Garn-St Germain Act). The Garn-St Germain Act deleted from the Federal Deposit Insurance Act a provision that required an insured bank which assumes the deposit liabilities of another insured bank to notify the latter's depositors of the assumption. The deleted provision was the primary authority for the portion of Part 307 proposed to be eliminated.

For further information, contact MaryBeth Triano, Attorney, Legal Division, telephone (202) 389–4151.

SECTION C—FINAL RULES ISSUED FROM OCTOBER 26, 1982 THROUGH MAY 9, 1983

1. Assessment of Civil Money Penalties

(12 CFR Part 308)

The Garn-St Germain Depository Institutions Act of 1982 (Garn-St Germain Act) gives FDIC the authority to remit, modify or compromise civil money penalties for violations of any final order issued under sections 8 (b) or (c) of the Federal Deposit Insurance Act, sections 22(h) and 23A of the Federal Reserve Act and section 106(b) of the Bank Holding Company Act Amendments of 1970. The Garn-St Germain Act also gives FDIC authority to remove from office any director or officer of an insured bank who has violated the Depository Institution Management Interlocks Act. FDIC amended its regulations to implement the Garn-St Germain Act, effective March 7, 1983 (48 FR 9514, March 7, 1983).

For further information, contact James L. Meador, Senior Attorney, Legal Division, telephone (202) 389–4171.

2. Delegation of Authority to Act on Enforcement Matters

(12 CFR Parts 303 and 308)

On November 22, 1982, the Board of Directors delegated authority to the FDIC's Board of Review, the Director of the Division of Bank Supervision, the Deputy General Counsel for Open Bank Regulation and Supervision, and, where confirmed in writing, to the appropriate regional director or regional counsel, or both, to act on certain enforcement matters, including the initiation of cease-and-desist proceedings and the issuance of cease-and-desist orders (47 FR 53837, November 30, 1982). The authority to act on certain procedural motions was delegated to the Executive Secretary. The delegations became effective November 30, 1982.

For further information, contact Arthur L. Beamon, Counsel, Legal Division, telephone (202) 389–4171.

3. Delegation of Authority to the Executive Secretary

(12 CFR Part 308)

The FDIC's Executive Secretary has been delegated the authority to designate presiding officers for hearings of (1) individuals subject to suspension and removal proceedings under section 8(g) of the Federal Deposit Insurance Act, and (2) banks or individuals that have petitioned for reconsideration of denials of applications under section 19 of the Act. The Executive Secretary has been delegated additional authority to schedule hearings beyond the 30-day period for setting hearing dates after a request for a hearing has been filed. Formerly, these responsibilities were undertaken by FDIC's Board of Directors. The FDIC has amended its rules of practice and procedures to reflect the delegations (48 FR 11421, March 18, 1983).

For further information contact, Margaret M. Olsen, Assistant Executive Secretary, telephone (202) 389–4446.

4. Eligibility for NOW Accounts

(12 CFR Part 329)

The FDIC amended its regulations, effective January 11, 1983, to conform to a provision of the Garn-St Germain Depository Institutions Act of 1982 which allows all public units to maintain NOW accounts (48 FR 1182, January 11, 1983). The regulation previously prohibited establishment of NOW accounts by any public unit that was not operated primarily for religious, philanthropic, charitable, educational, fraternal, or other similar purposes.

For further information, contact F. Douglas Birdzell, Counsel, or Fredric H. Karr, Attorney, Legal Division, telephone (202) 389–4171.

5. Management Official Interlocks

(12 CFR Part 348)

Effective October 26, 1982, the FDIC amended its regulations, in conjunction with the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Home Loan Bank Board and the National Credit Union Administration, to reflect recent statutory changes (47 FR 47369, October 26, 1982). The changes provide that a management official whose service in an interlocking relationship is grandfathered under the Depository Institution Management Interlocks Act may continue such service for the duration of the ten-year grandfather period provided in the Act, notwithstanding changes in circumstances. Additionally, a management official of a depository organization and a nondepository organization may continue such service after the nondepository organization becomes a diversified saving and loan holding company.

For further information, contact Pamela E. F. LeCren, Senior Attorney, or Barbara I. Gersten, Senior Attorney, Legal Division, telephone (202) 389–4171.

6. Procedure on Applications

(12 CFR Part 303)

The FDIC has amended its regulations, effective March 9, 1983, (1) to provide that any petition for reconsideration of a denied request for relief from the requirement of making reimbursements to consumers for violations of the Truth in Lending Act (or any other requests, applications or petitions) be addressed to the FDIC's Board of Review, if the initial request, application or petition was denied by the Board of Review acting under its delegated authority, and (2) to clarify that actions by the Board of Review on enforcement matters brought under section 8 of the Federal Deposit Insurance Act are subject, upon request, to review by FDIC's Board of Directors (48 FR 9841, March 9, 1983).

For further information, contact James L. Meador, Senior Attorney, Legal Division, telephone (202) 389–4171.

7. Resumption of Management Interlocks

(12 CFR Part 348)

On January 24, 1983, FDIC amended its regulation on management interlocks to allow management officials who terminated their interlocking service because of a change in circumstances to resume such service for the duration of the grandfather period under the Depository Institution Management Interlocks Act ("Interlocks Act"). The Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Federal Home Loan Bank Board and the National Credit Union Administration have similarly amended their respective regulations. The amendment allows uninterruption of interlocks that were established prior to enactment of the Interlocks Act. The amendment became effective upon publication in the **Federal Register** (48 FR 5533, February 7, 1983).

For further information, contact Pamela E. F. LeCren, Senior Attorney, or Barbara I. Gersten, Senior Attorney, Legal Division, telephone (202) 389–4171.

8. Retail Repurchase Agreements

(12 CFR Part 329)

Effective January 3, 1983, the FDIC amended its regulation governing interest on deposits to eliminate the requirement that retail repurchase agreements ("repos") be issued for 89 days or less (48 FR 9, January 3, 1983). The amendment is in compliance with the Depository Institutions Deregulation Act of 1980, which mandates removal of interest rate ceilings by March 31, 1986.

For further information, contact F. Douglas Birdzell, Counsel, or Fredric H. Karr, Attorney, Legal Division, telephone (202) 389–4171.

By order of the Board of Directors, May 9, 1983.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 83-13270 Filed 5-17-83; 8:45 am]

BILLING CODE 6714-01-M

CIVIL AERONAUTICS BOARD

14 CFR Parts 253 and 254

[EDR-458; Economic Regulations Docket 41443*]

Notice of Terms of Contract of Carriage; and Domestic Baggage Liability

Dated: April 20, 1983.

*For administrative purposes, Dockets 40366 and 38621 have been merged into Docket 41443.

AGENCY: Civil Aeronautics Board.

ACTION: Notice of proposed rulemaking.

SUMMARY: The CAB is proposing to amend its recently issued domestic baggage liability requirements. It proposes to modify its requirement that each airline provide specific notice on all tickets of its liability limitations, to allow the option of stating the minimum liability allowed by Board rule. The Board also proposes to add baggage liability to the subjects required to be listed on the tickets under the rule allowing incorporation of contract terms by reference. In addition, the CAB is requesting comment on alternative levels ($1,000 and $1,250) of minimum airline baggage liability. Pending the completion of this rulemaking, the effective date of the new rules has been stayed and the previous rules remain in effect. This action is in response to a petition by certain Members of the Air Transport Association to repeal the domestic liability rule prior to its effective date.

DATES: *Comments by:* June 17, 1983.

Comments and other relevant information received after this date will be considered by the Board only to the extent practicable.

Requests to be put on the Service List: May 25, 1983.

The Docket Section prepares the Service List and sends it to each person listed on it, who then serves comments on others on the list.

ADDRESSES: Twenty copies of comments should be sent to Docket 41443, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428. Individuals may submit their views as consumers without filing multiple copies. Comments may be examined in Room 711, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. as soon as they are received.

FOR FURTHER INFORMATION CONTACT: Joanne Yancey Hitchcock, Office of the General Counsel, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428; 202–673–5442.

SUPPLEMENTARY INFORMATION:

Background

In two recent rulemakings, the Board adopted final rules governing domestic baggage liability (14 CFR Part 254) and notice of terms of contracts of carriage (14 CFR Part 253).

In EDR–438, 47 FR 5232, February 4, 1982, the Board proposed three alternatives with respect to baggage liability: (1) eliminate all regulation of baggage liability, (2) retain only the $750 limit, and (3) codify the most significant elements of the Board orders governing baggage liability. In response to the notice of proposed rulemaking, sixteen formal comments were filed by airlines, trade associations, law firms and a chamber of commerce. Nearly 100 individuals also wrote letters expressing their opinions.

Based on the comments received, the Board adopted Part 254 (ER–1305, 47 FR 52987, November 24, 1982). That final rule simplified and codified the rule for airline baggage liability. It provided that airlines in interstate and overseas air transportation may not limit their liability to less than $1,000 per passenger for loss, damage, or delay in the carriage of passenger baggage. In addition, carriers were required to provide written notice to passengers on or with their tickets concerning any limitation on baggage liability, including rules for fragile or perishable goods, and the availability, if the carrier provides it, of excess valuation insurance coverage. Although the rule was originally scheduled to become effective January 1, 1983, to coincide with the end of the Board's domestic tariff authority, the effective date was changed to February 22, 1983, in response to a petition by the Air Transport Association.

During the same period, the Board conducted a rulemaking proceeding that considered whether to set disclosure requirements for airlines that incorporate by reference some terms of their contracts of carriage. In EDR–444, 47 FR 28681, July 1, 1982, the Board proposed to include baggage liability within the notice of incorporated terms that carriers would provide under this part. The Board did not adopt that aspect of the proposal in the final rule (14 CFR Part 253, ER–1302, 47 FR 52128, November 19, 1982, effective January 1, 1983), because domestic baggage requirements were being handled in a separate proceedings, and as noted above, the new baggage rule required direct notice on the tickets of a carrier's baggage liability limitations.

On December 17, 1982, certain members of the Air Transport Association (ATA) petitioned the Board to repeal the new domestic baggage liability rule prior to its effective date. ATA argued, first, that the notice requirement was not practical, and second, that the Board failed to give adequate notice and an opportunity to comment before raising the minimum liability limitation from $750 to $1000. In addition, its also alleged that the Board did not fulfill the requirements of the Administrative Procedure Act in adopting the notice provisions in Part 254. Answers were filed by Associated Travel Nationwide (ATN) and the

Aviation Consumer Action Project (ACAP). The two main issues will be discussed separately. All comments filed in response to this NPRM will be in Docket 41443. Relevant materials from Dockets 40772, 40366 and 38621 will, however, be considered in this proceeding.

Notice Requirements

ATA argued that, "the requirement for specific ticket notice on general liability limits, on rules for fragile and/or perishable items and on excess valuation coverage presents extremely serious problems with respect to standard industry ticket stock and carrier-issued tickets that involve interline transportation." It stated that since uniform liability limits are not envisioned or permitted by Part 254, travel agents and airlines must include additional, specific information concerning liability limitations for each airline on every ticket. According to ATA, the rule results in undue burden and undermines the efficiencies of universal ticket stock.

ATA listed a number of practical problems. First, travel agents and air carrier personnel writing interline tickets would need to know the liability limits, and any other applicable rules, of well over 100 air carriers. If ticket stuffers were used, each ticketing location would have to keep an adequate inventory on hand for each carrier represented. ATA also believed that if there were an error, the transporting carrier would be bound by the error or omission. ATA, therefore, asked that baggage liability limits be among those areas incorporated by reference pursuant to § 253.5(b).

In support of its petition, ATA noted that baggage liability information is now available from three different sources. It has already voluntarily included the following notice on its standard ticket stock: "Incorporated terms may include, but are not restricted to * * * 2) Limits on liability for baggage, including fragile or perishable goods, and the availability of excess valuation coverage." Second, under § 253.5(b), detailed information must now be available at all U.S. ticketing locations. According to ATA, their publication "Conditions of Carriage—Summary of Incorporated Terms," provides such information. Finally, under § 253.4(c), carriers are required to provide full text copies of their terms that are incorporated by reference to passengers on request.

ATA also argued that the CAB has taken no action to correct the mandatory ticket notice contained in § 221.176. Since ATA filed its petition, the Board has acted by adopting a conforming amendment (ER-1310, 48 FR 277, January 4, 1983). ER-1310 eliminated all Board-mandated language on tickets and countersigns concerning domestic baggage liability, so that carriers would remain free to provide notice as they choose. The effective date of this rule has not been stayed.

Finally, ATA argued that the notice of proposed rulemaking contained no discussion of air carriers' duty to provide notice to passagers in the area of baggage liability. It stated that contrary to the requirements of the Administrative Procedure Act, the Board failed to provide adequate notice, opportunity to comment and did not provide a statement of basis and purpose that would enable a reviewing court to evaluate the reasonableness of the regulation.

Associated Travel Nationwide (ATN) supported ATA's petition. It stated that "the only possible means of accommodating the Board regulations would be the insertion of individual carrier stuffers in each ticket or a requirement that agents fill in a blank on each ticket." It argued that the notice requirement is extremely burdensome to travel agents and that implementation would be almost impossible.

The Aviation Consumer Action Project (ACAP) opposed ATA's petition to allow airlines to incorporate their baggage rules by reference. ACAP argued that the current requirement in § 254.4 not only gives passengers much better notice than would be provided through incorporation by reference, but will help the marketplace work by highlighting an important area of service competition. It stated that incorporation makes no sense in such an important consumer area, given the fact that there have always been a large number of complaints in this area, and that inadequate notice may result in substantial loss for passengers. ACAP further argued that by leaving the notice requirements as they are, the Board would be able to compare the adequacy of the notice given by airlines under the common law with the adequacy of notice given by airlines under Part 253. ACAP rejected ATA's argument that ticket stuffers will be required, since carriers have been able to prepare a uniform notice for subjects on which carrier practices vary. Finally, it argued that the burden of providing notice to passengers of the baggage rules is outweighed by the benefits to passengers of having a more complete, readily accessible notice.

At the time it issued the new baggage rule, Part 254, the Board did not fully consider the consequences of the notice requirements of the rule. They were not greatly changed; the carriers had been providing specific notice of baggage liability limitations for years, pursuant to a requirement contained in the rules dealing primarily with tariffs, 14 CFR 221.176. Section 221.176 had specified the actual notice to be provided, including the amount. This relieved carriers from any discretion in the matter, and the notice could therefore be printed routinely on all uniform ticket stock.

The new Part 254 would require carriers to state their limitations as before, but does not specify what those limitations are to be. The intent is for carriers to develop their liability limitations individually, under the influence of competitive forces. The difference, it seems, is crucial. Now the routine printing of a uniform baggage liability limit on ticket stock by a central agency such as ATA or the Air Traffic conference, would have anticompetitive implications. Thus, under Part 254 as it stands each carrier must separately print and distribute to all ticketing locations—all travel agencies—its own version of its baggage liability limits, to be included with each ticket for that carrier's service. As ATA pointed out, this would levy significant costs on travel agencies, and on the writing of each ticket, and would undermine the uniform ticket stock system that was sought to be preserved by the issuance of the incorporation by reference of terms of contract rule, 14 CFR Part 253.

The Board tentatively finds that such costs would be unjustified, and hereby is proposing to amend both Parts 253 and 254 to allow carriers to incorporate their baggage liability terms by reference. Paragraph (b)(1) of § 253.5 would be amended to add limits on air carriers' liability, including those for fragile or perishable items, and the availability of excess valuation insurance, to the list of items on which passengers are advised to ask for information at their ticketing location. In Part 254, § 254.4, requiring specific notice on or with each ticket of baggage liability limitations, would be amended to allow either of two optional forms. The first would be a statement of the carrier's actual monetary baggage liability limitation. The second would be the following statement: "Federal rules require any limit on an airline's bagage liability to be at least $1000 per passenger, except for flights on small aircraft where lower limits may apply. Airlines may have higher limits." The statement in the second option could be printed on standard ticket stock, thus avoiding the excessive costs of individualized ticket notice in the case

of sales by travel agents, while still alerting passengers to their possible exposure in the case of baggage losses. The Board is of the opinion that these modifications to the notice requirements will solve potential practical problems as well as giving interested persons additional opportunity to comment on this issue.

The likelihood of a standardized notice on uniform ticket stock has also brought to the Board's attention the possibility that passengers might be misled as to their loss exposure when flying on small aircraft. The Board has until now not imposed any baggage liability requirements on air taxis. Passengers may, however, use a commuter air taxi as part of a trip that is ticketed on standard stock, which contains the notice described above. The language at the end of the notice is designed to alert passengers to the fact that small-aircraft flights may involve lower baggage liability limits.

Many commuters have liability limits below the Board-prescribed minimum. When a bag is lost during interline travel involving large and small aircraft, it is often difficult for the passenger to establish which airline is at fault and therefore which liability limit applies. This variance in liability limits is confusing and may result in unfairness to passengers.

The Board would like to receive comment on whether the proposed notice would be sufficient to warn the public about possible lower baggage liability limits on small-aircraft segments of multisegment trips. In the alternative, the Board is proposing to require any carrier, regardless of aircraft size, to observe the minimum baggage liability specified by the Board for large aircraft, for all flight segments included on the same ticket with a large-aircraft segment. Under this alternative, any carrier using small aircraft would have to use separate ticketing in order to have a baggage liability limit lower than the Board's minimum, thus avoiding the misleading effect of the statement appearing on regular ticket stock.

Liability Limitation

ATA argued that the Board did not meet the requirements of the Administrative Procedure Act (APA) in raising the minimum liability limitation from $750 to $1000. It stated that the Board failed to give adequate notice that it was considering raising the liability limitation, that as a result no ATA member addressed such a possibility in its comments to the rulemaking, and that the final rule failed to incorporate "a concise general statement of the basis and purpose" concerning the change. ATA argued that the Board was limited in its final rule to choosing among the three alternatives presented for comment, and that if additional issues remain, that they should be the subject of separate rulemaking initiatives.

ACAP argued that the public was given adequate notice of the $1000 limit. It stated that the issue of the reasonableness of a $1000 limit was directly at stake in the proceeding, and that if the airlines felt that the Board was acting correctly in dropping the $1000 limitation, they should have commented, just as ACAP commented that the Board was acting incorrectly. Accordingly to ACAP, the baggage rulemaking offered airlines a second chance, in addition to Order 80–6–133, to express their views.

The Board believes that it has fully complied with the requirements of the APA, contrary to ATA's assertions. Previous limits were embodied in orders, not rules, and the show-cause proceeding to raise the limit to $1,000 was precisely analogous to a notice of proposed rulemaking under 5 U.S.C. 553. Many answers were filed in response to that show-cause order. The appropriate limitation level was noted in the NPRM and was logically a central feature of the proposed alternative rules. However, because the Board is inviting additional public comment on the notice issue, it is taking this opportunity to lay to rest the issue raised by ATA. The Board has suspended the effectiveness of Part 254, as noted below, and hereby invites interested persons to submit data, views, and arguments on the appropriateness of various liability limitations.

As noted in the NPRM and final rule, the Board is of the opinion that an increase in the minimum liability limitation is called for because of inflation over the last 6 years. In the orders setting the $750 baggage liability limitation (Orders 75–3–18 and 77–2–9), the Consumer Price Index was relied upon together with data concerning actual baggage claims to determine the approximate limit. The Board does not have precise data upon which to base a minimum liability level, because a new reporting requirement would have been needed in order to collect such data, while the Board's emphasis since adoption of the Airline Deregulation Act has been on reducing reporting requirements. The criteria used by the Board in 1976 and 1966 did not establish a strict correlation between increases in the CPI and increases in the minimum baggage liability limit. The Board had increased the minimum baggage liability by approximately two-thirds of the increase in the CPI from 1966 to 1977 when we last raised the limit to $750. Since the last increase in the baggage liability limitation from $500 to $750 became effective in May 1977, the Consumer Price Index for all Urban Consumers (US City Average; all items) has increased at an annualized inflation rate of 8.875 percent. The $1000 minimum would be about two-thirds of the increase in the CPI from 1977 to 1982. Overall, this would represent an annual inflation rate of about 5% since the $750 level was adopted in May 1977. The Board also proposes and requests comment on a minimum baggage liability of $1250 per passenger since, if the limitation were raised to reflect this actual rise in prices to December 1982, it would be $1214. Adding 3% in consideration of the current inflation rate and a projected effective date in mid-1983 would be $1250.

Excess Valuation Insurance

In ER–1305, the Board did not include a requirement that carriers offer excess valuation insurance. The rule merely required air carriers to give notice to passengers of the availability of such coverage, by written material on or with the ticket. The Board had assumed that most carriers would continue to make this insurance available. As the Board noted in the *Baggage Liability Rules Case*, 45 CAB Reports at 195, "[b]y providing a choice of rates with varying degrees of liability based on declared value, the basic limitation of liability is rendered legal, and is not considered an attempt by a carrier to free itself of responsibility for its own negligence." We assumed that it was in carriers' self-interest to provide such coverage in order to avoid potential unlimited liability under the common law.

Upon reconsideration, we are concerned that the absence of a requirement for excess valuation insurance may cause inconvenience or hardship for some travelers. Furthermore, in adopting a domestic baggage rule, the Board is setting a Federal standard and preempting States from regulating in the subject area. If carriers do not offer excess valuation coverage, passengers may not be able to recover for losses beyond the basic liability limitation offered by the carrier, and have no opportunity to protect themselves.

The Board is therefore proposing to add a requirement that carriers subject to Part 254 offer passengers the opportunity of purchasing excess valuation coverage, and provide conspicuous notice that it is available.

The Board recognizes that, as proposed, the requirement for excess

valuation insurance does not provide specifics: where and how it should be offered, in what amounts, with what coverage or exclusions, and at what cost. The practices of most carriers appear to be satisfactory in these aspects. The Board would at this point prefer, if possible, to assume that, under the general requirement, all carriers will establish reasonable practices, without the need for detailed requirements. The Board could, of course, monitor industry practices, attempt informally to have airlines modify unsatisfactory provisions, and if necessary change its rules at a later time. Comments are requested on the desirability of this approach.

Comments are also requested on how the availability of excess valuation insurance can be made compatible with expedited check-in procedures, such as curbside check-in.

Effective Date of Part 254

In a related rulemaking (ER–1305A, 48 FR 6961, February 17, 1983), the Board stayed the February 22, 1983, effective date of Part 254. In the interim, the baggage orders that currently govern domestic baggage liability will remain in effect, without any of their tariff-filing requirements. ATA's petition and the answers in response to it have raised important questions concerning the practicality of the notice requirement and the need for additional public comment in general. Rather than implement the rule as scheduled and then face the possibility of changes shortly thereafter, the rule has been stayed pending completion of this rulemaking.

The Board is setting a 30-day comment period in this rulemaking. There already have been lengthy rulemaking proceedings on both domestic baggage liability and incorporation by reference. Many comments were filed on most of the major issues by the industry, the public and other interested persons. The Board wishes to resolve these questions as soon as possible so that airlines and the public can adjust to the new post-tariff system.

Initial Regulatory Flexibility Analysis

Under the Regulatory Flexibility Act, Pub. L. 96–354, the Board concludes that this rule, if adopted, may have a significant economic impact on travel agents. There are about 20,000 travel agents, most of whom are small businesses. The effect of this rule would be to relieve travel agents of the burden of having to maintain different ticket notices for each carrier for which they sell tickets.

This rule may have a substantial economic impact on a substantial number of small air carriers. Under one proposal, small carriers that interline with other carriers using large aircraft would be required to provide written notice to passengers on or with their tickets of any monetary limitation for baggage limitation, or the Board-mandated language. Air taxis are presently required to post a sign stating their baggage liability limits. Small interlining airlines that chose to use the Board-mandated notice would have to have new ticket notices or use the ticket stock of the airline using large aircraft.

If the alternative proposal to extend the substantive requirements of Part 254 is adopted, there may be an additional economic impact on small carriers. The Board presently does not regulate the baggage practices of air taxis, except for the general notice requirement. If small carriers are held to the Part 254 levels, it might result in significantly higher liability limitations and higher claims. Because these carriers may choose to continue to offer a lower limitation for their on-line operations, some carriers may have a two-tier rule, depending on the type of operation. Such a system would require the printing and distribution of two types of notices. If a small carrier chose not to interline in order to avoid the higher limit, it might result in fewer passengers and increased costs per passenger.

Passengers in small communities might be affected if small carriers choose not to interline and therefore could not offer joint fares. Under the present system, many carriers offer interline passengers a joint fare that is less than the sum of the local fares. Curtailment of interline service might also result in passengers being required to make two or more reservation transactions and to pick up their luggage at connecting points.

The need, objective, and legal basis for this rule and the reporting and recordkeeping requirements involved are described above. It would not duplicate, overlap, or conflict with other Federal rules.

List of Subjects in Parts 253 and 254

Advertising, Air carriers, Air transportation, Claims, Consumer protection, Freight, Law, and Travel.

All Members concurred and Members Bailey and Morales filed the following separate statements:

Statement of Member Elizabeth E. Bailey:

In this order the Board is proposing that airlines be required to make excess valuation insurance available to their passengers. I have some doubts about the need to regulate baggage liability; even without government intervention carriers have incentives to exercise reasonable care in the handling of passenger baggage and to insure passengers against possible loss. However, given the Board's determination that carriers must offer a minimum amount of insurance, a decision to require excess valuation insurance is unnecessary. Moreover, the Board is placing itself in the difficult position of having to rule on the details of the insurance including the reasonableness of the amounts offered and the manner in which it is sold. In these cases, the Board is intruding in an area where it doesn't belong and in a manner which may have the effect of limiting remedies already available to passengers in the courts. The more intimately involved the Board becomes in spelling out the details of insurance sales—including levels and manner of sale—the less likely courts will be to interpose their own judgment on the reasonableness of carrier practices when called upon to settle disputes in this area.

If the Board is concerned with the availability of excess valuation insurance, it should merely require that carriers make such insurance available and not require carriers to offer any minimal level of baggage liability insurance. This will have the effect that carriers will determine not only the rates of any excess valuation insurance, but to determine the level to which they will insure lost or damaged baggage if insurance is not purchased.

Such a system will give carriers the greatest degree of flexibility in determining their baggage liability and insurance. There is every reason to believe that this will lead to a better system of protection than the ad hoc framework the Board is attempting to fashion.

Elizabeth E. Bailey.

Statement of Member Diane K. Morales

I believe that a minimum airline baggage liability is both the best and the least regulatory way to ensure that air carriers can reasonably limit their liability and to ensure that consumers have the minimum necessary protection for loss, damage or delay in the carriage of their baggage by airlines.

Consumers should take many self-help measures to protect themselves against baggage losses. They do not have to pack valuables in checked luggage. They can make sure luggage is properly marked with identification tags and destination tags. They can check in early enough to ensure that baggage will make it on to their intended flight and that enough time is available between connections or stopovers to ensure transfer to successive flights. These important and readily available self-help measures convince me that consumers can and should bear much of the responsibility for preventing loss or damage to or delay in receiving their baggage.

However, even using these precautions, there is a point after which the consumers lose the ability to protect their luggage. It is possible that in the absence of government regulation in this area, carriers would have unlimited liability in the baggage area. Besides the constant threat of lawsuits, the removal of federal restrictions invites states

to step in and impose new and possibly more restrictive regulations for airline liability. On the other hand, I think sound public policy requires us to provide a liability limitation so that some basic monetary recovery can be obtained, but that amount should truly be a minimum. The Board Members do differ on what that basic level should be. I initially preferred maintaining the current level of $750. However, given the Board's proposal to consider increases to this level, my tentative preference is to find that $1,000 is the appropriate minimum and is in keeping with the decisional standards established in previous Board proceedings. I do not believe our goal is to require absolute liability on the part of the carrier or to provide full monetary recovery for whatever may have been inappropriately packed in baggage.

The history of the Board's baggage liability regulations reveals that in years past, carriers have in fact attempted to set liability limits too low for loss or damage of, or delay to passenger baggage. The minimum liability amount has served over the years as a guarantee to consumers that, if they can *prove* their losses to a carrier or, if necessary, to a court, they will not be denied some modest monetary recovery because carriers had in advance unreasonably limited the responsibility they assumed for passenger baggage. The minimum liability amount does not guarantee a monetary settlement. Consumers have always had and will continue to have to prove their damages under the rule described in this Notice of Proposed Rulemaking. I do not believe that the Board is interfering with any remedies now available to consumers and to carriers in the courts.

My concerns about the availability of excess valuation insurance are many. Aside from the minimum baggage liability provided by carriers, it has been suggested that consumers who desire to insure their baggage for a higher amount should have guaranteed access to excess valuation insurance. For the past several years many carriers have voluntarily offered this insurance to customers who specifically requested it. It has recently been argued that all carriers should be required to promote and sell excess insurance either instead of or in addition to the minimum liability insurance.

I believe that, indeed, excess valuation insurance should be available to those passengers who require it; however, I am not now convinced that the burden should be on all carriers—majors, nationals, and commuters—to provide it. Such a proposal may tend to upset the fair balance of burdens the Board has weighed for carriers and consumers.

I wonder whether the administrative and operational complications of high volume purchases of excess valuation insurance may not exceed the benefits. Airlines presently require passengers to arrive at the airport at some specified period before departure time. Entitlement to the non-smoking seating and the denied boarding compensation is also based on early arrival to meet a carrier's check-in time. If excess baggage insurance is an added step to the purchase of tickets or express baggage lines at the airline counter, carriers will have additional administrative expense, especially personnel, to move the passengers along quickly. Carriers currently have an efficient system for processing passengers. Passengers who purchase and receive their tickets before the date of travel are able to stop in an express line to check their baggage, pass through a security point, and pick up their boarding pass at the gate.

Rather than interrupt this process, it is possible that excess valuation insurance can be purchased by alternative means. Passengers requiring additional baggage insurance often have personal homeowners insurance policies to cover these needs. Also, companies such as American Express offer a $3.00 insurance policy (with those tickets charged on American Express) for excess life insurance and $1,250 baggage liability insurance. In airports, passengers may purchase at concession stands additional life insurance before boarding any airline. Perhaps excess baggage insurance would continue to be offered voluntarily by carriers and/or insurance companies at the check-in counter or at concession stands as additional life insurance is sold. There are surely additional alternatives not mentioned here. I look forward to reading all comments the Board receives on the question of excess valuation insurance and whether and how it should be administered.

Again, I am seeking both the best and least regulatory way to ensure that air carriers can reasonably limit their liability and to ensure that consumers have the necessary protection in the carriage of the luggage by airlines.

Diane K. Morales.

PART 253—[AMENDED]

Accordingly, the Civil Aeronautics Board proposes to amend 14 CFR Chapter II as follows:

1. In Part 253, *Notice of Terms of Contracts of Carriage*, paragraph (b)(1) of § 253.5 would be revised by adding a reference to baggage terms so that it would read:

§ 253.5 Notice of incorporated terms.

* * * * *

(b) * * *

(1) Limits on the air carrier's liability for personal injury or death of passengers, and for loss, damage, or delay of goods and baggage, including fragile or perishable goods; and the availability of excess valuation insurance coverage.

* * * * *

2. Part 254, *Domestic Baggage Liability*, would be revised to read as follows:

PART 254—DOMESTIC BAGGAGE LIABILITY

Sec.

254.1 Purpose.
254.2 Applicability.
254.3 Definitions.
254.4 Carrier liability.
254.5 Excess valuation insurance.
254.6 Notice requirement.

Authority: Secs. 204, 403, 404, and 411, Pub. L. 85-726, as amended, 72 Stat. 743, 758, 760, 769; 49 U.S.C. 1324, 1373, 1374, 1381.

§ 254.1 Purpose.

The purpose of this part is to establish rules for the carriage of baggage in interstate and overseas air transportation. The part sets permissible limitations of air carrier liability for loss, damage, or delay in the carriage of passenger baggage and requires air carriers to provide certain types of notice to passengers.

§ 254.2 Applicability.

This part applies to air carriers with respect to charter or scheduled passenger service in interstate or overseas air transportation.

§ 254.3 Definitions.

"Large aircraft" means any aircraft designed to have a maximum passenger capacity of more than 60 seats.

§ 254.4 Carrier liability.

In any flight segment using large aircraft, an air carrier shall not limit its liability for provable direct or consequential damages resulting from the disappearance of, damage to, or delay in delivery of a passenger's personal property, including baggage, in its custody to an amount less than $1000 for each passenger.

Alternative Proposals for § 254.4: 1. After the opening phrase "In any flight segment using large aircraft," the following language would be added: "or on any flight segment that is included on the same ticket as another flight segment that uses large aircraft,".

2. Instead of the figure "$1000" in the above section, the figures "$750" or "$1250" would be substituted.

§ 254.5 Excess valuation insurance.

In any flight segment subject to this part, an air carrier shall make available excess valuation insurance.

§ 254.6 Notice requirement.

For any flight segment using large aircraft, or that is included on the same ticket as another flight segment that uses large aircraft, an air carrier shall provide to passengers, by written material included on or with its ticket, the notices set forth in paragraphs (a) and (b).

(a) Either—

(1) Notice of any monetary limitation on its baggage liability to passengers; or

(2) The following notice: "Federal rules require any limit on an airline's baggage liability to be at least $1000 per passenger, except for flights on small

aircraft where lower limits may apply. Airlines may have higher limits."

(b) Conspicuous notice that excess valuation insurance is available to cover any flight segment subject to this part.

(Secs. 204, 403, 404, and 411, Pub. L. 85-726, as amended, 72 Stat. 743, 758, 760, 769; 49 U.S.C. 1324, 1373, 1374, 1381)

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 83-13464 Filed 5-17-83; 8:45 am]

BILLING CODE 6320-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 275

[Rel. No. IA-860, File No. S7-974]

Proposed Amendments to Investment Adviser Requirements Concerning Agency Cross Transactions for Advisory Clients

AGENCY: Securities and Exchange Commission.

ACTION: Proposed amendments to rule.

SUMMARY: The Commission is publishing for comment proposed amendments to a rule under the Investment Advisers Act of 1940 which deems registered investment advisers who effect agency cross transactions for advisory clients pursuant to blanket consents to be in compliance with the Advisers Act if they follow the procedures specified in the rule. The amendments would reduce the cost and burden to advisers of complying with the rule in effecting agency cross transactions for clients by eliminating the requirement that the client's written consent to such transactions be revewed at least annually. In view of the other protections of the rule, the Commission believes that the benefits to investment advisory clients of requiring annual renewals may not justify the burden to investment advisers in obtaining them.

DATES: Comments should be received on or before June 28, 1983.

ADDRESSES: Comments should be submitted in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Stop 6-9, Washington, D.C. 20549. Comment letters should refer to File No. S7-974. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Mary S. Champagne, Special Counsel (202) 272-2079 or Arthur E. Dinerman, Esquire (202) 272-3021, Office of Regulatory Policy, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, N.W., Stop 5-2, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: Rule 206(3)-2 [17 CFR 275.206(3)-2] under the Investment Advisers Act of 1940 ("Advisers Act") [15 U.S.C. 80b-1 et seq.] [1] provides a method for a registered investment adviser or a registered broker-dealer controlling, controlled by or under common control with such an adviser, to effect agency cross transactions [2] for an advisory client in compliance with Section 206(3) of the Advisers Act [15 U.S.C. 80b-6(3)]. As here pertinent, that section generally prohibits an investment adviser from effecting an agency cross transaction involving a client's account without disclosing to the client in writing before the completion of such transaction the capacity in which he is acting and obtaining the client's consent to the transaction.

Rule 206(3)-2 deems a registered adviser to be in compliance with Section 206(3) if fhe adviser obtains written blanket client consent to agency cross transactions for a period not to exceed one year, provided other conditions specified in the rule are met. Under the rule, the investment adviser must make full written disclosure to the client that, with respect to agency cross transactions, the adviser or other person relying on the rule will act as broker for, receive commissions from, and have a potentially conflicting division of loyalties and responsibilities regarding, both parties to such transactions. In addition, the adviser or other person relying on the rule must send to the client at or before completion of each agency cross transaction a written confirmation containing certain specified information and offering to furnish specified additional information, and must send to each client, within 30 days prior to the expiration of the blanket consent, a written disclosure statement identifying the total number of transactions during the period and the total amount of all commissions or remuneration received by the adviser and any person relying on the rule in connection with agency cross transactions during the period. Finally, the rule requires that each written disclosure and confirmation required by the rule include a conspicuous statement that the client's blanket written consent can be revoked at any time by written notice from the client to the investment adviser of any other person relying on the rule.[3]

Prior to adoption of Rule 206(3)-2, investment advisers as a practical matter were precluded from entering into agency cross transactions involving client accounts because the requirement of Section 206(3) of the Advisers Act that the adviser make written disclosure to the client and obtain the client's consent prior to completion of each such transaction imposed delays which made expeditious execution of such transactions generally impossible. Rule 206(3)-2 is premised on the view that agency cross transactions can be of benefit to advisory clients and should be permitted, provided there are adequate safeguards to protect advisory clients from the potential for abuse which exists when the adviser acts on behalf of both parties to the transaction. The rule generally has provided an effective method to permit such transactions consistent with investor protection.

It appears, however, that the condition of the rule which requires the adviser to obtain express written renewal of the client's blanket consent at least annually may impose unwarranted administrative burdens on advisers. The Commission has been informed by a number of registered advisers which effect agency cross transactions for clients in reliance on the rule that, although practically all clients who give consents to such transactions renew those consents annually, the process of obtaining such renewals often involves numerous mailings and subsequent phone calls to clients. To the extent that obtaining annual renewals is costly and time consuming to advisers, the Commission believes that the benefits to clients of requiring annual renewals may not justify the burdens to advisers in obtaining them, in light of other provisions of the rule designed to protect advisory clients. Specifically, the

---

[1] Investment Advisers Act Release No. 589, June 1, 1977 [42 FR 29300].

[2] Under the rule, an agency cross transaction is defined to mean "a transaction in which a person acts as an investment adviser in relation to a transaction in which such investment adviser, or any person controlling, controlled by or under common control with such investment adviser, acts as broker for both such advisory client and for another person on the other side of the transaction".

[3] Rule 206(3)-2 expressly does not apply to a transaction if the investment adviser, or the adviser and any person controlling, controlled by or under common control with the adviser, recommended the transaction to both the seller and the purchaser. Nor does the rule relieve an adviser, or other person relying on the rule, from acting in the best interests of the client with respect to the transaction or relieve the adviser or other person from any disclosure obligation imposed by Section 206 [1] [15 U.S.C. 80b-6(1)] or [2] [15 U.S.C. 80b-6(2)] of the Advisers Act or by other applicable provisions of the federal securities laws.

requirements that: (1) Certain written disclosures be made to the client prior to obtaining the client's blanket consent, (2) confirmations of each transaction be sent to the client, (3) a summary of such transactions be furnished periodically, and (4) each writing sent to the client include conspicuous disclosure that the client's written consent to agency cross transactions can be revoked by the client at any time, would appear to protect adequately the interests of advisory clients with respect to such transactions. Accordingly, the Commission proposes to amend paragraph (a)(i) of Rule 206(3)–2 to delete the limitation that a client's written blanket consent to agency cross transactions authorize such transactions only for a period not to exceed one year. In addition, the Commission is proposing a conforming amendment to paragraph (a)(iii) of the rule. That paragraph, which now requires the adviser to furnish to the client, within 30 days of the expiration of the client's consent, certain summary information relating to agency cross transactions entered into during that period, would be amended to require that such summary information be furnished to the client at least annually.

The Commission also proposes to amend the rule by redesignating the paragraphs within paragraph (a) for the purpose of clarifying any possible ambiguity resulting from the present format.

Regulatory Flexibility Act

The Chairman of the Commission has certified that the proposed amendments, if adopted, would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 17 CFR Part 275

Investment advisers, Reporting and recordkeeping requirements, Securities.

Text of Proposed Amendment

PART 275—RULES AND REGULATIONS, INVESTMENT ADVISERS ACT OF 1940

It is proposed to amend Part 275 of Chapter II of Title 17 of the Code of Federal Regulations under the Investment Advisers Act of 1940 as follows:

By revising paragraph § 275.206(3)–2 to read as follows:

§ 275.206(3)–2 Agency cross transactions for advisory clients.

(a) An investment adviser registered under Section 203 of the Act (15 U.S.C. 80b–3), or a person registered as a broker-dealer under Section 15 of the Securities Exchange Act of 1934 (15 U.S.C. 78o) and controlling, controlled by or under common control with an investment adviser registered under Section 203 of the Act, shall be deemed in compliance with the provisions of Section 206(3) of the Act (15 U.S.C. 80b–6(3)) in effecting an agency cross transaction for an advisory client, if:

(1) The advisory client has executed a written consent prospectively authorizing the investment adviser, or any other person relying on this rule, to effect agency cross transactions for such advisory client, provided that such written consent is obtained after full written disclosure that with respect to agency cross transactions the investment adviser or such other person will act as broker for, receive commissions from, and have a potentially conflicting division of loyalties and responsibilities regarding, both parties to such transactions;

(2) The investment adviser, or any other person relying on this rule, sends to each such client a written confirmation at or before the completion of each such transaction, which confirmation includes (i) a statement of the nature of such transaction, (ii) the date such transaction took place, (iii) an offer to furnish upon request, the time when such transaction took place, and (iv) the source and amount of any other remuneration received or to be received by the investment adviser and any other person relying on this rule in connection with the transaction, *Provided, however,* That if, in the case of a purchase, neither the investment adviser nor any other person relying on this rule was participating in a distribution, or in the case of a sale, neither the investment adviser nor any other person relying on this rule was participating in a tender offer, the written confirmation may state whether any other remuneration has been or will be received and that the source and amount of such other remuneration will be furnished upon written request of such customer;

(3) The investment adviser, or any other person relying on this rule, sends to each client, at least annually, and with or as part of any written statement or summary of such account from the investment adviser or such other person, a written disclosure statement identifying the total number of such transactions during the period since the date of the last such statement or summary, and the total amount of all commissions or other remuneration received or to be received by the investment adviser or any other person relying on this rule in connection with such transactions during such period;

(4) Each written disclosure and confirmation required by this rule includes a conspicuous statement that the written consent referred to in paragraph (a)(1) of this section may be revoked at any time by written notice to the investment adviser, or to any other person relying on this rule, from the advisory client; and

(5) No such transaction is effected in which the same investment adviser or an investment adviser and any person controlling, controlled by or under common control with such investment adviser recommended the transaction to both any seller and any purchaser.

* * * * *

Statutory Authority

The Commssion hereby proposes to amend Rule 206(3)–2 pursuant to the authority contained in Section 211(a) of the Advisers Act [15 U.S.C. 80b–11(a)].

By the Commission.

George A. Fitzsimmons,

Secretary.

May 12, 1983.

Regulatory Flexibility Act Certification

I, John S. R. Shad, Chairman of the Securities and Exchange Commission, hereby certify, pursuant to 5 U.S.C. 605(b), that the proposed amendments to Rule 206(3)–2 [17 CFR 275.206(3)–2] under the Investment Advisers Act of 1940 [15 U.S.C. 80b–1 et seq.] set forth in Investment Advisers Act Release No. 860, if promulgated, will not have a significant economic impact on a substantial number of small entities.

Rule 206(3)–2 provides a means for a registered investment adviser, or a broker-dealer affiliated with such an adviser, to enter into agency cross transactions involving a client's account without having to provide written disclosure and obtain client consent prior to each such transaction as otherwise required by Section 206(3) of the Advisers Act [15 U.S.C. 80b–6(3)].

The reason for this certification is that the proposed amendments will not affect a substantial number of small entities. The Commission's staff has estimated, based on its program of routine investment adviser examinations, that fewer than one percent of the 5,900 registered investment advisers (i.e., not more than 58 investment advisers) enter into agency cross transactions in reliance upon Rule 206(3)–2. The effect of the amendments would be to reduce the costs of compliance for these advisers. Although the staff does not know how many of the approximately 58 investment advisers using the rule are

small entities, the staff thinks the magnitude would not be greater than one-half, or 29 firms.

Dated: May 12, 1983.

John S. R. Shad,

Chairman.

[FR Doc. 83-13306 Filed 5-17-83; 8:45]

BILLING CODE 8010-01-M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2606

Rules for Administrative Review of Agency Decisions

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Proposed rule.

SUMMARY: The Pension Benefit Guaranty Corporation's regulation on Administrative Review of Agency Decisions sets forth the rules governing the issuance of certain initial determinations made by the Pension Benefit Guaranty Corporation (the "PBGC") and the procedures for requesting and obtaining administrative review by the PBGC of those determinations. This proposed amendment makes a number of modifications to the final regulation. The regulation, as the agency proposes to amend it, is reprinted in full for the convenience of the public. The modifications are being proposed to take into account agency experience during the three years this rule has been in effect. The amendments are intended to streamline the review process, clarify issues that have created confusion in the past, and modify the Appeals Board procedures to more effectively utilize the agency's resources. The amendments would also conform the regulation with the multiemployer Pension Plan Amendments Act of 1980.

DATE: Comments must be received on or before July 18, 1983.

ADDRESSES: Comments should be addressed to the Office of the General Counsel, Pension Benefit Guaranty Corporation, Suite 7200, 2020 K Street, N.W., Washington, D.C. 20006. Written comments will be available for public inspection at the PBGC, Suite 7100, at the above address, between the hours of 9:00 A.M. and 4:00 P.M. on regular business days.

FOR FURTHER INFORMATION CONTACT: Deborah West, Attorney, Office of the General Counsel, Pension Benefit Guaranty Corporation, 2020 K Street, N.W., Washington, D.C. 20006; (202) 254-3010. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On July 19, 1979, the PBGC published a final rule regarding administrative review of agency decisions (44 FR 42181). The purpose of the regulation was to ensure that persons who are adversely affected by certain determinations of the PBGC are provided with an opportunity to contest and to obtain review of those determinations. The current regulation applies to eleven types of determinations and provides for two types of agency review. Seven types of determinations are subject to appeal; four are subject to reconsideration. An Appeals Board was established to consider appeals. On April 25, 1983, the PBGC amended the regulation to change the composition of the Appeals Board, 48 FR 17070.

This proposal, if adopted, would modify the regulation in several ways. First, the formal reconsideration process under the regulation would be eliminated. This action is being proposed because the PBGC now believes a formal reconsideration procedure is unnecessary. The PBGC may informally reconsider determinations not subject to the regulation and will, of course, correct erroneous determinations, however discovered, without reference to the formal administrative review process. The amendment adds additional PBGC determinations to the list of determinations subject to administrative appeal. The regulation's provision concerning requests for assistance in obtaining information is modified in the proposed rule to make it clear that this provision applies to information in the possession of parties other than the PBGC and not to information available from the PBGC. The regulation is clarified to indicate that there is no appeal of determinations made final upon issuance.

The proposed rule provides that determinations regarding benefit entitlement of participants and beneficiaries under single employer plans (sections 4022 (a) and (b), and 4022B of the Act) shall be effective upon issuance. The regulation's provision on late-filed appeals is changed to provide that such appeals shall be reviewed by the Appeals Board if the Board determines that good cause is shown for the late filing.

The amendment makes technical changes that are necessary to clarify the regulation by conforming the regulation to the Multiemployer Act. Finally, minor clarifying changes are made in the language of several sections.

Elimination of Reconsideration Process; Additional Determinations Subject to Administrative Appeal

The formal reconsideration process under the regulation is eliminated in this proposal. PBGC now believes a formal reconsideration procedure is unnecessary. The current dichotomy between appeals and reconsideration has proven cumbersome and confusing. Determinations not subject to appeal may be informally reconsidered on request, and, of course, the PBGC will correct erroneous determinations, however discovered, whether or not subject to appeal.

The proposed amendment adds a new item to the list of PBGC determinations subject to appeal: determinations under section 4022B of the Act regarding limitations on guaranteed benefit entitlement under single employer plans.

If the amendment is adopted, cases in which a determination was made prior to the regulation's effective date will be processed pursuant to the current administrative review procedure.

Appeals Board Jurisdiction

The proposed regulation provides, at § 2606.3, that there shall be within the PBGC an Appeals Board to consider determinations listed as appealable at § 2606.1(b) of the regulation, other than those determinations made final upon issuance under § 2606.23(b). The Appeals Board shall consider, in reaching its decision, applicable law and policy, relevant facts, and equity.

PBGC Assistance in Obtaining Information

Section 2603.3 of the current regulation provides for PBGC assistance in obtaining information necessary to file an appeal (or necessary to a decision whether to file an appeal). This provision is intended to apply only to situations where the needed information is in the possession of a party other than the PBGC (for example, a bank or insurance company). Where the PBGC is in possession of revelant records, an appellant may make a request under the Freedom of Information Act or the Privacy Act. Thus, the provision, at § 2606.4 of the proposed rule, is being modified so that it is clear that this provision applies only to information in the possession of parties other than the PBGC.

Effective Date of Determinations Under Sections 4022 (a) and (b), and 4022B of the Act

Under the current regulation, the effective date of a determination that is subject to appeal and that is not made

"immediately effectively" under current § 2606.23(b) is stayed until the Appeals Board disposition of the appeal. Thus, when a participant who is receiving a benefit in excess of the amount guaranteed by Title IV of the Act files an appeal, the current regulation obligates the PBGC to continue paying the higher benefits until the Appeals Board rules on the appeal. Often these excess amounts paid are not recovered by PBGC. The result is that plan assets are depleted, and a greater expenditure of PBGC's insurance funds is required. To alleviate this problem, the proposed regulation provides, at § 2606.23, initial determinations of benefit amounts under sections 4022 (a) and (b), and 4022B of the Act shall be effective upon issuance. Should the Appeals Board determine that an appellant is entitled to a greater amount than the PBGC initially determined, appellant will be reimbursed for underpayments made during the period after the plan terminated.

The PBGC believes that the likelihood of an erroneous determination is small. Moreover, the proposed regulation provides that the effective date of the determination regarding benefit entitlement under sections 4022 (a) and (b) and 4022B of the Act may be stayed by the Appeals Board until the Board's disposition of the appeal. A temporary stay may be granted by the Appeals Board. Stays will be granted only where there exist extraordinary circumstances.

Review of Determinations Made Final on the Date of Issuance

Section 2606.23(b) of the current regulation provides that the PBGC may, in its discretion, make an initial determination "effective" on the date it is issued, and that, in such cases, there is no obligation to exhaust administrative remedies with respect to that determination by filing an appeal. As discussed above, the proposed regulation provides that PBGC benefit determinations are generally "effective" upon issuance. However, such determinations are still subject to Appeals Board review and thus even though effective immediately do not constitute the final agency action on the matter. To avoid confusion regarding terminology, the provision, renumbered § 2606.24(b), is changed to provide that when the PBGC intends a decision to be final agency action, that determination is "final" on the date of issuance.

As the preamble to the current regulation noted, there may be cases where it is warranted to make a determination final immediately. However, the preamble to the final regulation stated that "administrative review of the determination would still be available to the person if he or she requests it." The PBGC believes it necessary to clarify this statement. This statement does not mean that an administrative appeal is available. The words "administrative review" mean that the PBGC may informally review a determination under current § 2606.23(b), but would not stay the decision pending review. The same factors that lead the PBGC to make a determination final upon issuance will normally require that the delay resulting from the appeals process be avoided. Accordingly, in appropriate cases, PBGC will make a determination final upon issuance, eliminating Appeals Board review. To make this clear, the proposed amendment stated that there is no PBGC Appeals Board review of determinations that are made final on the date of issuance.

Nothing in the proposed regulation is intended to limit settlement discussions between the PBGC and the aggrieved party even while an appeal is pending. PBGC proposes to amend the regulation to state (1), at § 2606.23(b), that determinations under that subsection are final upon issuance, and (2) at § 2606.3, that the Appeals Board has no jurisdiction over such determinations. This is consistent with PBGC's regulation on employer liability for single employer plan terminations, which provides, at 29 CFR 2622.9(c), that there is no right to appeal the assessment of liability when a determination is made "immediately effective."

Finally, no determination issued by the Executive Director is subject to appeal under this part.

Non-timely Requests for Review

The current regulation provides that the PBGC will process a late-filed appeal if (1) the person requesting review demonstrates in his or her request that he or she did not file a timely appeal because he or she neither knew nor could have known of the initial determination, and (2) the appeal was filed within 45 days of the date the person first learned of the initial determination. The proposed regulation provides, at § 2606.36, that late-filed appeals, i.e., appeals filed after the 45-day appeals period plus any additional time granted by the Appeals Board pursuant to § 2606.35, may be processed if the Appeals Board determines that good cause is shown for the late filing.

Record Before the Appeals Board

The present regulation does not provide for a uniform method by which appellants may fully understand the basis for a disputed initial determination. The proposed regulation would add such a procedure. It provides that the Appeals Board shall serve the appeal upon the office within the PBGC that issued the disputed initial determination. The office shall, within 30 days, compile and submit to the Board a copy of the initial determination and any other documents which the office believes are necessary to support the initial determination. The office may also submit supporting statements within this 30 day period.

The Appeals Board shall then send all material submitted by the office to the appellant except such material as the appellant has already been provided. The appellant must file any response to the material within 15 days of the date of the Appeals Board letter transmitting the material. This change, then, is to ensure that all appellants have an opportunity to review and comment upon the records relied upon by the PBGC in making its initial determination.

Changes Due to the Enactment of the Multiemployer Pension Plan Amendments Act of 1980

Certain technical changes in the regulation are being made to conform the citations in the regulation to the proper section numbers of the Employee Retirement Income Security Act of 1974, as amended by the Multiemployer Act.

The regulation currently provides that determinations with respect to benefit entitlement under a plan under section 4022(a) and determinations of the amount of quaranteed benefits under section 4022(b) are subject to appeal. The Multiemployer Act added a new section on rules for aggregate limits on guaranteed benefits (section 4022B), which rules are essentially those previously contained in section 4022(b)(5). Accordingly, the proposed regulation authorizes appeal of determinations under section 4022B by the PBGC regarding limitations on guaranteed benefit entitlement under a covered single employer plan.

The regulation currently provides that coverage determinations under section 4082(b) of ERISA are subject to administrative review. Under the Multiemployer Act, section 4082(b) is redesignated as section 4402(b). The proposed regulation makes the necessary conforming changes.

Other Changes

Nonsubstantive clarifying changes were made in the language of several sections. To accommodate the changes discussed above and to make the

regulation clearer and more useful to the public, the regulation has been reorganized. The subpart on reconsiderations has been deleted, along with all other references to reconsideration.

The Pension Benefit Guaranty Corporation has determined that this regulation is not a "major rule" for the purposes of Executive Order 12291, because it will not have an annual effect on the econony of $100 million or more; or create a major increase in costs or prices for consumers, individual industries, or geographic regions; or have significant adverse effects on competition, employment, investment, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. This conclusion is based on the fact that this regulation is merely a procedural regulation which provides an administrative appeal route for aggrieved persons so that they may avoid, in certain instances, expensive federal court litigation.

Under section 605(b) of the Regulatory Flexibility Act, the Pension Benefit Guaranty Corporation certifies that this rule will not have a significant economic impact on a substantial number of small entities. The reason for this certification is that the rule is essentially procedural in nature. In addition, this regulation will have little or no adverse economic impact on small entities and will, in many cases, substantially lessen the financial burden of contesting agency action in expensive court proceedings by providing an avenue for expediting inexpensive administrative review. Therefore compliance with sections 603 and 604 of the Regulatory Flexibility Act is waived.

Interested parties are invited to submit comments on this proposed regulation. Comments should be addressed to: Deborah West, Office of the General Counsel, Pension Benefit Guaranty Corporation (240), Suite 7200, 2020 K Street, NW., Washington, D.C. 20006. Written comments will be available for public inspection at the above address, Suite 7100, between the hours of 9:00 a.m. and 4:00 p.m. Each person submitting comments should include his or her name and address, identify this proposed regulation, and give reasons for any recommendation. This proposal may be changed in light of the comments received.

For the convenience of the public and to have the entire proposed amended rule in one place, the regulation is being reprinted below in its entirety.

List of Subjects in 29 CFR Part 2606

Administrative practice and procedure, Conflict of interests, Penalties.

In consideration of the foregoing, the PBGC proposes to amend Chapter XXVI of Title 29, Code of Federal Regulations, by revising Part 2606 as follows:

PART 2606—RULES FOR ADMINISTRATIVE REVIEW OF AGENCY DECISIONS

Subpart A—General Provisions

Sec.

2606.1 Purpose and scope.
2606.2 Definitions.
2606.3 Appeals Board jurisdiction.
2606.4 PBGC assistance in obtaining information.
2606.5 Representation.
2606.6 Request for confidential treatment.
2606.7 Exhaustion of administrative remedies.

Subpart B—Determinations

2606.21 Purpose and scope.
2606.22 Form and contents of determinations.
2606.23 Effective date of determinations; final agency action.

Subpart C—Administrative Appeals

2606.31 Purpose and scope.
2606.32 Who may appeal or participate in appeals.
2606.33 When to file.
2606.34 Filing of documents.
2606.35 Extension of time.
2606.36 Non-timely request for review.
2606.37 Computation of time.
2606.38 Contents of appeal.
2606.39 Record before the Appeals Board.
2606.40 Opportunity to appear and to present witnesses.
2606.41 Consolidation of appeals.
2606.42 Appeals affecting third parties.
2606.43 Powers of the Appeals Board.
2606.44 Decision by the Appeals Board.
2606.45 Referral of appeal to the Executive Director.

Authority: Sec. 4002(b)(3), Pub. L. 93-406, as amended by Sec. 403(1), Pub. L. 96-364, 94 Stat. 1208, 1302 (1980) (29 U.S.C. 1302(b)(3)).

Subpart A—General Provisions

§ 2606.1 Purpose and scope.

(a) *Purpose.* This part sets forth the rules governing the issuance of all determinations issued on or after the effective date of this part by the PBGC involving the matters set forth in paragraph (b) of this section and the procedures for requesting and obtaining administrative review by the PBGC of those determinations.

(b) *Scope.* This part applies to the following determinations made by the PBGC on or after the effective date of this part and to the review of those determinations:

(1) Determinations that a plan is not covered under section 4021 or section 4402(b) of the Act;

(2) Determinations under section 4022(a) of the Act with respect to benefit entitlement of participants and beneficiaries under covered single employer plans;

(3) Determinations regarding the amount of guaranteed benefits of participants and beneficiaries under covered single employer plans under sections 4022(b) or 4022B of the Act;

(4) Determinations of the amount of money subject to recapture pursuant to section 4045 of the Act;

(5) Determinations of the amount of employer liability under section 4062 of the Act;

(6) Determinations of the amount of contingent liability under section 4063 of the Act;

(7) Determinations of the amount of employer liability under section 4064 of the Act;

(c) *Determinations not covered by this part.* Nothing contained in this part shall limit the authority of the PBGC to review informally, either upon request or on its own motion, determinations that are not subject to this part when the PBGC determines, in its discretion, that it is appropriate to do so.

§ 2606.2 Definitions.

As used in this part:

"Act" means the Employee Retirement Income Security Act of 1974, as amended.

"Aggrieved person" means any participant, beneficiary, plan administrator, plan sponsor, or employer, adversely affected by a determination of the PBGC covered by this part with respect to a pension plan in which such participant, beneficiary, plan administrator, plan sponsor, or employer has an interest. The term "employer" includes all trades and businesses under common control within the meaning of Part 2612 of this chapter, and all employers who contribute to or have contributed to a pension plan to which more than one employer contributes.

"Appeals Board" means a board consisting of a Chairperson appointed by the Executive Director of the PBGC and two senior agency official appointed by the Executive Director to serve as regular members. Other senior agency official may serve as alternate members in the event that a regular member is not available to serve or is unable to serve. Such alternates may be appointed pursuant to a list designated by the Executive Director and shall serve in the order designated in that list. The

General Counsel, and the Executive Director or the Deputy Executive Director, in the absence of the Executive Director, shall be ex officio members of the Appeals Board. The General Counsel may, as an ex officio member of the Appeals Board, if he or she chooses, vote on any matter before the Board. Appeals shall be decided by a majority vote of the Board members, but if the General Counsel's vote on an appeal results in a tie vote, the appeal shall be referred to the Executive Director as specified in § 2606.45. The Executive Director may designate the Deputy Executive Director to decide any appeal referred to the Executive Director from the Appeals Board under this section in accordance with § 2606.45. A person may not serve on the Appeals Board with respect to any case in which he or she made a determination with respect to the merits of the determination subject to appeal.

"Appellant" means any person filing an appeal under Subpart C of this part.

"PBGC" means the Pension Benefit Guaranty Corporation.

§ 2606.3 Appeals Board jurisdiction.

There shall be within the Pension Benefit Guaranty Corporation an Appeals Board to consider administrative appeals from determinations listed at § 2606.1(b), other than those determinations made final upon issuance under § 2606.23(b) of this part.

§ 2606.4 PBGC assistance in obtaining information.

A person who lacks information or documents necessary to file an appeal pursuant to Subpart C of this part, or necessary to a decision whether to seek review, or necessary to participate in an appeal pursuant to § 2606.42 of this part, or necessary to a decision whether to participate, may request the Appeals Board's assistance in obtaining the information or documents when the information or documents are in the possession of a party other than the PBGC. The request shall state or describe the missing information or data, the reason why the person needs the information or documents, and the reason why the person needs the assistance of the Appeals Board in obtaining the information or documents. The request may also include a request for an extension of time to file an appeal pursuant to § 2606.35 of this part.

§ 2606.5 Representation.

A person may file any document or make any appearance that is required or permitted by this part on his or her own behalf or he or she may designate a representative. When the representative is not an attorney-at-law, a notarized power of attorney signed by the person making the designation authorizing the representation shall be filed with the Appeals Board in accordance with § 2606.34 (b) of this part.

§ 2606.6 Request for confidential treatment.

If any person filing a document with the Appeals Board believes that some or all of the information contained in the document is exempt from the mandatory public disclosure requirements of the Freedom of Information Act, 5 U.S.C. § 552, and wishes such material to be withheld by the PBGC, he or she shall specify the information with respect to which he or she requests confidentiality and the grounds therefor.

§2606.7 Exhaustion of administrative remedies.

Except as provided in § 26.623(b), a person aggrieved by a determination of the PBGC covered by this part has not exhausted his or her administrative remedies until he or she has filed an appeal under Subpart C of this part, and a decision granting or denying the relief requested has been issued.

Subpart B—Determinations

§ 2606.21 Purpose and scope.

This subpart sets forth rules governing the issuance of determinations of the PBGC on matters covered by this part.

§ 2606.22 Form and contents of determinations.

All determinations to which this part applies shall be in writing and shall state the reason for the determination. All determinations to which this part applies, other than determinations made final upon issuance under § 2606.23(b) of this part, shall include notice of the right to request review of the determination pursuant to Subpart C of this part and a brief description of the procedures review.

§ 2606.23 Effective date of determinations; final action.

(a) *General rule.* Except as provided in Paragraph (c) of this section, determinations regarding benefit entitlement under sections 4022(a) and (b), and 4022B of the Act shall be effective upon issuance. Except as provided in Paragraph (b) of this section, all determinations covered by this part will not become final until the prescribed period of time for filing an appeal under Subpart C of this part has elapsed, or if an appeal is filed, until the date of the Appeals Board decision regarding the appeal.

(a) *Exception.* The PBGC may, in its discretion, order that a determination is final on the date it is issued. When the PBGC makes such an order, the determination shall state that it is the final agency action with respect to the matter.

(c) *Stay.* The Appeals Board may order that the effective date of a determination regarding benefit entitlement or amount under sections 4022(a) and (b), and 4022B of the Act be stayed until the Appeals Board disposition of the appeal. Such an order may provide for complete or partial relief from the immediate implementation of the determination. A temporary stay may be granted by the Appeals Board.

Subpart C—Administrative Appeals

§ 2606.31 Purpose and scope.

This subpart establishes procedures governing administrative appeals to the Appeals Board from determinations relating to the matters set forth in § 2606.1(b) of this part, other than those determinations made final upon issuance under § 2606.23(b) of this part.

§ 2606.32 Who may appeal or participate in appeals.

Any person aggrieved by a determination of the PBGC to which this subpart applies may file an appeal. Any person who will be aggrieved by a decision of the Appeals Board under this part granting the relief requested in whole or in part may participate in the appeal as provided in § 2606.42.

§ 2606.33 When to file.

Except as provided in §§ 2606.35 and 2606.36, an appeal under this subpart must be filed within 45 days after the date of the determination being appealed.

§ 2606.34 Filing of documents.

(a) *Date of filing.* Any document required or permitted to be filed under this part is considered filed on the date of the United States postmark stamped on the cover in which the document is mailed, provided that the document was mailed postage prepaid properly packaged and addressed to the Appeals Board. If these conditions are not met, the document is considered filed on the date it is received by the PBGC. Documents received after regular business hours are considered filed on the next regular business day.

(b) *Where to file.* Any document required or permitted to be filed under this part in connection with an appeal shall be submitted to the Appeals Board, Pension Benefit Guaranty Corporation,

2020 K Street, N.W., Washington, D.C. 20006.

§ 2606.35 Extension of time.

When a document is required under this part to be filed within a prescribed period of time, an extension of time to file will be granted only upon good cause shown. The request for an extension of time shall be filed before the expiration of the time prescribed. The request for an extension shall be in writing and shall state why additional time is needed and the amount of additional time requested. The filing of a request for an extension shall stop the running of the prescribed period of time. When a request for an extension is granted, the Appeals Board shall notify the person requesting the extension, in writing, of the amount of additional time granted. When a request for an extension is denied, the Appeals Board shall so notify the requestor in writing, and the prescribed period of time shall resume running from the date of the letter denying the request. A request for an extension of time that is filed after the expiration of the time prescribed shall be considered only if good cause is shown for the late filing.

§ 2606.36 Non-timely request for review.

The Appeals board shall process a request for review of a determination that was not filed within the prescribed period of time for requesting review in § 2606.33 if the Board, in its discretion, determines that good cause is shown for the late filing.

§ 2606.37 Computation of time.

In computing any period of time prescribed or allowed by this part, the day of the act, eventy, or default from which the designated period of time begins to run is not counted. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or Federal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or a Federal holiday.

§ 2606.38 Contents of appeal.

(a) An appeal shall—

(1) Be in writing;

(2) Be designated as an appeal;

(3) Contain a statement of the grounds upon which it is brought and the relief sought;

(4) Reference all pertinent information known to be in the possession of the PBGC; and

(5) Include any additional information believed to be relevant.

(b) In any case where the appellant believes that another person may be aggrieved if the PBGC grants the relief sought, the appeal shall also include the name(s) and address(es), if known, of such other person(s).

§ 2606.39 Record before the Appeals Board.

(a) Upon receipt of an appeal, the Appeals Board shall furnish a copy of the appeal to the office of the PBGC that issued the initial determination. The office shall compile and submit to the Board within 30 days a copy of the initial determination being appealed and a copy of any other documents which the office believes are necessary to support the initial determination. Supporting statements may accompany such material.

(b) All material submitted by the office pursuant to subsection (a) except that already provided to appellant shall be sent to appellant and to any person identified under § 2606.42 for response. Appellant and any third party under § 2606.42 shall file any response to the material submitted by the office with the Appeals Board within 30 days of the date of the letter transmitting the material.

(c) The Chairperson may, upon good cause shown, extend the time limits in paragraphs (a) and (b) of this section.

§ 2606.40 Opportunity to appear and to present witnesses.

(a) An opportunity to appear before the Appeals Board and an opportunity to present witnesses may be permitted at the discretion of the Appeals Board.

(b) Appearances permitted under this section will take place at the main offices of the PBGC, 2020 K Street, N.W., Washington, D.C., unless the Appeals Board, in its discretion, designates a different location.

(c) An appearance permitted under this subpart may be before a hearing officer designated by the Appeals Board.

§ 2606.41 Consolidation of appeals.

(a) *When consolidation may be required.* Whenever multiple appeals are filed that arise out of the same or similar facts and seek the same or similar relief, the Appeals Board may, in its discretion, order the consolidation of all or some of the appeals.

(b) *Decision by Appeals Board.* The decision of the Appeals Board in a consolidated appeal shall be binding on all appellants whose appeals were consolidated.

§ 2606.42 Appeals affecting third parties.

(a) When the Appeals Board makes a preliminary finding that the relief requested in an appeal should be granted in whole or in part, before issuing a decision the Board shall make a reasonable effort to notify third persons who will be aggrieved by the decision of the pendency of the appeal, of the grounds upon which the Appeals Board is considering reversing the initial determination, of the right to submit written comments on the appeal, and that no further opportunity to present information to the PBGC with respect to the determination under appeal will be provided.

(b) Written comments and a request to appear before the Appeals Board must be filed within 45 days after the date of the notice from the Appeals Board.

(c) Appellant shall be notified of material submitted by any third party under this section. Such material, to the extent permitted by law, will be made available to appellant upon request.

(d) If more than one third party is involved, their participation in the appeal may be consolidated pursuant to § 2606.41.

§ 2606.43 Powers of the Appeals Board.

In addition to the powers specifically described in this part, the Appeals Board, in its discretion, may cause additional information to be obtained, may request the submission of any information or the appearance of any person it considers necessary to resolve a matter before it and may enter any order it considers necessary for or appropriate to the disposition of any matter before it.

§ 2606.44 Decision by the Appeals Board.

(a) In reaching its decision, the Appeals Board shall consider those portions of the PBGC file relating to the issues raised by the appeal, material submitted by the appellant and third parties in connection with the appeal, and written statements or documents, if any, filed with the Appeals Board that are made available to the appellant.

(b) The decision of the Appeals Board constitutes the final agency action with respect to the determination which was the subject of the appeal and is binding on all parties who participated in the appeal and on all parties who were notified pursuant to § 2606.42 of their right to participate in the appeal.

(c) The decision of the Appeals Board shall be in writing, specify the relief granted, if any, state the reasons for the decision, and state that the appellant has exhausted his or her administrative remedies.

§ 2606.45 Referral of appeal to the Executive Director.

If the Appeals Board finds that an appeal presents a major unresolved policy issue for the PBGC, the Appeals

Board shall refer such appeal to the Executive Director of the PBGC for appropriate action. The Executive Director may designate the Deputy Executive Director to decide any appeal referred to the Executive Director from the Appeals Board under this section. When acting on appeals which are referred by the Appeals Board under this section or § 2606.02, the Executive Director and the Deputy Executive Director shall have, in addition to all the powers vested in their offices, all the powers vested in the Appeals Board by this part. The decision of the Executive Director or the Deputy Executive Director shall meet the requirements of and have the effect of a decision issued under § 2606.44 of this part.

Issued this 13th day of May, 1983.

Charles C. Tharp,

Acting Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 83-13284 Filed 5-17-83 8:45 am]

BILLING CODE 7708-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 4

[OA-FRL 2365-3]

Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970; Acquisition and Relocation for Federal and Federally Assisted Programs

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed model regulations and request for comments.

SUMMARY: The Department of Transportation (DOT), at the request of the Office of Management and Budget (OMB), published in the Federal Register on April 14, 1983, 48 FR 16198, a notice of proposed rulemaking (NPRM) under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (the Uniform Act). The proposed DOT rule, developed by an interagency working group, is intended to serve eventually as a model for regulations to be issued by all other Federal agencies with programs covered by the Uniform Act. Those agencies will be requested by OMB to review their existing regulations and to revise them to conform substantially to the final DOT regulations.

State and local agencies, organizations, and individuals affected by programs of the Environmental Protection Agency may wish to review and comment on the proposed regulation within the prescribed period. Appropriate DOT officials will be available to respond to any questions which may arise on this matter. To the extent possible, it is intended that all major issues be resolved through the DOT NPRM and that subsequent rules of this agency will adhere closely to the DOT model. Copies of comments sent to DOT may also be sent to EPA.

DATES: Comments must be received by the Department of Transportation on or before May 31, 1983.

ADDRESSES: Send comments to Docket Clerk, OST Docket No. 79, Department of Transportation, 400 7th St., SW., Room 10241, Washington, D.C. 20590. Copies of comments may also be sent to the Enviornmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Marshall Schy, Grants Administration Division (PM-216), (202) 382-5298.

Dated: May 10, 1983.

Alfred M. Zuck,

Acting Assistant Administrator for Administration.

[FR Doc. 83-13294 Filed 5-17-83 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 52

[A-5-FRL 2269-1]

Approval and Promulgation of Implementation Plans; Minnesota

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: On December 13, 1979 (44 FR 72116), EPA approved a transportation control plan for the St. Cloud, Minnesota, Metropolitan Area as a revision to the Minnestoa State Implementation Plan (SIP). The plan contains transportation strategies which reduce emissions of carbon monoxide (CO) and demonstrates attainment of the National Ambient Air Quality Standards (NAAQSs) for CO by December 31, 1982. On August 16, 1982, the Minnesota Pollution Control Agency (MPCA) submitted an amendment to the St. Cloud transportation control plan. The amendment adds five additional measures to the original transportation control plan which will result in reductions of CO emissions. The additional measures were proposed by the State in lieu of two projects which were approved in the original SIP and are now being delayed into 1983 or later. EPA proposes to approve the five additional meaures and disapprove the delay of the two projects. The purpose of this notice is to discuss EPA's evaluation of the amendment and to solicit public comment on EPA's proposed action.

DATE: Comments on this revision to the Minnesota SIP and EPA's proposed action must be received by June 17, 1983.

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

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

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

Written comments on this action should be addressed to: Gary Gulezian, Chief, Regulatory Analysis Section, Air Programs Branch, Region V, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Delores Sieja at the above EPA Region V address or call (312) 886-6038.

SUPPLEMENTARY INFORMATION: On March 3, 1978 (44 FR 8962, 9006), pursuant to the requirements of Section 107 of the Clean Air Act (Act), as amended in 1977, EPA designated the City of St. Cloud as not meeting the NAAQSs for CO.

Part D of the Act, which was added by the 1977 amendments, requires that each State revise its SIP to meet specific requirements for areas designated as nonattainment. These SIP revisions must demonstrate attainment of the primary NAAQS as expeditiously as practicable, but no later than December 31, 1982. Under certain conditions, the date may be extended to December 31, 1987. Minnesota did not request an extension of the attainment date for the CO standards for St. Cloud.

On My 17, 1979, the MPCA submitted a transportation control plan for the City of St. Cloud Metropolitan area as a revision to the Minnesota SIP. EPA determined that the transportation strategies would reduce emissions of CO and demonstrate attainment of the CO standard by December 31, 1982. On December 13, 1979 (44 FR 72116) EPA approved the St. Cloud transportation plan as a revision to the Minnesota SIP.

On August 16, 1982, the MPCA submitted an mendment to the St. Cloud transportation control plan. The amendment is for the addition of five transportation control measures that will be implemented in 1982 in lieu of two projects which were approved in the original SIP and are now being delayed into 1983. The five additional measures are:

(1) Enforcement of an existing ban on double parking and extended idling on St. Germain Street. St. Germain Street is a major traffic access to and through downtown St. Cloud, and is associated with hotspot nonattainment areas in the vicinity of its intersection with 10th Avenue.

(2) Implementation of a media campaign designed to encourage use of transportation routes which will improve air quality in the City.

(3) Distribution of a pamphlet by local merchants encouraging use of alternate transportation routes.

(4) Development of a signing plan to direct traffic to alternate routes.

(5) Creation of left-hand turn lanes on Division Street between 19 1/2 and 31st Avenues to decrease local traffic congestion and to allow easier access to routes around downtown St. Cloud.

The two delayed projects are:

(1) Construction project for 9th and 10th Avenues

(2) Construction project for T.H. 23/10th Avenue.

EPA has reviewed the amendment and determined that no quantitative analysis was provided on the amount of emission reductions that would result from the additional measures. Without such an analysis EPA cannot assess whether the additional measures will be an acceptable substitution for the two delayed projects. However, EPA believes these measures, even though not quantified, will result in some positive air quality impact. Therefore, EPA proposes approval of the additional measures as revisions to the Minnesota SIP. EPA proposes disapproval of the delay of the two projects because of lack of a quantitative equivalency analysis.

By disapproval of these measures EPA acknowledges that, at this time, the additional measures cannot be used as a replacement for the delayed projects. The delayed projects are an essential part of the 1979 SIP which demonstrated attainment of the CO standard by December 31, 1982. Without an analysis demonstrating that the emissions reductions from the five new projects are equivalent to those from the delayed projects, EPA cannot determine whether the new projects would be approvable substitutes for the delayed ones.

A final action disapproving the delay of the two original projects would not trigger a moratorium on new source construction under Section 110(a)(2)(I) of the Clean Air Act. By disapproving the request for delay, EPA leaves in effect the original schedules for these projects which were approved as part of the 1979 SIP revision and have not been disapproved.

On February 3, 1983, however, EPA proposed to disapprove SIPs for approximately 140 nonattainment areas (48 FR 4972). For many of these plans, EPA proposed disapproval because available air quality showed that it was unlikely that the area had in fact achieved attainment by December 31, 1982 as required under Part D. For the remaining areas, EPA proposed disapproval because the states had not completed the process of submitting an approvable Part D plan. As explained in that proposal, final disapprovals would trigger construction moratoriums under Section 110(a)(2)(I). EPA may also propose restrictions on Federal funding for these areas.

EPA proposed to disapprove the 1979 Part D CO SIP for St. Cloud because available data indicated that the area had not attained the CO standards by the 1982 deadline (48 FR 5013; February 3, 1983). This is a separate issue that is not part of today's action. Today's action responds to a new SIP revision submitted to EPA in 1982. It does not propose any finding concerning the adequacy of the SIP submitted in 1979. EPA's action on this newly submitted SIP revision thus can proceed independently of the action proposed on February 3.

EPA is providing a 30-day comment period on this notice of proposed rulemaking. Public comment received on or before June 17, 1983, will be considered in EPA's final rulemaking. All comments will be available for inspection during normal business hours at the Region V office listed at the front of this notice.

Under Executive Order 12291, today's action is not "Major". It has been submitted to the Office of Management and Budget (OMB) for review. Any comments from OMB to EPA, and any EPA response, are available for public inspection at the Region V office listed at the beginning of this notice. Pursuant to the provisions of 5 U.S.C. Section 605(b), the Administrator certified that the attached rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. This action proposes to approve and disapprove a State action. For approval, it imposes no new requirements beyond those which the State has already imposed. For disapproval, the sources affected will remain subject to the applicable provisions of the current Minnesota CO SIP. Thus no additional requirements will be imposed on these sources.

List of Subjects in 40 CFR Part 52

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

This proposed rulemaking is issued under the authority of sections 110 and 172 of the Clean Air Act.

Dated: December 3, 1982.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 83-13295 Filed 5-17-83; 8:45 am]

BILLING CODE 6560-50-M

---

40 CFR Part 81

[A-5-FRL 2334-6]

Designation of Areas for Air Quality Planning Purposes; Attainment Status Designation; Ohio

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to change the Total Suspended Particulate (TSP) primary and secondary nonattainment designation of Mahoning County, Ohio. This revision is based on a request from the State of Ohio to redesignate this area and on the supporting data submitted by the State. Under the Clean Air Act, designations can be changed if sufficient data are available to warrant such change.

DATE: All comments must be received by June 17, 1983.

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

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

Ohio Environmental Protection Agency, Office of Air Pollution Control, 361 East Broad Street, Columbus, Ohio 43216.

Comments in this proposed rule should be addressed to (please submit an original and five copies if possible): Gary Gulezian, Chief, Regulatory Analysis Section Air Programs Branch (5AP-26), USEPS, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Anne E. Tenner, (312) 886-6036.

SUPPLEMENTARY INFORMATION: Under section 107(d) of the Act the Administrator of EPA has promulgated the National Ambient Air Quality Standards (NAAQS) attainment status

for each area of every state. See 43 FR 8962 (March 3, 1978) and 43 FR 45993 (October 5, 1978). These area designations may be revised whenever the data warrants.

The current designations for TSP in Mahoning County, Ohio, as codified in 40 CFR 81.336, are:

Primary Nonattainment—Cities of Campbell, Youngstown, and Struthers; that portion of Poland Township north of U.S. 224; and that portion of Coitsville Township south of U.S. 422.

Secondary Nonattainment—Townships of Coitsville (north of U.S. 422 and east of S.R. 616), Boardman (all) Poland (south of U.S. 224), and Austintown (east of S.R. 46).

On October 14, 1982, the State of Ohio requested EPA to revise the TSP designation of Mahoning County, Ohio to:

Primary Nonattainment Area

1. From the north county line and Four Mile Run Road south on Four Mile Run Road to Meridian Road,
2. South on Meridian Road to Bears Den Road,
3. Southeast on Bears Den Road to Furnace Road,
4. Furnace Road east to Mill Creek,
5. East on a line from Mill Creek and Furnace Road to Warren Avenue,
6. East on Warren Avenue to Rosedale Avenue,
7. South on Rosedale Avenue to Chicago Avenue,
8. East on Chicago Avenue to Market Street,
9. South on Market Street to Dewey Avenue,
10. East on Dewey Avenue to Power Way,
11. Power Way south to Center Street,
12. Center Street northeast to Wilson Avenue,
13. Wilson Avenue north west to Dry Run Creek,
14. Dry Run Creek north to Oak Street,
15. West on Oak Street to Garland Avenue,
16. North on Garland Avenue to Parker Street,
17. West on Parker Street to Albert Street,
18. North on Albert Street to McGuffey Road,
19. West on McGuffey Road to Wick Avenue, and
20. North on Wick Avenue to Logan Avenue, then north to the county line
21. The county line west to Four Mile Run Road.

Secondary Nonattainment Area

The cities of Campbell, Struthers and Youngstown (excluding the Primary nonattainment area); Poland Township north of U.S. Route 224; Coitsville Township south of U.S. Route 42; Austintown Township east of State Route 46; and Boardman Township north of Canfield Poland Road.

To support the redesignation request, the State of Ohio submitted on October 14, 1982, and February 11, 1983, ambient data collected at ten monitors in the Youngstown area during the period of July 1980–December 1982. In addition, EPA considered modeling analyses based on July 1974 actual SIP allowable emission rates, performed previously for this area by the State as well as recent modeling performed by EPA.

The ambient data from the ten Mahoning County monitors are discussed in the technical support document which is available in EPA's Region V office. The data, which have been determined to be representative, support the proposed nonattainment boundaries. Additional technical support for the exact boundaries is contained in the October 14, 1982, State submittal.

The major effects of the revision are to change the area south of the Youngstown-Campbell-Struthers area from secondary nonattainment to attainment, and change the Campbell-Struthers area (around the J & L Campbell Coke Plant) from primary to secondary nonattainment. Both changes are acceptable based on a review of the available monitoring and modeling data. It should be noted that additional improvement in air quality in the Campbell-Struthers area is expected in the immediate future. In late January 1983, J & L began a phased 3-month permanent shut-down of the remaining two batteries at the coke plant. Therefore, ambient TSP concentrations in the area should continue to decline.

In summary, EPA finds this designation to be acceptable and proposes to approve the redesignation of Mahoning County, Ohio.

All interested persons are invited to submit written comment on the proposed redesignation. Written comments received by the data specified above will be considered in determining whether EPA will approve the redesignation. After review of all comments submitted, the Administrator of EPA will publish in the **Federal Register** the Agency's final action on the redesignation.

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

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

List of Subjects in 40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

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

Dated: March 22, 1983.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 83-13266 Filed 5-17-83; 8:45 am]

BILLING CODE 6560-50-M

---

40 CFR Part 180

[PP 1E2565/P295; PH-FRL 2363-2]

N-(Mercaptomethyl) Phthalimide S-(O,O-Dimethyl Phosphorodithioate); Proposed Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that a tolerance be established for the combined residues of the insecticide *N*-(mercaptomethyl) phthalimide *S*-(*O,O*-dimethyl phosphorodithioate) and its oxygen analog in or on the commodity tomatoes imported from Mexico. The proposed regulation to establish a maximum permissible level for residues of the insecticide was requested, pursuant to a petition, by the Stauffer Chemical Company.

DATE: Comments must be received on or before June 17, 1983.

ADDRESS: Written comments to: Product Manager (PM) 15, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 204, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-2400).

FOR FURTHER INFORMATION CONTACT: George LaRocca, PM-15, (703-557-2400) at the above address.

SUPPLEMENTARY INFORMATION: The Stauffer Chemical Company, 1200 South 47th Street, Richmond, CA 94804, submitted pesticide petition 1E2565 to the EPA. The petition requests that the Administrator propose that 4 CFR 180.261 be amended by establishing a tolerance for the combined residues of the insecticide *N*-(mercaptomethyl) phthalimide *S*-(O,O-dimethyl phosphorodithioate) and its oxygen analog in or on the commodity tomatoes imported from Mexico at 2.0 parts per million (ppm).

The data submitted in the petition and other relevant material have been evaluated. The toxicological data

considered in support of the proposed tolerance included a 2-year rat feeding/oncogenicity study which was negative for oncogenic effects and had a cholinesterase inhibition and systemic no-observed-effect level (NOEL) of 40.0 ppm; and 2-year dog feeding study which had a cholinesterase-inhibition and systemic NOEL of 40.0 ppm and 400.0 ppm respectively; rabbit and monkey teratology studies which were negative at 60 mg/kg/day and 8 mg/kg/day respectively; a rat reproduction study which had a NOEL of 80 ppm and acute delayed hen neurotoxicity study which was negative for acute delayed neurotoxicity.

The acceptable daily intake (ADI), based on the 2-year rat feeding study (NOEL of 40 ppm equivalent to 2.0 mg/kg/bw/day) and a 100-fold safety factor, is calculated to be 0.020 mg/kg/day. The maximum permissible intake (MPI) for a 60-kg human is calculated to be 1.2 mg/day. The current action will utilize 7.9 percent of the ADI. Published tolerances utilize 91.1 percent of the ADI. Desirable data that are currently lacking from the petition is a second oncogenicity study in a second mammalian species. In a letter dated December 7, 1979, the petitioner indicated that the second oncogenicity study will be submitted to the Agency by February 1984.

The metabolism of *N*-(mercaptomethyl) phthalimide *S*-(*O,O*-dimethyl phosphorodithioate) is adequately understood for this use, and an adequate analytical method, gas chromatography, is available for enforcement purposes. Residues on processed tomatoes are not likely to exceed the tolerance on whole tomatoes and therefore food additive tolerances are not needed on these items. Imported Mexican tomatoes are not processed into dried tomato pomace for animal feed, therefore, there is no reasonable expectation of secondary residues in eggs, meat, milk, or poultry. No actions are currently pending against registration of the insecticide, nor are there any other relevant consideration involved in establishing the proposed tolerance.

The pesticide is considered useful for the purpose for which the tolerance is sought. Based on the above information considered by the Agency it is concluded that the tolerance would protect the public health and is therefore proposed as set forth below.

Any person who has registered or submitted an application for registration of a pesticide under FIFRA, as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this notice in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number [PP 1E2565/P295]. All written comments filed in response to this proposed rulemaking will be available in the product manager's office, Registration Division, at the address given above from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays.

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

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

List of Subjects in 40 CFR Part 180

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

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

Dated: May 5, 1983.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, it is proposed that 40 CFR 180.261 be amended by adding and alphabetically inserting the commodity tomatoes to read as follows:

§ 180.261 N-(Mercaptomethyl)phthalimide S-(O,O-dimethylphosphorodithioate); tolerances for residues.

* * * * *

Commodities	Parts per million
* * * * *	
Tomatoes	2.0
* * * * *	

[FR Doc. 83-13001 Filed 5-17-83; 8:45 am]

BILLING CODE 6560-50-M

Notices

Federal Register
Vol. 48, No. 97
Wednesday, May 18, 1983

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

Animal and Plant Health Inspection Service

[Docket No. 83-322]

Cooperative Gypsy Moth Suppression and Regulatory Program—1983; Decision Notice

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of a record of decision for the gypsy moth eradication treatment areas in Illinois, Indiana, Michigan, Minnesota, North Carolina, Ohio, Oregon, Virginia, Washington, and Wisconsin.

SUMMARY: This gives notice that a decision has been made to cooperate with the States of Illinois, Indiana, Michigan, Minnesota, North Carolina, Ohio, Oregon, Virginia, Washington, and Wisconsin in gypsy moth eradication programs. The State Departments of Agriculture for Indiana, Michigan, MInnesota, Ohio, and Oregon have decided to use carbaryl for the proposed treatment areas in Elkhart County, Indiana; Kalamazoo, Muskegon, and Van Buren Counties, Michigan; Ramsey and Washington Counties, Minnesota; Hamilton, Franklin, Knox and Lucas Counties, Ohio; and Salem County, Oregon. The State Departments of Agriculture for Illinois, Washington, and Wisconsin have decided to use *Bacillus thuringiensis (B.t.)* for the proposed treatment areas in Du Page and Kane Counties, Illinois; Clark, King, and Pierce Counties, Washington; and Waukesha County, Wisconsin. The State Departments of Agriculture for North Carolina and Virginia have decided to use dispalure for the proposed treatment areas in Carteret County, North Carolina; and Floyd and Patrick Counties, Virginia. Based on an evaluation of the Programmatic Environmental Impact Statement (PEIS) and a site-specific environmental analysis prepared for the proposed treatment areas in each state (Illinois, Indiana, Michigan, Minnesota, North Carolina, Ohio, Oregon, Virginia, Washington, and Wisconsin) the Animal and Plant Health Inspection Service (APHIS) has determined that these treatment methods pose no significant adverse impact on the environment of these areas.

FOR FURTHER INFORMATION CONTACT: Gary Moorehead, Staff Officer, Field Operations Support Staff, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 663 Federal Building, Hyattsville, MD 20782, (301) 436-8295.

SUPPLEMENTARY INFORMATION: A notice of the availability of a site-specific environmental analysis document for the proposed treatment areas in Du Page and Kane Counties, Illinois; Elkhart County, Indiana; Kalamazoo, Muskegon, and Van Buren Counties, Michigan; Ramsey and Washington Counties, Minnesota; Carteret County, North Carolina; Hamilton, Franklin, Knox, and Lucas Counties, Ohio; Salem, Oregon; Floyd and Patrick Counties, Virginia; Clark, King, and Pierce Counties, Washington; and Waukesha County, Wisconsin, for the USDA Cooperative Gypsy Moth Suppression and Regulatory Program was published in the **Federal Register** on April 28, 1983 (48 FR 19190).

On or about April 1, 1983, the State Departments of Agriculture for each of these States decided to conduct ground or aerial spray treatment programs using either carbaryl, *B.t.*, or dispalure as indicated below in the proposed treatment areas.

The State Departments of Agriculture for Indiana, Michigan, Minnesota, and Ohio have decided to conduct aerial spray treatment programs using carbaryl.

The State Departments of Agriculture for Illinois, Washington, and Wisconsin have decided to conduct aerial spray treatment programs using *B.t.*

The State Departments of Agriculture for North Carolina and Virginia have decided to conduct aerial spray treatment programs using dispalure.

The State Department of Agriculture for Oregon has decided to conduct ground spray treatment program using carbaryl.

Based on the Department's review of the PEIS and the site-specific analysis, and in accordance with the National Environmental Policy Act and the Department's PEIS, the Department has decided to cooperate with the States of Illinois, Indiana, Michigan, Minnesota, North Carolina, Ohio, Oregon, Virginia, Washington, and Wisconsin in the conduct of these programs.

The Organic Act of September 21, 1944, as amended (7 U.S.C. 147a) authorizes APHIS to cooperate with States to retard the artificial, long-range spread of the gypsy moth and to eradicate isolated infestations of the pest.

Carbaryl, *B.t.*, and dispalure, in accordance with the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136 *et. seq.*), are registered by the Environmental Protection Agency (EPA) for use against gypsy moth. They will be applied according to the label directions and APHIS operating procedures. Appropriate public involvement, notification and utilization of insecticide treatment measures will further reduce human exposure during periods of application.

Gypsy moth egg masses were expected to have reached peak hatching in Illinois, Indiana, Michigan, Minnesota, North Carolina, Ohio, Oregon, Virginia, Washington, and Wisconsin on or after May 1, 1983. The State Departments of Agriculture for each of these States have notified the Department that if a spraying program for gypsy moth in Illinois, Indiana, Michigan, Minnesota, North Carolina, Ohio, Orgeon, Virginia, Washington, and Wisconsin is to be effective, they must be prepared to commence spraying as close to the peak hatching time as possible. Therefore, implementation of the program may take place immediately after the date of publication of this decision.

Done at Washington, DC., this 13th day of May 1983.

William F. Helms,

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

[FR Doc. 83-13353 Filed 5-17-83; 8:45 am]
BILLING CODE 3410-34-M

Animal Inspection Station, Detroit, Michigan; Finding of No Significant Impact

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of finding of no significant impact.

SUMMARY: The Animal and Plant Health Inspection Service (APHIS) has prepared an environmental assessment for the construction and operation of an animal inspection station on W. Jefferson Avenue in Detroit, Michigan. This 4,000 square foot, single story building will be constructed on a 2.2 acre site adjacent to the city dog pound. The building will be used to inspect animals that are shipped by truck and other vehicles into the United States from Canada over the Ambassador Bridge.

This assessment indicates that the proposed project will not cause any significant local, regional or national impacts on the environment. Based upon this Finding Of No Significant Impact (FONSI) it has been determined that the preparation and review of an Environmental Impact Statement is not needed for this project

Copies of this environmental assessment have been sent to the Environmental Protection Agency, appropriate State and local agencies and other interested parties.

FOR FURTHER INFORMATION CONTACT: Copies of the environmental assessment are available upon request from Mr. Dennis Wilmeth, Environmental Protection Specialist, APHIS, ASD, Room 260, 6505 Belcrest Road, Hyattsville, MD 20782, Area Code (301) 436–8775.

SUPPLEMENTARY INFORMATION: The environmental assessment indicates that the animal inspection station will comply with local plans and zoning regulations. Odors and noise should be minimal since animals will only be inspected and not kept overnight. The animal wastes left in the building will be washed into a sanitary sewer drain in the floor. The animal inspection station will have a minor impact on local air quality and traffic and no impact on water quality. The building will not be located in a 100 year flood plain and will not affect any endangered species. While this project will have no effect on any above-ground cultural resources, it may impact archaeological resources. Therefore, an archaeological survey and/or land use history will be conducted prior to construction activity.

Implementation of the proposed project will not be initiated until 30 days after publication of this notice in the **Federal Register.**

Done at Washington, D.C., this 12th day of May 1983.

James O. Lee, Jr.,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 83-13283 Filed 5-17-83; 8:45 am]

BILLING CODE 3410-34-M

Office of the Secretary

Forms Under Review by Office of Management and Budget

May 13, 1983.

The Department of Agriculture has submitted to OMB 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. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96–511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Marshall L. Dantzler, Acting Department Clearance Officer, USDA, OIRM, Room 108-W Admin. Bldg., Washington, D.C. 20250, (202) 447–6201.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503, ATTN: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

New

• Food and Nutrition Service
Federal-State Agreement
FNS–74
Annually
State or local governments: 77 responses; 26 hours; not applicable under 3504(h)
Jim MacDonald (703) 756–3600

Revised

• Food and Nutrition Service
Distribution of Surplus Commodities
On occasion, monthly
Individuals or households, state or local governments, farms, businesses or other for profit, and non-profit institutions: 2,451 responses; 3,336 hours; not applicable under 3504(h)
Donald McCreary (703) 756–3660

• Federal Grain Inspection Service
Applications Under U.S. Grain Standards Act
FGIS 907, 908, CP–5, 5–1, 6, 333, WH 30
On occasion
Businesses: 138,887 responses; 26,281 hours; not applicable under 3504(h)
Lewis Lebakken (202) 382–1738

Reinstatement

• Agricultural Stabilization and Conservation Service
Report of Tobacco Acreage
ASCS–311
On occasion
Farms: 15,000 responses; 2,500 hours; not applicable under 3504(h)
Thomas Burgess (202) 447–2715

Marshall L. Dantzler,

Acting Department Clearance Officer.

[FR Doc. 83-13286 Filed 5-17-83; 8:45 am]

BILLING CODE 3410-01-M

CIVIL AERONAUTICS BOARD

Application of Michigan Peninsula Airways for Certificate Authority Under Subpart O

AGENCY: Notice of Order Instituting the Michigan Peninsula Airways Fitness Investigation, 83–5–61, Docket 41478.

ACTION: Notice.

SUMMARY: The Board is instituting an investigation to determine the fitness of Michigan Peninsula Airways to engage in interstate and overseas cargo and foreign cargo charter air transportation.

DATES: Persons wishing to intervene in the *Michigan Peninsula Airways Fitness Investigation* shall file their petitions in Docket 41478 by May 26, 1983.

ADDRESSES: Petitions to intervene should be filed in Docket 41191 and 41192, and addressed to the Docket Section, Civil Aeronautics Board, Washington, D.C. 20428.

FOR FURTHER INFORMATION CONTACT: John F. Brennan, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428 (202) 673–5333.

SUPPLEMENTARY INFORMATION: The complete text of Order 83-5-61 is available from our Distribution Section, Room 100, 1825 Connecticut Avenue, NW., Washington, D.C. 20428. Persons outside the metropolitan area may send a postcard request for Order 83-5-61 to that address.

By the Bureau of Domestic Aviation: May 12, 1983.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 83-13354 Filed 5-17-83; 8:45 am]

BILLING CODE 6320-01-M

COMMISSION ON CIVIL RIGHTS

District of Columbia Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the District of Columbia Advisory Committee to the Commission will convene at 2:00 p.m. and will end at 4:00 p.m. on June 14, 1983, at the National Housing Center, in the Board Room, Washington, D.C. 20005. The Administration of Justice and Employment subcommittees will deliver reports, and the Commissioner of the D.C. Commission on Social Services will present a briefing on the effects of Federal block grants.

Persons desiring additional information or planning a presentation to the Committee, should contact the Chairperson, Walter E. Washington, 1025 15th Street, North West, Washington, D.C. 20005, (202) 659-3300 or the Mid-Atlantic Regional Office, 2120 L Street, North West, Room 510, Washington, D.C. 20037, (202) 254-6670.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., May 9, 1983.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 83-13329 Filed 5-17-83; 8:45 am]

BILLING CODE 6335-01-M

Illinois Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Illinois Advisory Committee to the Commission will convene at 3:00 p.m. and will end at 10:00 p.m. on June 3, 1983, at the Ramada Inn, 3000 West Main, Carbondale, Illinois 62901. The purposes of this meeting are to receive reports on the Industrial Revenue Bond and Chicago Affirmative Action projects, and conduct a forum on civil rights issues in Carbondale.

Persons desiring additional information or planning a presentation to the Committee, should contact the Chairperson, Thomas J. Pugh, 500 West Melbourne Avenue, Peoria, Illinois, 61604, (309) 671-7475 or the Midwestern Regional Office, 230 South Dearborn Street, 32nd Floor, Chicago, Illinois 60604, (312) 353-7479.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., May 9, 1983.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 83-13330 Filed 5-17-83; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Minority Business Development Agency

Financial Assistance Application Announcements; Boston

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting applications under its Minority Business Development Center (MBDC) program to operate one project for a 12-month period beginning August 1, 1983 in the Boston SMSA. The cost of the project is estimated to be $275,000. The maximum Federal participation amount is $247,500. The minimum amount required for non-Federal participation is $27,500. The award number will be 01-10-83009-01.

Applicant shall be required to contribute at least 10% of the total program costs through non-Federal funds. Cost sharing contributions can be in the form of cash contributions, fee for services of in-kind contributions.

DATE: Closing date: June 10,1983.

ADDRESS: New York Regional Office, Minority Business Development Agency, 26 Federal Plaza, Room 36-116, New York, New York 10278.

FOR FURTHER INFORMATION CONTACT: Joseph F. Korpsak. Telephone: (212) 264-3262.

SUPPLEMENTARY INFORMATION:

A. Scope and Purpose of this Announcement. Executive Order 11625 authorizes MBDA to fund projects which will provide technical and management assistance to eligible clients in areas related to the establishment and operation of businesses. The MBDC program is specifically designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit through which and from which information and assistance to and about minority businesses are funneled.

B. Eligible Applicants. Awards shall be open to all individuals, non-profit organizations, for-profit firms, local and state governments, American Indian tribes and educational institutions.

C. Evaluation Process. All proposals received as a result of this announcement will be evaluated by a MBDA review panel.

D. Evaluation Criteria for Minority Business Development Center Applications.

The evaluation criteria is designed to facilitate an objective evaluation of competitive applications for the Minority Business Development Center program.

MBDA reserves the right to reject any or all applications, including the application receiving the highest evaluation, and will exercise this right when it is determined that it is in the best interest of the Government to do so (e.g., the apparent successful applicant has serious unresolved audit issues from current or previous grants, contracts or cooperative agreements with an agency of the Federal Government).

Evaluation of proposals will employ the following criteria:

I. *Capability and Experience of Firm/Staff*—provide information that demonstrates the organization's capabilities and prior experiences in addressing the needs of minority business individuals and firms. Provide information that demonstrates the staff's capabilities and prior experiences in providing management and technical assistance to minority individuals and firms. Indicate previous experience in MBE community to be served in terms of: inventorying resources and opportunities; the brokering thereof; and providing management and technical assistance.

The following are key factors to be considered in this section:

Firm

—The organization's receptivity in the MBE community to be served, i.e., business contacts in the public and

private sector; leadership responsibilities; and experience in assisting MBE business persons and firms. (References from clients assisted are pertinent.)

—Background credentials and references for the owners of the organization and a capability statement of what the organization can do.

—Knowledge of the geographic area to be served in terms of the needs of minority businesses and past ongoing relationships with local, public and private—entities that can possibly enhance the BDC program effort—i.e., Chambers of Commerce, trade associations, venture capital organizations, banks, SBA, HUD, state, city and county government agencies, etc.

Staff

—List personnel to be used. Indicate their salaries, educational level and previous experience. Provide resumes for all professional staff personnel.

—Demonstrate competence among staff to effectuate mergers, acquisitions, spin-offs and joint-ventures.

—Provide organizational chart, job descriptions and qualification standards involving all professional staff persons to be utilized on the project.

—If any contractors are to be utilized, identify and indicate areas and level of experience. *Primary consideration will be given to inhouse capability.*

Note.—All contracting proposed should be in accordance with procurement standards in Attachment O of OMB Circulars A-110 or A-102.

II. *Techniques and Methodology*—specify plans for achieving the goals and objectives of the project. This section should be developed by using the outline of the Work Requirements and the MBDC responsibilities as *guides* and will become part of the award document. Include start-up plan and example of work plan format. Fully explain the procedures for: outreach, screening, assisting and monitoring clients; maintaining the profile inventory of minority businesses; and brokering of new business ownership, market and capital opportunities and prevention of business failures. In summary, address how, when and where work will be done and by whom. Include level of performance.

III. *Resources*—address technical and administrative resources, i.e., computer facilities, voluntary staff time and space; and financial resources in terms of meeting MBDA's 10% cost-sharing requirement and including a fee for services for assistance provided clients. A fee for services in the amount of 10% of the cost of assistance will be charged to all clients receiving management and technical assistance.

Cost-sharing is that portion of project costs not borne by the Federal Government. The composition and amount of cost-sharing are key factors that will be considered in determining the merit of this section. The cost sharing requirement can be met through the following order or priority: (1) Cash contributions; (2) fee for services; and (3) in-kind contributions.

A. *Cash contribution*—means cash that is contributed or donated by the recipient, and other non-Federal sources, i.e., public agencies and institutions, private organizations, corporations and individuals.

B. *Fee for services*—is a charge to a client for assistance provided by the MBDC for M&TA and/or SCS.

C. *In-kind contribution*—represents the value of non-cash contributions provided by the recipient and other non-Federal sources. The order of priority for in-kind contributions are: high technology systems to be utilized to achieve program objectives; top level staff personnel and real and personal property donated by other public agencies, institutions and private organizations. Property purchased with Federal funds will not be considered as the recipient's in-kind contribution. Under no circumstances can the in-kind contribution exceed 50% of the total non-Federal contribution.

IV. *Costs*—demonstrate in narrative format that costs being proposed will give the minority business client and the government the most effective program possible in terms of quality, quantity, timeliness and efficiency.

Include the principal costs involved for achieving work plan under Cooperative Agreement by completing Part III—the Budget Information Section of the Request for Application.

Provide cost-sharing plan information in terms of methodology and format for billing the costs of management and technical assistance and specialized consulting services to clients.

Total project cost will be evaluated in terms of:

—Clear explanations of all expenditures proposed, and

—The extent to which the applicant can leverage Federal program funds and operate with *economy* and *efficiency*.

In conclusion, the applicant's schedule for start of the MBDC operation should be included in Part II. Part II will be known as the applicant's plan of operation and will be incorporated into the Cooperative Agreement Award.

A detailed justification of all proposed costs is required for Part III and each item must be fully explained.

The failure to supply information in any given category of the criteria will result in the application being considered non-responsive and dropped from competitive review.

All information submitted is subject to verification by MBDA.

E. Disposition of Proposals.

Notification of awards will be made by the Grants Officer, U.S. Department of Commerce (DOC). Organizations whose proposals are unsuccessful will be advised by MBDA, DOC.

F. Proposal Instructions and Forms.

This program is subject to OMB Circular A-95 requirements.

Questions concerning the preceding information, copies of application forms, and applicable regulations can be obtained at the above address.

Nothing in this solicitation shall be construed as committing MBDA to divide available funds among all qualified applicants.

(11.800 Minority Business Development (Catalog of Federal Domestic Assistance))

Dated: May 10, 1983.

Joseph F. Korpsak,

Acting Regional Director.

[FR Doc. 83-13346 Filed 5-17-83; 8:45 am]

BILLING CODE 3510-21-M

Financial Assistance Application Announcement; California

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting applications under its Minority Business Development Center (MBDC) program to operate three projects for a 12-month period beginning November 1, 1983, in the following locations:

Los Angeles SMSA—I.D. Number: 09-10-83021-01		
Maximum MBDA contribution	$1,008,000	
SCS contribution	100,800	
Total Federal contribution		$1,108,800
Minimum cost share contribution		195,670
Minimum total project cost		1,304,470
Oxnard SMSA—I.D. Number: 09-10-83025-01		
Maximum MBDA contribution	225,000	
SCS contribution	22,500	
Total Federal contribution		247,500
Minimum cost share contribution		43,676
Minimum total project cost		291,176
Santa Barbara SMSA—I.D. Number: 09-10-83026-01		
Maximum MBDA contribution	153,000	
SCS contribution	15,300	
Total Federal contribution		168,300
Minimum cost share contribution		29,700
Minimum total project cost		198,000

Applicants shall be required to contribute at least 15% of the total program cost through non-Federal funds. Cost sharing contributions can be in the form of cash contributions, fee for services or in-kind contributions.

Dates: Closing date: June 16, 1983.

ADDRESS: Minority Business Development Agency, U.S. Department of Commerce, 450 Golden Gate Avenue, Box 36114, San Francisco, California 94102.

FOR FURTHER INFORMATION CONTACT: Mr. Mikel Cook at 415/556/6733.

SUPPLEMENTARY INFORMATION:

A. Scope and Purpose of this Announcement. Executive Order 11625 authorizes MBDA to fund projects which will provide technical and management assistance to eligible clients in areas related to the establishment and operation of businesses. The MBDC program is specifically designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit through which and from which information and assistance to and about minority businesses are funneled.

B. Eligible Applicants. Awards shall be open to all individuals, non-profit organizations, for-profit firms, local and state governments, American Indian tribes and educational institutions.

C. Evaluation Process. All proposals received as a result of this announcement will be evaluated by a MBDA review panel.

D. Evaluation Criteria for Minority Business Development Center Applications.

The evaluation criteria is designed to facilitate an objective evaluation of competitive applications for the Minority Business Development Center program.

MBDA reserves the right to reject any or all applications, including the application receiving the highest evaluation, and will exercise this right when it is determined that it is in the best interest of the Government to do so (e.g., the apparent successful applicant has serious unresolved audit issues from current or previous grants, contracts or cooperative agreements with an agency of the Federal Government).

Evaluation of proposals will employ the following criteria:

I. *Capability and Experience of Firm/Staff*—provide information that demonstrates the organization's capabilities and prior experiences in addressing the needs of minority business individuals and firms. Provide information that demonstrates the staff's capabilities and prior experiences in providing management and technical assistance to minority individuals and firms. Indicate previous experience in MBE community to be served in terms of: inventorying resources and opportunities; the brokering thereof; and providing management and technical assistance.

The following are key factors to be considered in this section:

Firm

The organization's receptivity in the MBE community to be served, i.e., business contacts in the public and private sector; leadership responsibilities; and experience in assisting MBE business persons and firms. (References from clients assisted are pertinent.)

Background credentials and references for the owners of the organization and a capability statement of what the organization can do.

Knowledge of the geographic area to be served in terms of the needs of minority businesses and past ongoing relationships with local, public and private—entities that can possibly enhance the BDC program effort—i.e., Chambers of Commerce, trade associations, venture capital organizations, banks, SBA, HUD, state, city and county government agencies, etc.

Staff

List personnel to be used. Indicate their salaries, educational level and previous experience. Provide resumes for all professional staff personnel.

Demonstrate competence among staff to effectuate mergers, acquisitions, spin-offs and joint-ventures.

Provide organizational chart, job descriptions and qualification standards involving all professional staff persons to be utilized on the project.

If any contractors are to be utilized, identify and indicate areas and level of experience. *Primary consideration will be given to inhouse capability.*

Note.—All contracting proposed should be in accordance with procurement standards in Attachment O of OMB Circulars A-110 or A-102.

II. *Techniques and Methodology*—specify plans for achieving the goals and objectives of the project. This section should be developed by using the outline of the Work Requirements and the MBDC responsibilities as *guides* and will become part of the award document. Include start-up plan and example of work plan format. Fully explain the procedures for: outreach, screening, assisting and monitoring clients; maintaining the profile inventory of minority businesses; and brokering of new business ownership, market and capital opportunities and prevention of business failures. In summary, address how, when and where work will be done and by whom. Include level of performance.

III. *Resources*—address technical and administrative resources, i.e., computer facilities, voluntary staff time and space; and financial resources in terms of meeting MBDA's 10% cost-sharing requirement and including a fee for services for assistance provided clients. A fee for services in the amount of 10% of the cost of assistance will be charged to all clients receiving management and technical assistance.

Cost-sharing is that portion of project costs not borne by the Federal Government. The composition and amount of cost-sharing are key factors that will be considered in determining the merit of this section. The cost sharing requirement can be met through the following order or priority: (1) cash contributions; (2) fee for services; and (3) in-kind contributions.

A. *Cash contribution*—means cash that is contributed or donated by the recipient, and other non-Federal sources, i.e., public agencies and institutions, private organizations, corporations and individuals.

B. *Fee for services*—is a charge to a client for assistance provided by the MBDC for M&TA and/or SCS.

C. *In-Kind contribution*—represents the value of non-cash contributions provided by the recipient and other non-Federal sources. The order of priority for in-kind contributions are: high technology systems to be utilized to achieve program objectives; top level staff personnel and real and personal property donated by other public agencies, institutions and private organizations. Property purchased with Federal funds will not be considered as the recipient's in-kind contribution. Under no circumstances can the in-kind contribution exceed 50% of the total non-Federal contribution.

IV. *Costs*—demonstrate in narrative format that costs being proposed will give the minority business client and the government the most effective program possible in terms of quality, quantity, timeliness and efficiency.

Include the principal costs involved for achieving work plan under Cooperative Agreement by completing Part III—the Budget Information Section of the Request for Application.

Provide cost-sharing plan information in terms of methodology and format for billing the costs of management and technical assistance and specialized consulting services to clients.

Total project cost will be evaluated in terms of:

Clear explanations of all expenditures proposed, and

The extent to which the applicant can leverage Federal program funds and operate with *economy* and *efficiency*.

In conclusion, the applicant's schedule for start of the MBDC opertion should be included in Part II. Part II will be known as the applicant's plan of operation and will be incorporated into the Cooperative Agreement Award.

A detailed justification of all proposed costs is required for Part III and each item must be fully explained.

The failure to supply information in any given category of the criteria will result in the application being considered non-responsive and dropped from competitive review.

All information submitted is subject to verification by MBDA.

E. Disposition of Proposals.

Notification of awards will be made by the Grants Officer, U.S. Department of Commerce (DOC) Organizations whose proposals are unsuccessful will be advised by MBDA, DOC.

F. Proposal Instructions and Forms.

This program is subject to OMB Circular A-95 requirements.

Questions concerning the preceding information, copies of application forms, and applicable regulations can be obtained at the above address.

Nothing in this solicitation shall be construed as committing MBDA to divide available funds among all qualified applicants.

G. A pre-application conference to assist all interested applicants will be held at the: Inglewood City Hall, Community Room A-First Floor, One Manchester Boulevard, Inglewood, California 90301, May 25, 1983 from 1:30 to 5:00 P.M.

(11.800 Minority Business Development (Catalog of Federal Domestic Assistance))

Dated: May 12, 1983.

Powell McDaniel,

Acting Regional Director.

[FR Doc. 83-13339 Filed 5-17-83; 8:45 am]

BILLING CODE 3510-21-M

National Bureau of Standards

National Voluntary Laboratory Accreditation Program (NVLAP); Report of Laboratory Accreditation Actions for April 1983

AGENCY: National Bureau of Standards, Commerce.

ACTION: Announcement of laboratory accreditation actions.

SUMMARY: The National Bureau of Standards (NBS) announces the following laboratory accreditation actions for April 1983.

Gold Bond Building Products, a National Gypsum Division, Research Center, 1650 Military Road, Buffalo, NY 14217, which was previously accredited under the Acoustical Testing Services Laboratary Accreditation Program (Acoustics LAP), has been accredited for three additional test methods under that program.

The additional test methods for which accreditation has been granted are:

NVLAP Code	Designation	Short title
08/P03	ANSI/ASTM C423-81	Sound Absorption and Sound Absorption Coefficients.
08/P05	ASTM C523-68 (81)	Light Reflectance of Acoustical Materials.
08/P06	ANSI/ASTM E90-82	Airborne Sound Transmission Loss of Building Partitions.

Lewis Engineering, Inc., 402 East Main Street, Plainfield, IN 46168 has voluntarily terminated its accreditation under the Freshly Mixed Field Concrete Labortary Accreditation Program.

FOR FURTHER INFORMATION CONTACT: Mr. John W. Locke, Manager, Laboratory Accreditation, TECH B141, National Bureau of Standards, Washington, DC 20234, (301) 921-3431.

Dated: May 11, 1983.

Guy Chamberlin,

Acting Director, National Bureau of Standards.

[FR Doc. 83-13315 Filed 5-17-83; 8:45 am]

BILLING CODE 3510-13-M

National Oceanic and Atmospheric Administration

North Pacific Fishery Management Council, Scientific and Statistical Committee and its Advisory Panel; Meeting Amendment

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: The agenda, as published in the **Federal Register**, May 5, 1983 (48 FR 20266), for the North Pacific Fishery Management Council, its Scientific and Statistical Committee and its Advisory Panel (AP), has been modified to include a new discussion item. The location of the Council's AP meeting as stated in the above **Federal Register** citation has also been changed.

New Agenda Item

Consideration of an appeals procedure for the halibut moratorium.

New AP Meeting Location

Anchorage Westward Hilton, Kenai Room.

All other information remains unchanged.

FOR FURTHER INFORMATION CONTACT: North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, Alaska 99510, Telephone: (907) 274-4563

Dated: May 13, 1983.

Richard B. Stone,

Acting Chief, Operations Coordination Group, National Marine Fisheries Service.

[FR Doc. 83-13331 Filed 5-17-83; 8:45 am]

BILLING CODE 3510-22-M

Office of the Secretary

President's Private sector Survey on Cost Control

AGENCY: Office of the Secretary, Commerce.

ACTION: Notice of Open Meeting of the Subcommittee of the President's Private sector Survey on Cost Control (PPSSCC).

SUMMARY: The Subcommittee was established by the Excutive Committee of the PPSSCC to: (i) Review the recommendations submitted, including task force reports and public comments, and (ii) determine which recommendations should be made to the President and the Departments and Agencies.

Time and Place: May 26, 1983, beginning at 11 a.m. The meeting will be held at the U.S. Department of Commerce Auditorium, First Floor, Herbert C. Hoover Building, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

Agenda

1. Draft reports from the following Task Forces of the Survey will be discussed by subcommittee members.

A. Boards/Commissions—Business.
B. Board/Commissions—Banking.
C. User Charges.
D. Low Income Standards.
E. Department of State/AID/USIA.
F. Land/Facilities/Personal Property.

2. Comments and recommendations received from public and other interested parties will be discussed by Subcommittee members.

In compliance with Federal Advisory Committee Act and Freedom of Information Act requirements, copies of the draft reports will be available on May 16 at the Department's Central Reference and records Inspection Facility, Room 6628 Hoover Building, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. Please call Ms. Geraldine P. LeBoo on (202) 377–3271 for information concerning fees and procedures for obtaining copies by mail.

SUPPLEMENTARY INFORMATION: The Subcommittee will hold additional public meetings in May and June, 1983. Exact dates will be noticed in the **Federal Register.** Copies of all materials, including Task Force reports, to be considered at these meetings will be available approximately two weeks prior to each meeting at the Department's Central Reference and Records Inspection Facility, address above.

Public Participation: The May 26 meeting will be open to the public. Seating will be on a first-come, first-served basis, up to the safe capacity of the meeting room. Media representatives are encouraged to call Mr. Malcolm Barr, Director, News Relations Department of Commerce, 377–4901 to arrange for coverage of the meeting.

The public may file written statements for consideration by the Subcommittee any time before, at, or after the meeting. It is strongly recommended that statements concerning the matters to be considered at each meeting be filed before such meeting to ensure that they are considered by the Subcommittee before adoption of a report. The statements should be filed at the Department of Commerce's Central Reference and Records Inspection Facility, address and phone number as above. Because of the number of recommendations to be discussed, the meeting agenda will not include time for oral statements from public attendees. All public statements reveived will be available for public review.

FOR FURTHER INFORMATION CONTACT: Ms. Janet Colson, Committee Control Officer for the Exectuive Committee of the President's Private Sector Survey on Cost Control, telephone (202) 466–4665.

Dated: May 13, 1983.

Marilyn S. McLennan

Chief, Information Policy and management Division, Officer of the Secretary.

[FR Doc. 83–13564 Filed 5–17–83; 11:19 am]

BILLING CODE 3510–(CW)–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Controlling Imports of Certain Man-Made Fiber Textile Products From Mexico

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Controlling imports of acrylic spun yarn in Category 604 pt. (only T.S.U.S.A. No. 310.5049), produced or manufactured in Mexico and exported during the ninety-day period which began on April 1, 1983 and extends through June 29, 1983.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (FR 55709), as amended on April 7, 1983 (48 FR 15175) and May 3, 1983 (48 FR 19924).

SUMMARY: On March 31, 1983 the Government of the United States requested consultations with the Government of Mexico with respect to acrylic spun yarn in Category 604 pt. (only T.S.U.S.A. No. 310.5049). This request was made on the basis of paragraph 6 of the Bilateral Cotton, Wool, and Man-Made Fiber Textile Agreement of February 26, 1979, as amended, between the two governments. Paragraph 6 provides for consultations when the orderly development of trade between the two countries may be impeded by imports due to market disruption, or the threat thereof.

Under the consultation provision of the bilateral agreement, Mexico is obligated to limit its exports to the United States of these products during the ninety-day period to 256,609 pounds. Mexico is also obligated under the bilateral agreement, if no mutually satisfactory solution is reached during consultations, to limit its exports to the United States during the twelve months which began on January 1, 1983 to 759,421 pounds.

The United States Government has decided, pending a mutually satisfactory solution, to control imports of man-made fiber textile products in Category 604 pt. (only T.S.U.S.A. No. 310.5049) for the ninety-day period, at the level described above. The United States remains committed to finding a solution concerning this category. Should such a solution be reached in consultations with the Government of Mexico, further notice will be published in the **Federal Register.**

In the event the limit established for Category 604 pt. (only T.S.U.S.A. No. 310.5049) period is exceeded, such excess amounts, if they are allowed to enter, will be charged to the level (described above) for the twelve-month period.

EFFECTIVE DATE: May 19, 1983.

FOR FURTHER INFORMATION CONTACT: William Boyd, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, D.C. 20230 (202/377–4212)

SUPPLEMENTARY INFORMATION: In the letter published below, pursuant to the bilateral agreement, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to prohibit entry into the United States for consumption, or withdrawal from warehouse for consumption, of man-made fiber textile products in Category 604 pt. (only T.S.U.S.A. No. 310.5049), produced or manufactured in Mexico and exported during the indicated ninety-day period, in excess of the designated level of restraint.

Paul T. O'Day,

Acting Chairman, Committee for the Implementation of Textile Agreements.

May 13, 1983.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; pursuant to the Bilateral Cotton, Wool, and Man-Made Fiber Textile Agreement of February 26, 1979, as amended, between the Governments of the United States and Mexico; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, you are directed to prohibit, effective on May 19, 1983, and for the ninety-day period beginning on April 1, 1983, and extending through June 29, 1983, entry into the United States for consumption and withdrawal from warehouse for consumption of man-made fiber textile products in Category 604 pt. (only T.S.U.S.A. No. 310.5049), produced or manufactured in Mexico and exported on and after April 1, 1983, in excess of 256,609 pounds.[1]

[1] The level of restraint has not been adjusted to reflect any imports after March 31, 1983.

Textile products in Category 604 pt. (T.S.U.S.A. NO. 310.5049) which have been exported to the United States prior to April 1, 1983 shall not be subject to this directive.

Textile products in Category 604 pt. (only T.S.U.S.A. No. 310.5049) which have been released from the custody of the U. S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175) and May 3, 1983 (48 FR 19924)).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The action taken with respect to the Government of Mexico and with respect to imports of man-made fiber textile products from Mexico has been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the **Federal Register.**

Sincerely,

Paul T. O'Day,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 83-13313 Filed 5-17-83; 8:45 am]

BILLING CODE 3510-25-M

DEPARTMENT OF DEFENSE

Department of the Army

United States Army Medical Research and Development Advisory Committee, Subcommittee on Medical Defense Against Chemical Agents; Partially Closed Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Subcommittee meeting:

Name of Committee: United States Army Medical Research and Development Advisory Committee, Subcommittee on Medical Defense Against Chemical Agents

Date of meeting: June 1, 1983.

Time and place: 0830 hours, Room 14, US Army Medical Research Institute of Chemical Defense, Aberdeen Proving Ground, MD.

Proposed agenda: This meeting will be open to the public from 0830 to 0945 hrs for the administrative review and discussion of the scientific research program of the US Army Medical Research Institute of Chemical Defense. Attendance by the public at open sessions will be limited to space available.

In accordance with the provisions set forth in Section 552b(c)(6), U.S.C., Title 5 and Section 10(d) of Pub. L. 92-463, the meeting will be closed to the public from 0945 to 1700 on 1 June 1983 for the review, discussion and evaluation of individual programs and projects conducted by the US Army Medical Research and Development Command, including consideration of personnel qualifications and performance, the competence of individual investigators, medical files of individual research subjects, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

COL Richard Lindstrom, US Army Medical Research Institute of Chemical Defense, Aberdeen Proving Ground, MD 21010 (301/671-2833) will furnish summary minutes, roster of Subcommittee members and substantive program information.

Harry G. Dangerfield,

Colonel, MC, Deputy Commander.

[FR Doc. 83-13366 Filed 5-17-83; 8:45 am]

BILLING CODE 3710-08-M

Corps of Engineers; Department of the Army

Intent to Prepare a Draft Environmental Impact Statement (DEIS) for a Proposed Flood Control Project for the O'Hare System of the Chicagoland Underflow Plan in Cook County, Illinois

AGENCY: Army Corps of Engineers, Chicago District, DOD.

ACTION: Notice of intent to prepare a draft environmental impact statement (DEIS).

SUMMARY: 1. The study involves the potential construction of flood damage reduction reservoirs in the combined sewer service are a of the O'Hare Water Reclamation Plant in Cook County, Illinois. The surface reservoirs would be excavated below existing ground level and could be either wet or dry during non-flood periods. Each reservoir would include necessary appurtenant works for dewatering, operation and maintenance of the reservoir in conjunction with an existing deep tunnel system for combined sewer overflow abatement and treatment. The intent of the proposed project is to reduce flood damages caused by combined sewer system backflow into basements, ponding of surface runoff, and overbank flooding.

2. Alternatives studied in detail are:

a. No action.

b. Structural alternatives consisting of a system of two reservoirs, one on-line and one off-line, which would be connected to deep tunnels via drop shafts, connecting structures and pumping stations, most of which are already in place.

c. A series of plans based on an incremental analysis of the overall effects of each reservoir individually and in combination as well as in combination with other measures. The plan finally selected for implementation may consist of none, one, or both of the two reservoirs investigated.

d. The other measures to be considered in combination with the basic reservoir plan may include combined sewer system upgrades (i.e. separtation, increased capacities or bypass sewers), small, local detention reservoirs with pump stations, sewer inlet restrictors, downspout disconnection, flood proofing basements, excavation, and flood warning systems.

3. The basic reservoir plan considered in this study is essentially from the plan developed by the Metropolitan Sanitary District of Greater Chicago (MSDGC). Designs for the Tunnel and Reservoir Plan (TARP) were released in 1974 and have been subsequently divided into Phase 1 and Phase 2. Phase 1 which mainly involves water quality enhancement, has been implemented by MSDGC for the area under consideration, and Phase 2 which mainly concerns flood damage reduction, involves the proposed reservoirs. The U.S. Army Corps of Engineers began a feasibility study of this plan in 1979. Public participation has included numerous meetings and coordination with the State of Illinois, MSDGC and interested Federal, State and local agencies. Additional coordination has also been undertaken with the U.S. Fish and Wildlife Service, U.S. Environmental Protection Agency, and the Northeastern Illinois Planning Commission.

4. Significant issues to be analyzed in depth are destruction or disruption of terrestrial and aquatic habitat; mitigation for habitat losses; effects on water quality; disposal of excavated material; and aesthetic effects.

5. No formal scoping meeting will be held. A public meeting is tentatively scheduled for the comment period following release of the DEIS. No definite date has been set. Notice of the specific time and location will be issued to the appropriate media and parties expressing interest.

6. The DEIS is expected to be available in September 1983.

7. Questions about the proposed action and DEIS can be answered by: Rose Austin, U.S. Army Corps of Engineers, Chicago District,

Environmental and Social Analysis Section, 219 S. Dearborn Street, Chicago, Illinois 60604 (312/353–6464).

DATE: May 10, 1983.

Christos A. Dovas,

LTC, Corps of Engineers, District Engineer.

[FR Doc. 83-13343 Filed 5-17-83; 8:45 am]

BILLING CODE 3710-HN-M

Intent To Prepare a Draft Environmental Impact Statement for a Proposed Navigation Improvements for the Existing Federal Project in Sheepshead Bay, Brooklyn, New York

AGENCY: Army Corps of Engineers, DOD.

ACTION: Notice of intent to prepare a draft environmental impact statement.

SUMMARY: 1. Description of Proposed Action. The plan of improvement proposes to realign, widen, and lengthen the existing Federal project. This plan would provide for a channel 12 feet deep at mean low water (mlw) and a 125 foot width for a distance of 4,125 feet within the Bay, and a channel 14 feet deep at mlw, with a 300 foot width extending from the terminus of the Bay channel into Rockaway Inlet for a distance of 7,050 feet ending at buoys 1 and 2.

Ocean disposal of the dredged material is also proposed.

2. Reasonable Alternatives. a. Plans of Improvement for channel depths between 6 feet mlw (existing project) and 12 feet mlw were investigated. Intermediate depths of 8 and 10 feet were specifically investigated. The no-action plan was also considered.

b. (Disposal Alternatives) The New York District is presently examining alternative sites and methods of dredge material disposal for maintenance dredging projects under separate studies. The subject project Draft EIS will refer to these studies and summarize findings for other feasible alternatives such as upland disposal, sub-aqueous borrow pits, and wetlands creation.

3. Scoping Process. a. Public Involvement. Public input was received in preparation of a Reconnaissance Report, dated 15 December 1980. On 28 February 1980, the Corps took part in an open community meeting concerning the future of Sheepshead Bay sponsored by State Senator Donald Halperin. Preliminary EIS development includes the development of background information (fish and wildlife resources) in coordination with the U.S. Fish and Wildlife Service, and contact with other Federal, State and local agencies for background input. Any others who are interested in the proposed project may contact the EIS coordinator listed below.

b. Significant Issues Requiring In-depth Analysis. Water quality impacts, archaeological and cultural resources inpacts and aquatic resources impacts.

c. Assignments. None anticipated.

d. Environmental review and consultation. Review will be as outlined in Council on Environmental Quality regulations dated November 29, 1978 (40 CFR Parts 1500–1508) and Corps regulations ER 200–2–2, dated August 25, 1980 (revised 2 March 1981).

4. Scoping Meeting will ☐ * will not ☐ be held

* Date Time Location

5. Estimate date of statement availability August 1983.

Address:

Project Manager (Army Corps of Engineers), Pamela Tames, Attn: NANPL–EN, Tel No. (212) 264–9077

EIS Coordinator (Army Corps of Engineers), Peter Doukas, Attn: NANPL–E, Tel No. (212) 264–1275

U.S. Army Engineer District, New York, 26 Federal Plaza, New York, N.Y. 10007

Dated: May 10, 1983.

Stanley Fafinski,

Acting Assistant Chief, Planning Division.

[FR Doc. 83-13367 Filed 5-17-83; 8:45 am]

BILLING CODE 3710-06-M

Office of the Secretary

Defense Science Board Summer Study Panel on Joint Service Acquisition Programs; Notice of Advisory Committee Meeting

The Defense Science Board 1983 Summer Study Panel on Joint Service Acquisition Programs will meet in closed session on June 6–7, June 29–30, and July 14–15, 1983 in Washington, D.C.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense.

At the meetings on June 6–7, June 29–30, and July 14–15, 1983, the Panel will examine past and present joint Service programs and the factors which contribute to their success or failure.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92–463, as amended (5 U.S.C. App. I, (1976)), it has been determined that this DSB Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1976), and that accordingly these meetings will be closed to the public.

Dated: May 13, 1983.

M. S. Healy,

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

[FR Doc. 83-13301 Filed 5-17-83; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

National Advisory Council on Women's Educational Programs

AGENCY: National Advisory Council on Women's Educational Programs.

ACTION: Amendment of Notice.

SUMMARY: This document is intended to notify the general public of changes in the notice of meeting of the National Advisory Council on Women's Educational Programs published May 10, 1983, on 47 FR 20978.

The times, locations and agenda remain the same, except that the Executive Committee will meet in closed session on June 2, 1983 from 8:30 a.m. to 9:30 a.m. at the Hotel Washington, Pennsylvania Avenue at 15th Street, N.W., Washington, D.C. 20004.

Discussion will be held of personnel matters, including the evaluation of the Executive Director. The review and subsequent discussion will include consideration of the competence of the Executive Director and would constitute a serious invasion of privacy if conducted in open session. The meeting will be closed under the authority of Section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. Appendix I) and under exemptions (2) and (6) contained in the Government in the Sunshine Act (Pub. L. 94–409, 5 U.S.C. 552b(c) (2) and (6).

A summary of the activities of the closed session and related matters which would be informative to the public consistent with the policy of Title 5 U.S.C. 552b(c) will be available to the public within 14 days of the meeting at the Council's office, 425 13th Street, N.W., Suite 416, Washington, D.C. 20004.

Signed at Washington, D.C., on May 13, 1983.

Rosemary Thomson,

Executive Director.

[FR Doc. 83-13338 Filed 5-17-83; 8:45 am]

BILLING CODE 4000-01-M

Training Program for Special Programs Staff and Leadership Personnel

AGENCY: Office of Postsecondary Education, ED.

ACTION: Application Notice for Transmittal of Applications for New Awards; and Establishment of Final Funding Priorities for Fiscal Year 1983.

SUMMARY: Applications are invited for new awards under the Training Program for Special Programs Staff and Leadership Personnel.

Authority for this program is contained in sections 417A and 417F of the Higher Education Act of 1965, as amended.

(20 U.S.C. 1070d, 1070d–1d)

The Secretary is authorized to make grants under this program to institutions of higher education and other public and private nonprofit institutions and organizations.

The purpose of the grant awards is to improve the operation of the Special Programs for Students from Disadvantaged Backgrounds (Talent Search, Upward Bound, Special Services for Disadvantaged Students, and Educational Opportunity Centers) by providing training for staff and leadership personnel employed in, or preparing for employment in, such programs and projects.

EFFECTIVE DATE: Unless the Congress takes certain adjournments, the priorities included in this notice will take effect 45 days after publication in the **Federal Register**. If you want to know the effective date of these priorities, call or write the Department of Education contact person.

Closing Date for Transmittal of Applications

An application for a training grant must be mailed or hand delivered by July 5, 1983.

Applications Delivered by Mail

An application sent by mail should be addressed to the U.S. Department of Education, Application Control Center, Attention: 84.103 (Training Program for Special Programs Staff and Leadership Personnel), Washington, D.C. 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept a private metered postmark or a private mail receipt as proof of mailing. An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered mail or at least first class mail.

Each late applicant will be notified that its application will not be considered.

Applications Delivered by Hand

An application that is hand delivered must be taken to the U.S. Department of Education, Application Control Center, Room 5673, Regional Office Building 3, 7th and D Streets SW., Washington, D.C.

The Application Control Center will accept a hand-delivered application between 8:00 a.m. and 4.30 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, and Federal holidays.

An application that is hand delivered will not be accepted after 4:30 p.m. on the closing date.

Program Information

The Secretary is accepting applications for one year of funding to support a variety of training projects that respond to the training needs and priorities of the Special Programs staff and leadership personnel. An applicant may submit more than one application for funding under this program, and the Secretary strongly urges that separate applications be submitted for separate proposed training activities.

The applications for new awards will be evaluated competitively under the selection criteria for new awards, 34 CFR 642.31, published in the **Federal Register** on April 23, 1982, 47 FR 17786–17790. In addition, applicants that have been funded within the previous three years to operate a Training Program project for Special Programs staff and leadership personnel will be evaluated on the basis of their prior experience under 34 CFR 642.32 which was published in the **Federal Register** on June 8, 1982, 47 FR 24938–24943.

SUPPLEMENTARY INFORMATION: On January 17, 1983, the Secretary of Education published in the **Federal Register**, 48 FR 2034–2035, proposed funding priorities for training activities to be funded under the Training Program for Special Programs Staff and Leadership Personnel for Fiscal Year 1983.

Interested parties were given 30 days to submit comments, suggestions or recommendations regarding the proposed priorities. A total of 20 comments were received. The following is a summary of the comments received and the Secretary's response to those comments, including any changes. All changes are described together with an explanation for the change.

Proposed Priority (1): Regional workshops for new Special Programs project directors (one year or less in their current positions) to improve their skills in administering a Special Programs project in order to prevent mismanagement or marginal results.

Comment: One commenter strongly believed that all project directors and other leadership personnel need additional training in improving supervisory skills. A second commenter recommended adding to the priorities short-term workshops on program evaluation for project directors.

Response: No change has been made in the category of eligible participants. New Special Programs project directors (one year or less in their current positions) are given priority for this training. The Secretary feels that development of sound supervisory skills are vital to the new project director in order to prevent mismanagement or marginal results. Further, the Secretary agrees that program evaluation should be included among the training topics for new project directors, and since program evaluation is directly related to the goals and objectives established within each project, the Secretary encourages applications which include training on how to write measurable outcome objectives.

Proposed Priority (2): Short-term workshops which enhance the skills of Special Programs instructional staff to provide basic skills development.

Comment: No comments were received.

Response: No change has been made in this priority. The Secretary feels emphasis should be given to programs that strengthen basic skills in math, science, and English language literacy.

Proposed Priority (3): Short-term workshops which provide Special Programs counselors/instructors with techniques and information on appropriate uses of standardized tests and student assessment procedures.

Comment: Two commenters reiterated the need to train Special Programs counselors/instructors in appropriate uses of standardized tests and student assessment procedures. The commenters suggested that the training also include the following topics:

1. Individualized student assessment;

2. Utilizing assessment information to assist students in decision-making;

3. Standardized testing experiences that assist students in using test data in planning;

4. Career and educational planning experience related to the students' career goals; and

5. The development of a longitudinal student tracking system.

Response: No change has been made. The Secretary agrees that the above topics may be included in a training workshop on standardized tests and student assessment procedures.

Proposed Priority (4): Seminars/workshops to enhance the knowledge of Special Programs project directors, instructors, and counselors in cost-effective uses of computers and other advanced educational technology.

Comment: Two commenters indicated that the use of computers is important because of the integral part that they are playing and will play in the overall TRIO program functions. The commenters noted further that, as more and more emphasis is placed on the use of computers, there is a need to supplement the academic remediation which disadvantaged students receive with the help of computer technology. They stated that one major benefit of the use of computers and other advanced technology is that it will increase the educational potential of the disadvantaged student.

A third commenter suggested that a knowledge of college and university admissions practices for disadvantaged students should be substituted for the priority regarding computers and advanced educational technology which seems to be little more than a concession toward current fads.

Response: No change has been made. The Secretary has determined that programs which support the effective use of computers for improving basic and higher level skills instruction or for improving the productivity of teaching should be given priority.

Proposed Priority (5): Regionally based training seminars/workshops for Special Programs project staff on availability of, and application processes for, student financial assistance for postsecondary educaton.

Comment: Two comments were received which supported this priority.

Other commenters recommended deleting priority five. These commenters noted that existing organizations of professional financial aid administrators now regularly conduct high-quality training for novices in the field as well as for more experienced persons and that this training is open to Special Programs personnel across the nation. The commenters went on to state that these existing workshops:

(a) Provide the necessary training and information in a high-quality, existing setting;

(b) Obviate the need for establishing a duplicative training program; and

(c) Have the added benefit of personally acquainting Special Programs personnel with many professionals in the student financial aid field.

Response: A change has been made. The Secretary has deleted this topic as a training priority to avoid duplicating the existing federal and State student financial aid training programs.

Proposed Priority (6): Seminars to enhance the skills of project staff who provide services to the physically disabled.

Comment: Many comments were received which strongly endorsed this training priority. Several commenters suggested that the need for such training is considerable since unprepared university personnel are often pressed into service due to the lack of qualified staff. Other commenters recommended maintaining this as a top priority on an extended basis because much training is needed to affect attitudes and improve skills of staff and clients.

Response: No change has been made. The Secretary has encouraged programs that address the special skill acquisition needs of the handicapped and is committed to seeking ways of supplementing state and local resources in order to meet the challenge of serving special student populations such as the physically disabled.

Other Comments: Other comments received suggested adding the following training priorities:

(a) Training to meet the educational needs of the adult learner;

(b) Training to assist project directors in improving retention of Special Services students;

(c) Regional workshops to assist project staff in securing strong institutional, local or private sector commitment to their objectives; and

(d) Regional training for organizational improvement and project management.

Response: While each suggested addition to the priorities has merit, the Secretary has decided to limit the number of priorities due to the limited amount of funds available. The Secretary will, however, consider applications for a Training Program project on these topics and other topics which are not listed as priorities if the applicant addresses another significant training need in the local area being served by the Special Programs.

After careful consideration of the comments received, the Secretary is adopting the following priorities as the final priorities that will be used to evaluate applications for new awards in Fiscal Year 1983:

Funding Priorities for Fiscal Year 1983

(1) Regional workshops for new Special Programs project directors (one year or less in their current positions) to improve their skills in areas such as supervision, program evaluation, and establishment of measurable outcome objectives, in order to prevent mismanagement or marginal results.

(2) Short-term workshops which enhance the skills of Special Programs instructional staff to provide basic skills development;

(3) Short-term workshops which provide Special Programs counselors/instructors with techniques and information on appropriate uses of standardized tests and student assessment procedures;

(4) Seminars/workshops to enhance the knowledge of Special Programs project directors, instructors, and counselors in cost-effective uses of computers and other advanced educational technology;

(5) Seminars to enhance the skills of project staff who provide services to the physically disabled.

As mentioned above, the Secretary will consider applications for Training Program project on topics other than those given priority if the applicant addresses another significant training need in the local area being served by the Special Programs.

Available Funds

The Second Continuing Resolution, which expires September 30, 1983, authorizes $960,000 to be made available for new awards under the Training Program for Special Programs Staff and Leadership Personnel in Fiscal Year 1983. It is estimated that these funds could provide for approximately ten (10) training grant awards.

Application Forms

Application forms and program information packages are expected to be ready for mailing by May 19, 1983. Application packages may be obtained by contacting the Division of Student Services, Information Systems and Program Support Branch, U.S. Department of Education (Room 3514, Regional Office Building 3), 400 Maryland Avenue, SW., Washington, D.C. 20202. Telephone 202-245-7070.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information package. However, the program

information is only intended to aid applicants in applying for assistance. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantee performance requirements beyond those imposed under the statute and regulations.

The Secretary suggests that the narrative portion of the application not exceed thirty (30) pages in length. The Secretary further suggests that only the information required by the application form be submitted.

Applicable Regulations

Regulations applicable to this program are:

(a) Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, and 78; and

(b) Regulations governing the Training Program for Special Programs Staff and Leadership Personnel (34 CFR Part 642) which were published in the **Federal Register** on April 23, 1982, 47 FR 17786–17790, and amended on June 8, 1982, 47 FR 24943; and the final priorities included in this notice.

FOR FURTHER INFORMATION CONTACT: John L. Hunt, Program Development Branch, Division of Student Services, U.S. Department of Education (Room 3514, Regional Office Building 3), 400 Maryland Avenue, SW., Washington, D.C. 20202. Telephone: 202–245–2511.

(20 U.S.C. 1070d, 1070d–1d)

(Catalog of Federal Domestic Assistance Number: 84.103—Training Program for Special Programs Staff and Leadership Personnel)

Dated: May 13, 1983.

T. H. Bell,

Secretary of Education.

[FR Doc. 83-13549 Filed 5-17-83; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Salt Deposits for Detailed Site Characterization, Recommendations on Issues To Be Addressed in Environmental Assessments and Site Characterizations Plans; Public Hearings on Proposed Nomination of Sites

AGENCY: Department of Energy.

ACTION: Notice of change to the period for written comments for public hearings in Louisiana, Mississippi, Texas, and Utah, and changes to the location of public hearings in texas.

SUMMARY: The U.S. Department of Energy has identified one or more potentially acceptable sites in salt deposits for a high-level radioactive waste repository and has announced public hearings on the proposed nomination of these sites for site characterization studies pursuant to Section 113 of the Nuclear Waste Policy Act of 1982 (Pub. L. 97–425) in the April 13, 1983, **Federal Register**. These sites are: the Richton and Cypress Creek salt domes in Mississipi, the Vacherie salt dome in Louisiana, and sites in Davis and Lavender Canyons in southeastern Utah. The U.S. Department of Energy announced identical hearings in the April 26, 1983, **Federal Register** for one or more potentially acceptable sites in Deaf Smith and Swisher counties in the Texas Panhandle. This notice identifies the revised locations for the Tulia and Austin, Texas hearings and an extension to the public comment period for all hearings. These hearings are to solicit: (1) Comments on the proposed nominations, (2) issues to be included in Environmental Assessments supporting the nomination of each site, and (3) issues to be addressed in the Site Characterization Plan.

Dates and Addresses

1. April 28, 1983, 4:00 p.m. to 10:00 p.m., Richton High School, Richton, Mississippi.

2. April 29, 1983, 2:00 p.m. to 9:00 p.m., Woolfolk State Office Building, 501 North West Street, Jackson, Mississippi.

3. May 3, 1983, 7:00 p.m. to 11:00 p.m., Monticello High School Auditorium, Monticello, Utah.

4. May 4, 1983, 2:00 p.m. to 9:00 p.m., Hotel Utah, Salt Lake City, Utah.

5. May 10, 1983, 2:00 p.m. to 9:00 p.m., Civic Center Auditorium, Minden, Louisiana.

6. May 12, 1983, 2:00 p.m. to 9:00 p.m., Auditorium, Jefferson Davis Campus, Gulf Coast Community College, Gulf Port, Mississippi.

7. May 16, 1983, 7:00 p.m. to 11:00 p.m., Hereford High School Auditorium, 200 Avenue F, Hereford, Texas.

8. May 17, 1983, 7:00 p.m. to 11:00 p.m., Tulia Junior High School Auditorium, 401 Northeast 3rd Street, Tulia, Texas.

9. May 18, 1983, 2:00 p.m. to 9:00 p.m., Austin Hilton Inn, 6000 Middle Fiskville Road, Austin, Texas.

Written Comments

The period for public comment has been extended to May 31, 1983. Parties may submit written comments on the proposed nomination; the issues to be addressed in the environmental Assessment; and the issues to be addressed in any Site Characterization Plan until this date. These comments will be added to the Hearing transcript and constitute the official Departmental record of the Hearing. Comments should be mailed to the address noted below.

FOR FURTHER INFORMATION CONTACT: For requests to speak at the hearings, and for further information contact: J. O. Neff, U.S. Department of Energy, NWTS Program Office, 505 King Avenue, Columbus, Ohio 43201, Telephone: (614) 424–5916.

Written comments should be submitted to: J. O. Neff, U.S. Department of Energy, NWTS Program Office, 505 King Avenue, Columbus, Ohio 43201, Telephone: (614) 424–5916.

For the Department of Energy, May 13, 1983.

Donald Paul Hodel,

Secretary of Energy.

[FR Doc. 83-13579 Filed 5-17-83; 11:59 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

Compliance With National Environmental Policy Act Environmental Impact Statement and Scoping Meeting for the Edge Moor Power Station Conversion to Coal, Wilmington, Delaware

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of intent to prepare an environmental impact statement and notice of scoping meeting.

SUMMARY: The Department of Energy (DOE) announces its intent to initiate the preparation of the Environmental Impact Statement (EIS) in accordance with the National Environmental Policy Act of 1969 (NEPA), to analyze the potential impact associated with its proposal to issue a Notice of Effectiveness, of prohibition orders issued, to the Edge Moor Power Station of Delmarva Power in the State of Delaware. This action is taken under the authority granted the Secretary of the Department of Energy in the Energy Supply and Environmental Coordination Act (ESECA), as amended by the Onmibus Budget Reconcilation Act of 1981 (OBRA).

The purpose of the EIS is to determine the impacts likely to result from the conversion from residual fuel oil and natural gas, to coal of the Edge Moor facility stemming from the DOE action.

The public is invited to attend an open scoping meeting in Wilmington, Delaware to express it view on the substantive scope of the environmental document and on the environmental issues of concern which the document should address.

DATE OF HEARING: June 7, 1983.

Meeting Location: Carvel State Office Building, Conference Room B, Third Floor, 820 French Street, Wilmington, Delaware 19801.

Time: 1:00 p.m. and 6:00 p.m.

Notification to Attend and Submission of Comments: Those individuals planning to attend the scoping meeting should contact Mrs. Ellen Russell at the address printed below. Written comments or suggestions for consideration at the meeting, in connection with the preparation of this EIS, should be transmitted to Mrs. Russell by June 1, 1983.

FOR FURTHER INFORMATION CONTACT:

Ellen Russell, Office of Fuels Programs, Economic Regulatory Administration, Department of Energy, 1000 Indenpendence Avenue, SW., Room GS–093, Washington, D.C. 20585, (202) 252–1316

Elizebeth V. Jankus, Office of Environmental Compliance, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252–6374.

SUPPLEMENTARY INFORMATION: This site-specific environmental impact statement is the third tier in a three-tiered approach to environmental impact assessment, an approach which conforms to the intent of the National Environmental Policy Act (NEPA) in general, and to the Council on Environmental Quality Regulation on implementing NEPA procedures in particular (Section 1508.28).

The first tier in the impact assessment process associated with fuel conversion is the programmatic analysis. In April 1979, DOE issued a Final Programmatic Environmental Impact Statement for the Fuel Use Act (DOE/EIS–0038) assessing the major environmental impacts resulting from the implementation of the Powerplant and Industrial Fuel Use Act. Additional generic and historic information can be found in the Revised Programmatic Environmental Impact Statement for the Energy Supply and Environmental Coordination Act (FES 77–3) published by the Federal Energy Administration in May 1977.

The second tier of the impact analysis is the Northeast Regional Environmental Impact Statement (NEREIS) (DOE/EIS–0083–F) (October, 1982). This document assesses the potential for cumculative and interactive impacts among powerplants located in proximity to each other.

The NEREIS, and four technical documents which provide the data base for the regional analysis, emphasizes four major interrelated issues: (1) Air quality, (2) solid waste disposal, (3) fuel supply and transportation of fuel and solid waste, and (4) health effects. Detailed site-specific issues are not treated in the NEREIS; rather, generic issues that are cumulative or interactive on a regional basis are emphasized. When addressing issues in the site-specific documents where the use of generic information is most appropriate, the information is incorporated directly from the NEREIS.

The anlaysis in the Northeast Regional Environmental Impact Statement is based on an assessment of the impacts associated with four air pollution emission scenarios. This component of the analysis was conducted at the subregional level. The four subregions center around Boston, New York, Philadelphia, and Baltimore. In the Philadelphia subregion, the analysis in the NEREIS is based on the interaction of four generating stations with eight units with a potential for conversion. This analysis included the two Edge Moor units which are the subject of this site-specific EIS.

Nature of the Action: Under ESECA, as amended by the Omnibus Budget Reconciliation Act of 1981, if a prohibition order was pending under ESECA to a utility, the utility had the option of terminating the proceeding or electing to continue under the prohibition order process under ESECA. Continuation under the prohibition order process grants to the utility the status under the Clean Air Act of an existing emission source for that powerplant. DOE issuance of such orders may constitute a major Federal Action under NEPA, and thus requires the appropriate level of NEPA compliance.

Prohibition orders were issued to the Edge Moor Power Station on June 30, 1975, and Delmarva Power elected continued coverage under ESECA for Units 1 through 4 of the facility on November 2, 1981. The Edge Moor facility is currently burning coal in Units 3 and 4 under conditions defined by the State of Delaware's Department of Natural Resources and Environmental Control. Oil is burned in Units 1, 2, and 5. When the conversions of Units 3 and 4 to coal are complete, Delmarva Power plans to retire Units 1 and 2 and to continue to burn oil in Unit 5.

Purpose of the Environmental Review Process: The purpose of the Environmental Review Process is to assess the environmental impacts of Edge Moor Power Station's conversion of Units 3 and 4 from petroleum and natural gas to coal as a primary fuel. That assessment which complies with Section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA) will lead to the preparation of an appropriate NEPA document which addresses areas of concern. Currently, impacts related to air quality, water quality, solid waste disposal, transportation of fuel and solid waste, fuel availability, economic growth and health effects have been identified as issues of concern and will, therefore, be addressed in the analysis. Other impacts deemed to be potentially significant during the public scoping process will also be addressed.

The Energy Supply and Environemntal Coordination Act (ESECA) mandates that all facilities undergoing conversion meet all applicable environmental requirements. The EIS must also address the provisions of the Clean Air Act, as amended, and take into consideration the State Implementation Plan (SIP) as it applies to the units specified, and limits, other than the SIP, that are currently applied to specific units. The public is encouraged to recommend and identify other scenarios and impacts that should be assessed. Upon compeltion of the draft EIS, its availability will be announced in the **Federal Register** and comments will be solicited.

Purpose of Scoping Meeting: DOE desires to know what the public considers to be the major environmental issues associated with the potential conversion of the Edge Moor powerplant in Delaware from oil to coal. The meeting in Wilmington, Delaware will be held to receive comments on the structure of the EIS, anticipated energy/environmental problems, actions that might be taken to address them, and reasonable alternatives that should be considered.

The meeting is scheduled to begin at 1:00 p.m. and will continue until all persons wishing to speak have and an opportunity to do so. At that time the meeting will adjourn and reconvene at 6:00 p.m. to accommodate speakers unable to participate earlier.

If possible, participants are encouraged to submit to Mrs. Russell, by June 1, their intent to participate and copies of any written material. Although public participation is encouraged even without advance submission of written material, pre-registered speakers will precede all others. Attendees at the meeting will be asked to register, and this roster will be used to generate the mailing list for the draft document being prepared. The record of this meeting will remain open for submission of additional written material until 4:30 p.m., June 14, 1983.

Questions regarding the meeting should be addressed to Mrs. Russell at (202) 252–1316. Written comments should be submitted to Mrs. Russell at the above address.

Issued in Washington, D.C. on May 13th, 1983.

William A. Vaughan,

Assistant Secretary, Environmental Protection, Safety, and Emergency Preparedness.

[FR Doc. 83-13465 Filed 5-17-83; 8:46 am]

BILLING CODE 6450-01-M

[ERA Docket No. 83-CERT-025]

Bethlehem Steel Corp.; Application for Certification of the Use of Natural Gas To Displace Fuel Oil

Bethlehem Steel Corporation (Bethlehem), 8th & Eaton Avenue, Bethlehem, Pennsylvania 18106, filed an application on April 15, 1983, with the Economic Regulatory Administration (ERA) for certification of an eligible use of natural gas to displace fuel oil at its Sparrows Point Plant in Sparrows Point, Maryland, pursuant to 10 CFR Part 595 (44 FR 47920, August 16, 1979). More detailed information is contained in the application on file and available for public inspection at the ERA Natural Gas Division Docket Room, RG-43, Room GA-007, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, from 8:00 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

In its application, Bethlehen indicates that the volume of natural gas for which it requests certification is approximately 30,000 Mcf per day. This volume is estimated to displace the use of approximately 206,760 gallons of No. 6 fuel oil (1.0 percent sulfur) per day.

The eligible sellers are Enhanced Recovery Equipment Company, 25660 Saunders Road, Lake Forest, Illinois 60045; Mewborne Oil Company, P.O. Box 7698, Tyler, Texas 75711; and Exxon Company, U.S.A., P.O. Box 2180, Houston, Texas 77001. The Gas will be transported by Columbia Gas Transmission Corporation, 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314; Columbia Gulf Transmission Company, 3805 W. Alabama Avenue, Houston, Texas 77027; Panhandle Eastern Pipeline Company, P.O. Box 1348, Kansas City, Missouri 64141; and Baltimore Gas & Electric Company, P.O. Box 1475, Baltimore, Maryland 21203.

In order to provide the public with as much opportunity to participate in this proceeding as is practicable under the circumstances, we are inviting any person wishing to comment concerning this application to submit comments in writing to the Economic Regulatory Administration, Office of Fuels Programs, Natural Gas Division, RG-43, Room GA-007, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, Attention: Paula A. Daigneault, within ten (10) calendar days of the date of publication of this notice in the **Federal Register.**

An opportunity to make an oral presentation of data, views, and arguments either against or in support of this application may be requested by any interested person in writing within the ten (10) day comment period. The request should state the person's interest and, if appropriate, why the person is a proper representative of a group or class of persons that has such an interest. The request should include a summary of the proposed oral presentation and a statement as to why an oral presentation is necessary. If ERA determines that an oral presentation is necessary, further notice will be given to Bethlehem and any persons filing comments and will be published in the **Federal Register.**

Issued in Washington, D.C., on May 12, 1983.

James W. Workman,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 83-13200 Filed 5-17-83; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 83-CERT-016]

Burlington Industries, Inc.; Application for Certification of the Use of Natural Gas To Displace Fuel Oil

On April 12, 1983, Burlington Industries, Inc. (Burlington), P.O. Box 21207, Greensboro, North Carolina 27420, filed with the Administrator of the Economic Regulatory Administration (ERA) for certification of an eligible use of natural gas to displace fuel oil at three of its manufacturing facilities in North Carolina, pursuant to 10 CFR Part 595 (44 FR 47920, August 16, 1979). On May 3, 1983, Burlington filed an amendment concerning the volume of gas requested. More detailed information is contained in the application on file and available for public inspection at the ERA Natural Gas Division Docket Room, RG-43, Room GA-007, Forrestal Building, 100 Independence Avenue, SW., Washington, D.C. 20585, from 8:00 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

In its amended application, Burlington indicates that the volume of natural gas for which it requests certification is approximately 892,790 Mcf per year. This volume is estimated to displace the use of approximately 4,962,541 gallons of No. 6 fuel oil (2.1 percent sulfur) per year at the three North Carolina facilities. The facilities are: Greensboro Finishing Plant in Greensboro; Burlington House Finishing Plant in Burlington; and Hillcrest Veneer Plant in High Point.

The quantities at each location are subject to variation with changes in demand, but estimated gas usage and resulting oil displacement volumes are listed below:

Location	Estimated volume (thousand cubic feet) per year	Estimated oil (No. 6) displacement (gallons) 2.1 percent sulfur
1. Greensboro Finishing Plant, Greensboro, North Carolina	203,870	1,396,534
2. Burlington House Finishing Plant, Burlington, North Carolina	655,540	4,501,375
3. Hillcrest Veneer Plant, High Point, North Carolina	33,580	230,583
Total	892,790	4,962,541

The eligible seller is Oklahoma Natural Gas Company, Post Office Box 871, Tulsa, Oklahoma 74102. The gas will be transported by Transcontinental Gas Pipeline Corporation, Post Office Box 1396, Houston, Texas 77251; Northern Natural Gas Company, 2223 Dodge Street, Omaha, Nebraska 68102; and Piedmont Natural Gas Company, Inc., Post Office Box 33068, Charlotte, North Carolina 28233.

In order to provide the public with as much opportunity to participate in this proceeding as is practicable under the circumstances, we are inviting any peron wishing to comment concerning this application to submit comments in writing to the Economic Regulatory Administration, Office of Fuels Programs, Natural Gas Division, RG-43, Room GA-007, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, Attention: Paula A. Daigneault, within ten (10) calendar days of the date of publication of this notice in the **Federal Register.**

An opportunity to make an oral presentation of data, views, and arguments either against or in support of this application may be requested by an interested person in writing within the ten (10) day comment period. The request should state the person's interest and, if appropriate, why the person is a proper representative of a group or class of persons that has such an interest. The request should include a summary of the proposed oral presentation and a statement as to why an oral presentation is necessary. If ERA determines that an oral presentation is necessary, further notice will be given to Burlington and any

person filing comments and will be published in the **Federal Register.**

Issued in Washington, D.C., on May 12, 1983.

James W. Workman,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 83-13259 Filed 5-17-83; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 83-CERT-010]

Central Hudson Gas & Electric Corp.; Application for Certification of the Use of Natural Gas to Displace Fuel Oil

Central Hudson Gas & Electric Corporation (CHGE), 284 South Avenue, Poughkeepsie, New York 12601, filed an application on April 4, 1983, with the Economic Regulatory Administration (ERA) for certification of an eligible use of natural gas to displace fuel oil at its Danskammer Point Steam Electric Generating Station (Units 1 and 2) in Newburgh, New York, pursuant to 10 CFR Part 595 (44 FR 47920, August 16, 1979). More detailed information is contained in the application on file and available for public inspection at the ERA Natural Gas Division Docket Room, RG-43, Room GA-007, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, from 8:00 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

In its application, CHGE indicates that the volume of natural gas for which it requests certification is approximately 2,000,000 Mcf per year. This volume is estimated to displace the use of approximately 302,000 barrels of No. 6 fuel oil (1.0 percent sulfur) per year.

The eligible seller is New York State Electric & Gas Corporation, 4500 Vestal Parkway East, Binghampton, New York 13902. The gas will be transported by Tennessee Gas Pipeline Company, P.O. Box 2511, Houston, Texas 77001; CHGE will serve as its own local distributor.

In order to provide the public with as much opportunity to participate in this proceeding as is practicable under the circumstances, we are inviting any person wishing to comment concerning this application to submit comments in writing to the Economic Regulatory Administration, Office of Fuels Programs, Natural Gas Division, RG-43, Room GA-007, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, Attention: Paula A Daigneault, within (10) calendar days of the date of publication of this notice in the **Federal Register.**

An opportunity to make an oral presentation of data, views, and arguments either against or in support of this application may be requested by any interested person in writing within the ten (10) day comment period. The request should state the person's interest and, if appropriate, why the person is a proper representative of a group or class of persons that has such an interest. The request should include a summary of the proposed oral presentation and a statement as to why an oral presentation is necessary.

If ERA determines that a oral presentation is necessary, further notice will be given to CHGE and any person filing comments and will be published in the **Federal Register.**

Issued in Washington, D.C., on May 12, 1983.

James W. Workman,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 83-13258 Filed 5-17-83; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 83-CERT-012]

J. P. Stevens & Company, Inc.; Application for Certification of the Use of Natural Gas To Displace Fuel Oil

On April 12, 1983, J. P. Stevens & Company, Inc. (Stevens), P.O. Box 2850, Greenville, South Carolina 29602, filed with the Administrator of the Economic Regulatory Administration (ERA) for certification of an eligible use of natural gas to displace fuel oil at nine of its manufacturing facilities in North Carolina and South Carolina, pursuant to 10 CFR Part 595 (44 FR 47920, August 16, 1979). On May 3, 1983, Stevens filed an amendment concerning the volume of gas requested. More detailed information is contained in the application on file and available for public inspection at the ERA Natural Gas Division Docket Room, RG-43, Room GA-007, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, from 8:00 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

In its amended application, Stevens indicates that the volume of natural gas for which it requests certification is approximately 520,125 Mcf per year. This volume is estimated to displace the use of approximately 3,569,524 gallons of No. 6 fuel oil (2.1 percent sulfur) per year at the Boger City Plant in Lincolnton, North Carolina, and at the following eight South Carolina facilities: White Horse Plant No. 1, White Horse Plant No. 2, Monaghan Plant, and Dunean Plant, all in Greenville; Chemical Plant No. 1 and Estes Plant in Piedmont; Slater Plant in Slater; and Appleton Plant in Anderson.

The quantities at each location are subject to variation with changes in demand, but estimated gas usage and resulting oil displacement volumes are listed below:

Location	Estimated volume (thousand cubic feet) per year	Estimated oil (No. 6) displacement (gallons) 2.1 percent sulfur
1. White Horse Plant No. 1, Greenville, South Carolina	29,200	200,507
2. White Horse Plant No. 2, Greenville, South Carolina	25,550	175,443
3. Monaghan Plant, Greenville, South Carolina	58,400	401,013
4. Boger City Plant Lincolnton, South Carolina	36,500	250,633
5. Chemical Plant No. 1, Piedmont, South Carolina	21,900	150,380
6. Slatter Plant, Slater, South Carolina	91,250	625,583
7. Appleton Plant, Anderson, South Carolina	91,250	625,583
8. Estes Plant, Piedmont, South Carolina	56,575	388,482
9. Dunean Plant, Greenville, South Carolina	109,500	751,900
Total	520,1,25	3,569,524

The eligible seller is Oklahoma Natural Gas Company, Post Office Box 871, Tulsa, Oklahoma 74102. The gas will be transported by Transcontinental Gas Pipeline Corporation, Post Office Box 1396, Houston, Texas 77251; Northern Natural Gas Company, 2223 Dodge Street, Omaha, Nebraska 68102; and Piedmont Natural Gas Company, Inc., Post Office Box 33068, Charlotte, North Carolina 28233.

In order to provide the public with as much opportunity to participate in this proceeding as is practicable under the circumstances, we are inviting any person wishing to comment concerning this application to submit coments in writing to the Economic Regulatory Administration, Office of Fuels Programs, Natural Gas Division, RG-43, Room GA-007, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, Attention: Paula A. Daigneault, within ten (10) calendar days of the date of publication of this notice in the **Federal Register.**

An opportunity to make an oral presentation of data, views, and arguments either against or in support of this application may be requested by any interested person in writing within the ten (10) day comment period. The request should state the person's interest and, if appropriate, why the person is a proper representative of a group or class of persons that has such an interest. The request should include a summary of the proposed oral presentation and a statement as to why

an oral presentation is necessary. If ERA determines that an oral presentation is necessary, further notice will be given to Stevens and any person filing comments and will be published in the **Federal Register.**

Issued in Washington, D.C., May 12, 1983.

James W. Workman,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 83-13237 Filed 5-17-83; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 83-CERT-007]

Stone Container Corp.; Certification of Eligible Use of Natural Gas To Displace Fuel Oil

On March 7, 1983, Stone Container Company (Stone), 50 East Sixth Street, Franklin, Ohio 45005, filed with the Administrator of the Economic Regulatory Administration (ERA), pursuant to 10 CFR Part 595, an application for certification of an eligible use of approximately 360,000 Mcf per year of natural gas which is expected to displace the use of approximately 2,470,000 gallons (58,860 barrels) of No. 6 fuel oil (1.0 percent sulfur) per year at its paper mill facility in Franklin, Ohio.

The application was amended on April 27, 1983, to add two eligible sellers and a transporter; the volumes remain the same. The eligible sellers of the natural gas are Ohio Gas Marketing Corporation, 3933 Price Road, Newark, Ohio 43055; Exxon Company, U.S.A., P.O. Box 2810, Houston, Texas 77001; and Texas Gas Corporation, 3800 Frederica Street, P.O. Box 1160, Owensboro, Kentucky 42301. As amended, the gas will be transported by Columbia Gas Transmission Corporation, P.O. Box 1273, 1700 MacCorkle Avenue, S.E., Charleston, West virginia 25325; Texas Gas Transmission Corporation, 3888 Frederica Street, P.O. Box 1160, Owensboro, Kentucky 42301; and Cincinnati Gas and Electric Company, 139 East Fourth Street, Cincinnati, Ohio, a local distribution company.

Notice of that application was published in the **Federal Register** (48 FR 16101, April 14, 1983) and an opportunity for public comment was provided for a period of ten (10) calendar days from the date of publication. No comments were received.

The ERA has carefully reviewed Stone's application for certification in accordance with 10 CFR Part 595, and the policy considerations expressed in the Final Rulemaking Regarding Procedures for Certification of the Use of Natural Gas to Displace Fuel Oil (44 FR 47920, August 16, 1979). The ERA has determined that Stone's application satisfies the criteria enumerated in 10 CFR Part 595 and, therefore, has granted the certification and transmitted that certification to the Federal Energy Regulatory Commission. More detailed information, including a copy of the application, transmittal letter, and the actual certification, is available for public inspection at the ERA Natural Gas Division Docket Room, RG-43, Room GA-007, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, from 8:00 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., May 12, 1983.

James W. Workman,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 13256 Filed 5-17-83; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. CP83-275-000]

Arkansas Louisiana Gas Co.; a division of Arkla, Inc., Request Under Blanket Authorization

May 13, 1983.

Take notice that on April 14, 1983, Arkansas Louisiana Gas Company, a division of Arkla, Inc. (Arkla), P.O. Box 21734, Shreveport, Louisiana 71151, filed in Docket No. CP83-275-000 a request pursuant to Section 157.205) of the Regulations under the Natural Gas Act (18 CFR 157.205) that Arkla proposes to construct and operate a sales tap on its jursidictional Line F-185 and related facilities costing an estimated $1,372,000 to permit direct sales of gas under the authorization issued in Docket Nos. CP82-384-000 and CP82-384-001 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Arkla proposes to construct and operate a sales tap along with separation and metering equipment and approximately 7.7 miles of 8-inch line to permit direct sales of gas to Texas Eastman Company which would use up to 30,000 Mcf per day on an interruptible basis for chemical and plastic manufacturing processes. Arkla indicates it would charge a price of $3.75 per Mcf plus or minus a cost of gas adjustment equal to the amount by which Arkla's weighted average cost of gas during the preceding billing month exceeds or is less than $2.5692 per Mcf all subject to adjustment for Btu content provided that the maximum price until March 31, 1984, would not exceed $3.40 per million Btu and the maximum price during the balance of 1984 would not exceed $3.75 per million Btu.

Arkla states that the impact of service to the new customer would be *de minimis* upon Arkla's annual deliveries. Arkla indicates that although itprojects no curtailments on its system in the foreseeable future, except on spike peaks in the winter time, the proposed sale to Texas Eastman would be made under a completely interruptible basis and accordingly would not effect Arkla's ability to maintain service to any of its firm customers. Arkla also indicates that it has filed to make a tariff change in its curtailment plan to place this particular type of interruptible customer in Priority 8, the lowest priority of Arkla's curtailment plan. However, by letter filed April 19, 1983, Arkla advised that if curtailments are needed, Arkla will curtail according to whichever curtailment plan is in effect.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-13319 Filed 5-17-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER81-577-010]

Arkansas Power and Light Co.; Compliance Filing

May 13, 1983.

The filing Company submits the following:

Take notice that on May 6, 1983, Arkansas Power & Light Company (AP&L) submitted for filing revised rates and a refund report pursuant to the Commission's order issued April 6, 1983.

Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory

Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before May 31, 1983. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-13319 Filed 5-17-83; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2880-003]

Broad River Electric Cooperative, Cherokee Falls Associates; Application for Transfer of License (Major)

May 13, 1983.

Take notice that Broad River Electric Cooperative, Licensee for the Cherokee Falls Project, and Cherokee Falls Associates, have requested that the project license be transferred jointly to the Broad River Electric Cooperative and Cherokee Falls Associates. The Cherokee Falls Project is located on the Broad River in Cherokee County, South Carolina. The project proposed installed capacity is 3,500 kW.

Comments, Protests, or Motions to Intervene—Anyone may file comments, a protest, or a motion to intervene in accordance with the requirements of Rules 211 or 214, 18 CFR 385.211 or 385.214, 47 FR 19025-26 (1982). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be filed on or before June 24, 1983.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-13320 Filed 5-17-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP83-298-000]

Columbia Gulf Transmission Co. and Transcontinental Gas Pipe Line Corp.; Application

May 13, 1983.

Take notice that on April 28, 1983, Columbia Gulf Transmission Company (Columbia Gulf), P.O. Box 683, Houston, Texas 77001, and Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP83-298-000 a joint application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation and exchange of natural gas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that Columbia Gas Transmission Corporation (Columbia Gas) has acquired a portion of gas reserves underlying High Island Block A-446 and Transco has acquired gas reserves in West Cameron Block 624, all offshore Louisiana. Pursuant to an exchange of transportation service agreement between Applicants dated February 12, 1983, Columbia Gulf and Transco have agreed to exchange natural gas transportation services on a best-efforts and thermally equivalent basis. It is stated that Transco would receive quantities of Columbia Gas Transmission Corporation's natural gas at an existing platform located in High Island Block A-446, offshore Louisiana, and provide transportation to an existing interconnection between the facilities belonging to Columbia Gulf and Transco in High Island Block A-446. In an equivalent exchange service, Columbia Gulf would receive Transco's gas at a platform in West Cameron Block 624 and transport such gas to an existing interconnection in the Southwest Leg of Columbia Gulf's Blue Water Project in West Cameron Block 624, offshore Louisiana, it is asserted. The benefits to be derived from this exchange of transportation services would be substantially equal and mutually beneficial, it is stated. Therefore, it is explained that no transportation charge would be made by either Columbia Gulf or Transco.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 3, 1983, file with the Federal Energy Regulatory Commission, Washington, DC. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedures (18 CFR 385.214 or 385.211) 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 motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-13321 Filed 5-17-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP83-296-000]

Houston Pipe Line Co., Application

May 13, 1983.

Take notice that on April 28, 1983, Houston Pipe Line Company (Applicant), P.O. Box 1188, Houston, Texas 77001, filed in Docket No. CP83-296-000 an application pursuant to Section 311(a) (2) of the Natural Gas Policy Act of 1978 and § 284.127 of the Commission's Regulations for authority to transport certain quantities of natural gas for Northern Natural Gas Company, Division of InterNorth, Inc. (Northern), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it is currently engaged in the transportation of natural gas on behalf of Northern pursuant to a transportation agreement dated April 25, 1979. It is stated that service under this agreement commenced July 25, 1979, for an initial term of two years under the self-implementing provisions of

§ 284.122(a) of the Commission's Regulations and was extended for a period of two years commencing July 25, 1981, pursuant to § 284.125 of the Commission's Regulations. In order that the transportation service might be continued on an uninterrupted basis, Applicant requests the Commission to authorize a continuation of the transportation arrangement for a period of two years commencing July 25, 1983, and ending July 24, 1985.

Applicant proposes to transport up to 150,000 Mcf of gas per day for Northern or such additional daily volumes which Applicant determines that its operating conditions shall reasonably permit. Applicant states that it would transport Northern's volumes from a point or points located at one or more of: (i) The existing interconnections of Applicant's and Texas Eastern Transmission Corporation's pipeline facilities near Mont Belvieu, Chambers County, Texas, and near Mauriceville, Orange County, Texas, (ii) the existing interconnection of Applicant's and Tennessee Gas Pipeline Company, a Division of Tenneco Inc.'s pipeline facilities near the Sabine river, Newton County, Texas, (iii) the existing interconnection of Applicant's and Black Marlin Pipeline Company's pipeline facilities near Texas City, Galveston County, Texas, (iv) the existing interconnections of Applicant's and United Gas Pipe Line Company's (United) pipeline facilities near Bayside, Refugio County, Texas, and near Ingleside, San Patricio County, Texas, and (v) the existing interconnections of Applicant's and Transcontinental Gas Pipe Line Corporation's pipeline facilities near Loeb, Hardin County, Texas, near Fulshear, Fort Bend County, Texas, and in the Bammel Field Area, Harris County, Texas. A thermally equivalent quantity of gas so delivered, less applicable fuel if any, would be redelivered by Applicant for Northern's account to either or both Oasis Pipe Line Company (Oasis) and United at a point or points located at: (i) The existing interconnection of Applicant's and Oasis' pipeline facilities near Katy, Waller County, Texas, and (ii) the existing interconnection of Applicant's and United's pipeline facilities located near Bayside, Refugio County, Texas. Northern has agreed to pay Houston 6.0 cents per million Btu of gas delivered.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 3, 1983, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All protest 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 motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-13322 Filed 5-17-83; 8:45am]

BILLING CODE 6717-01-M

[Docket No. CP79-332-002]

Natural Gas Pipeline Co. of America; Petition To Amend

May 13, 1983.

Take notice that on May 11, 1983, Natural Gas Pipeline Company of America (Natural), 122 South Michigan Avenue, Chicago, Illinois 60603, filed in Docket No. CP79-332-002 a petition to amend authorization pursuant to Section 3 of the Natural Gas Act granted to Natural in Docket Nos. CP79-332 and CP79-332-001 by order issued April 24, 1981, in *Northwest Alaskan Pipeline Company, et al.*, Docket No. CP78-123, *et al.*, by authorizing Natural to continue to import natural gas from Canada purchased at a change in price, as more fully set forth in the petition to amend on file with the Commission and open to public inspection.

Natural states that Ordering Paragraph (A) of the order of April 24, 1981, authorizes Natural to import up to 75,000 Mcf of natural gas per day purchased from ProGas Limited "at an import price of $4.94 per MMBtu". Natural states that on April 11, 1983 the Government of Canada lowered its border price from $4.94 per MMBtu to $4.40 per MMBtu.

Natural requests that Ordering Paragraph (A) of the Commission's April 24, 1981, order be amended to read "at an import price of up to $4.40 per MMBtu". Natural avers that such amendment would clarify its authority to purchase Canadian natural gas from ProGas at the current border price of $4.40 per MMBtu as well as at any lesser price implemented by the Canadian government.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before June 3, 1983, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). 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. Any person wishing to become a party to a proceeding or bo participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-13323 Filed 5-17-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP78-220-005]

Northwest Pipeline Corporation; Petition To Amend

May 13, 1983.

Take notice that on April 22, 1983, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP78-220-005 a petition to amend the order issued October 4, 1978, as amended, in Docket No. CP78-220 pursuant to Section 7(c) of the Natural Gas Act so as to authorize the continued transportation and exchange of natural gas with Rocky Mountain Natural Gas Company (Rocky Mountain) pursuant to the terms of three amendments to their gas transportation exchange agreement, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Northwest states that by order issued on October 4, 1978, as amended, it was authorized to exchange up to 10,000 Mcf of natural gas per day with Rocky Mountain and RMNG Gathering Company (RMNG) pursuant to the terms of an exchange agreement dated January 27, 1978, as amended. The gas subject to the exchange is on acreage which Northwest owns or controls and is delivered by Northwest to Rocky Mountain at the intersection of Northwest's Great Divide Gathering System facilities and Rocky Mountain's Big Hole pipeline in Moffat County, Colorado, it is stated. RMNG then redelivers thermally equivalent volumes to Northwest at the Bar-X exchange meter station which is located at the intersection of RMNG's South Canyon gathering system facilities and

Northwest's mainline facilities in Mesa County, Colorado, it is further stated. Rocky Mountain currently charges Northwest 14.3 cents per Mcf for providing the described transportation and exchange service, it is asserted.

Northwest requests herein amendment of its exchange service authorization pursuant to the terms of three amendments to the exchange agreement as follows:

(1) The amendment dated June 29, 1979, provides for an additional redelivery point from Rocky Mountain to Northwest to be located at an existing point of interconnection between the facilities of Rocky Mountain and Northwest in Rio Blanco County, Colorado (Piceance delivery point);

(2) The amendment dated October 30, 1979, requires Northwest to reimburse Rocky Mountain and RMNG for actual out-of-pocket costs of providing taps on Rocky Mountain's and RMNG's facilities which enable them to receive natural gas for the account of Northwest; and,

(3) The amendment dated April 15, 1982, provides for the addition of 1,600 acres to the Great Divide area covered by the exchange agreement dated January 27, 1978.

Northwest further requests blanket authorization to include additional acreage subject to the certified exchange as it becomes available in the Great Divide area. Accordingly, Northwest proposes to file any such changes between Northwest and Rocky Mountain or any other parties as part of its required annual tariff filing.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before June 3, 1983, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) 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 motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-13324 Filed 5-17-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP83-297-000]

Oasis Pipe Line Co.; Application

May 13, 1983.

Take notice that on April 28, 1983; Oasis Pipe Line Company (Applicant), P.O. Box 1188, Houston, Texas 77001, filed in Docket No. CP83-297-000 an application pursuant to Section 311(a)(2) of the Natural Gas Policy Act of 1978 and § 284.127 of the Commission's Regulations for authority to transport certain quantities of natural gas for Northern Natural Gas Company, Division of InterNorth, Inc. (Northern), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it is currently engaged in the transportation of natural gas on behalf of Northern pursuant to a transportation agreement dated April 25, 1979. It is stated that service under this agreement commenced July 25, 1979, for an initial term of two years under the self-implementing provisions of § 284.122(a) of the Commission's Regulations and was extended for a period of two years commencing July 25, 1981, pursuant to § 284.125 of the Commission's Regulations. In order that the transportation service might be continued on an uninterrupted basis, Applicant requests the Commission authorize a continuation of the transportation arrangement for a period of two years commencing July 25, 1983, and ending July 24, 1985.

Applicant proposes to transport up to 150,000 Mcf of gas per day for Northern or such additional daily volumes which Applicant determines that its operating conditions shall reasonably permit. Applicant states that it would transport Northern's volumes delivered to Applicant by Northern at the existing interconnection of Applicant's and Houston Pipe Line Company's pipeline facilities located near Katy, Waller County, Texas, under the terms and conditions of a gas transportation agreement dated April 25, 1979, as amended March 28, 1983. A thermally equivalent quantity of gas so delivered, less Northern's *pro rata* share of compressor fuel on Applicant's system, would be redelivered by Applicant to Northern at the existing interconnection of Applicant's and Northern's pipeline facilities located near Ft. Stockton, Pecos County, Texas. It is stated that Northern has agreed to pay Applicant 12.39 cents per Million Btu of gas delivered.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 3, 1983, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). 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 motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-13325 Filed 5-17-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP83-293-000]

Tennessee Gas Pipeline Co., A Division of Tenneco Inc.;

May 13, 1983.

Take notice that on April 27, 1983, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Applicant), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP83-293-000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon its Hunt sales delivery meter station located in Kanawha County, West Virginia, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to abandon its Hunt sales meter station which serves as delivery point to Consolidated Gas Supply Corporation (Consolidated). Consolidated has received authorization to abandon the facilities into which the Hunt sales meter station connects; hence, there is no further need for the station. Applicant states that it would continue to deliver the related volumes of gas to Consolidated at the Cornwall delivery point under Applicant's Rate Schedule CD-3.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 3 1983, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) 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 motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Section 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-13326 Filed 5-17-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP83-294-000]

Tennessee Gas Pipeline Co., a Division of Tenneco Inc.; Application

May 13, 1983.

Take notice that on April 27, 1983, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Applicant), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP83-294-000 an application pursuant to section 7(c) of the Natural Gas Act and Subpart F of Part 284 of the Commission's Regulations for a certificate of public convenience and necessity authorizing the transportation of up to 25,000 Mcf of natural gas per day for Central Hudson Gas & Electric Corporation (Central Hudson) for a term of sixty consecutive days from the date of initial deliveries, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to transport daily volumes of up to 25,000 Mcf of natural gas to Central Hudson for a 60-day term commencing on the date of initial deliveries to enable it to reduce the use of fuel oil in the generation of electric energy at its electric generation stations. Applicant states that the gas to be transported would be purchased by Central Hudson from New York State Electric & Gas Corporation (NYSEG) and made available for transportation at Applicant's existing Lockport sales meter station delivery point to NYSEG in Niagara County, New York. Applicant states that it would redeliver equivalent quantities to Central Hudson at Applicant's existing Cedar Hills sales meter station delivery point to Central Hudson in Albany County, New York. Applicant states that the gas would be transported only to the extent its operating conditions and available capacity permit.

Applicant proposes to charge Central Hudson the rate contained in Applicant's Rate Schedule IT which is currently 21.32 cents per Mcf.

Applicant states that the subject gas would be used by Central Hudson solely to displace fuel oil it would otherwise use in its electric generating stations and that the source of the gas to be sold in NYSEG's general system supply which NYSEG purchases from Applicant and which, it is indicated, is surplus to NYSEG's market requirements.

Applicant further states that on April 4, 1983, Central Hudson filed for a certificate of eligible use from the Economic Regulatory Administration in ERA Docket No. 83-CERT-010.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 3, 1983, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) 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 motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-13327 Filed 5-17-83; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-30227; PH-FRL 2364-8]

Certain Companies; Applications To Register Pesticide Products Containing New Active Ingredients

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing active ingredients not included in any previously registered pesticide products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act FIFRA), as amended.

DATE: Comment by June 17, 1983.

ADDRESS: Written comments, identified by the document control number [OPP-30227] and the file symbol, should be submitted to: Production Manager (PM), Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 1921 Jefferson Davis Highway, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: The product manager at the telephone number cited.

SUPPLEMENTARY INFORMATION: EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered pesticide products pursuant to the provisions of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

Applications Received

1. File Symbol: 7969-AG. Applicant: BASF Wyandotte Corp., 100 Cherry Hill Road., PO Box 181, Parsippany, NJ 07054. Product name: Campogran™ B Seed Treatment Fungicide. Fungicide.

Active ingredient: *N*--cyclohexyl-*N*methoxy-2,5-dimethyl-3-furancarboxamide 50.9%. Proposed classification/Use: General. A seed treatment for cottonseed. (Product Manager (PM) 21–Henry Jacoby (703–557–1900).)

2. File Symbol: 39541–EG. Applicant: Montedison USA, Inc., 1114 Avenue of the Americas, New York, NY 10036. Product name: Galben™ 25 WP Fungicide. Fungicide. Active ingredient: *N*-(2,6-dimethylphenyl)-*N*-(phenylacetyl)-DL-alanine methyl ester 25%. Proposed classification/Use: General. For the control of pythium on turf grasses. (PM 21–Henry Jacoby (703–557–1900).)

3. File Symbol: 3125–GUA. Applicant: Mobay Chemical Corp., PO Box 4913, Hawthorn Road., Kansas City, MO 64120. Product name: Baytan™ 150 FS Seed Treatment Fungicide. Fungicide. Active ingredient: Beta-(4-chlorophenoxy)-alpha-(1,1-dimethylethyl)-1*H*-1,2,4-triazole-1-ethanol 13.8%. Proposed classification/Use: General. For the control of certain diseases on small grains and corn. Type registration: Conditional. (PM 21–Henry Jacoby (703–557–1900).)

4. File Symbol: 48031–R. Applicant: International Flavors and Fragrances, Inc., 52 W. 47th St., New York, NY 10019. Product name: Summer Fantasy Fragrance/Inspect Repellant Formulation for Candles. Insecticide. Active ingredient: 2-methyl heptenone—10.0%, Coumarin 2%, Indde .2%. Proposed classification/Use: General. For use as insect repellant against mosquitoes and other biting insects. Type registration: Conditional. (PM 17–Timothy Gardner (703–557–2690).)

Notice of approval or denial of an application to register a pesticide product will be announced in the **Federal Register**. Except for such material protected by section 10 of FIFRA, the test data and other scientific information deemed relevant to the registration decision may be available after approval under the provisions of the Freedom of Information Act. The procedure for requesting such data will be given in the **Federal Register** if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

Written comments filed pursuant to this notice, will be available in the product manager's office from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays. It is suggested that persons interested in reviewing the application file, telephone the product manager's office to ensure that the file is available on the date of intended visit.

(Sec. 3(c)(4) of FIFRA, as amended)

Dated: May 10, 1983.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 83-13300 Filed 5-17-83; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59122B/59123A; TSH-FRL 2365-1]

Certain Chemicals; Approval of Test Marketing Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of TM–83–42, and TM–83–43, applications for test marketing exemptions (TME) under section 5(h)(6) of the Toxic Substances Control Act (TSCA). The test marketing conditions are described below.

EFFECTIVE DATE: May 9, 1983.

FOR FURTHER INFORMATION CONTACT: Theodore C. Jones, Acting Chief, Notice Review Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–204, 401 M St. SW., Washington, DC. 20460 (202–382–3725).

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and to permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use and disposal of the substances for test marketing purposes will not present any unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities.

EPA has determined that test marketing of the new chemical substances described below, under the conditions set out in the applications, and for the time periods specified below, will not present any unreasonable risk of injury to health or the environment. Production volume, number of workers exposed to the new chemical, and the levels and duration of exposure must not exceed that specified in the applications. All other conditions described in the applications must be met. The following additional restrictions apply:

1. The applicant must maintain records of the date(s) of shipment(s) to each customer and the quantities supplied in each shipment, and must make these records available to EPA upon request.

2. A bill of lading accompanying each shipment must state that use of the substance is restricted to that approved in the TME.

TME 83–42

Date of Receipt: March 31, 1983.

Notice of Receipt: April 8, 1983 (48 FR 15323).

Applicant: Ethyl Corporation.

Chemical: Di (mixed alkyl) magnesium (Generic).

Use:

Polymerization catalyst.

Production Volume: Confidential.

Number of Customers: 1.

Process Information: Confidential.

Test Marketing Exemption Period: 1 year.

Commencing on: (Insert signature date.)

Risk Assessment: Overall concerns for health and environmental effects are low. Worker exposure to the new substance will be extremely low since manufacture will be in a closed system under nitrogen, and safe handling procedures are well-established for production, shipment and use of this class of chemicals to prevent worker exposure. Due to its reactivity, the test market substance is not available for environmental release.

Public Comments: None.

TME 83–43

Date of Receipt: April 1, 1983.

Notice of Receipt: April 15, 1983 (48 FR 16330).

Applicant: Confidential.

Chemical: Mixed polyalkoxy alkyl siloxanes and silsesquioxanes (Generic).

Use: Functional fluid additive.

Production Volume: Confidential.

Worker Exposure: Potential exposure will be by the dermal, inhalation and ocular routes. At the manufacturing site, a maximum of 12 workers will be potentially exposed for 2 hours/day for no more than 8 days. During processing during customer evaluation a maximum of 6 workers will be potentially exposed up to 6 hours/day for no more than 3 days.

Test Marketing Exemption Period: 1 year.

Commencing on: (Insert signature date.)

Risk Assessment: The Agency identified no significant health or environmental concerns. Human exposure and environmental release during manufacture, processing, and use.

under the conditions specified in the application are expected to be low.

Public Comments: None.

The agency reserves the right to rescind approval of an exemption should any new information come to its attention which casts significant doubt on its finding that the test marketing activities will not present an unreasonable risk to health or the environment.

Dated: May 9, 1983.

Marcia Williams,

Acting Director, Office of Toxic Substances.

[FR Doc. 83-13299 Filed 5-17-83; 8:45 am]

BILLING CODE 6560-50-M

[SAB-FRL 2365-2]

Science Advisory Board; High-Level Radioactive Waste Disposal Subcommittee; Open Meeting

Under Pub. L. 92-463, notice is hereby given that a two-day meeting of the High-Level Radioactive Waste Disposal Subcommittee of the Science Advisory Board will be held in Conference Room 3906/3908, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C., on June 2-3, 1983. The meeting will begin at 9:00 a.m. and last until 5:00 p.m. each day.

The purpose of the meeting will be to continue the review of the scientific and technical basis of the Agency's proposed rules for the management and disposal of high-level radioactive wastes. The members of the Subcommittee, and the principal issues for the Subcommittee's consideration, were announced in the **Federal Register**, Wednesday, January 5, 1983, page 509.

The agenda for the meeting, which is the fifth in a series of meetings on the proposed rules, will include discussions of risk assessment, geochemistry and groundwater transport, environmental pathways and qualitative assurance requirements. The recent report of the National Research Council's Waste Isolation Systems Panel (WISP) will also be discussed, and the Subcommittee will be briefed on the public comments received by the Agency on the proposed rules.

The meeting is open to the public. Any member of the public wishing to attend or obtain further information about the meeting should contact Harry C. Torno, Executive Secretary, at (202) 382-2552, or Terry F. Yosie, Staff Director, Science Advisory Board, at (202) 382-4126. Public comment will be accepted at the meeting. Written comments will be accepted in any form, and there will be opportunity for brief oral statements. Anyone wishing to make such comment must contact Mr. Torno prior to May 27, 1983, in order to be placed on the agenda.

EPA has recently instituted new visitor control procedures. In order to minimize any inconvenience, persons wishing to attend are requested to call Mrs. Dorothy M. Clark at (202) 382-2552, so that they may be included on a roster that will be prepared for the building security guards. Attendees are also requested to enter the building at the West Tower entrance.

Dated: May 9, 1983.

Terry F. Yosie,

Staff Director Science Advisory Board.

[FR Doc. 83-13297 Filed 5-17-83; 8:45 am]

BILLING CODE 6560-50-M

[OPP-50594; PH-FRL 2363-3]

Pesticides; Issuance of Experimental Use Permits; American Cyanamid Co. et al.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted experimental use permits to the following applicants. These permits are in accordance with, and subject to, the provisions of 40 CFR Part 172, which defines EPA procedures with respect to the use of pesticides for experimental purposes.

FOR FURTHER INFORMATION CONTACT: The product manager cited in each experimental use permit at the address below: Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 1921 Jefferson Davis Highway, Arlington, VA 22202.

SUPPLEMENTARY INFORMATION: EPA has issued the following experimental use permits:

241-EUP-96. Extension. American Cyanamid Company, P.O. Box 400, Princeton, NJ 08540. This experimental use permit allows the use of 5,000 pounds of the herbicide pendimethalin on cotton and soybeans to evaluate the control of weeds. A total of 5,000 acres are involved; the program is authorized only in the States of Arkansas, Illinois, Indiana, Mississippi, and Ohio. The experimental use permit is effective from April 5, 1983 to April 5, 1984. Permanent tolerances for residues of the active ingredient in or on cottonseed and soybeans have been established (40 CFR 180.361). (Robert Taylor, PM 25, Rm. 253, CM#2, (703-557-1800))

49548-EUP-1. Issuance. Bend Research, Inc., 64550 Research Road, Bend, OR 97701. This experimental use permit allows the use of nine pounds of the pheromones (Z,Z)-7,11-hexadecadien-1-ol-acetate and (Z,E)-7,11-hexadecadien-1-ol-acetate on cotton to evaluate the control of the pink bollworm. A total of 700 acres are involved; the program is authorized only in the State of Arizona. The experimental use permit is effective from May 1, 1983 to May 1, 1984. An exemption from the requirement of a tolerance for residues of the active ingredients in or on cottonseed has been established (40 CFR 180.1043). (Timothy Gardner, PM 17, Rm. 207, CM#2, (703-557-2690))

464-EUP-78. Issuance. Dow Chemical U.S.A., P.O. Box 1706, Midland, MI 48640. This experimental use permit allows the use of 245 pounds of the herbicide methyl 2-[4-[(3-chloro-5-(trifluoromethyl)-2-pyridinyl)oxy]phenoxy]propanoate on cotton and soybeans to evaluate the control of weeds. A total of 490 acres are involved; the program is authorized in the States of Alabama, Arizona, Arkansas, California, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Misouri, Nebraska, North Carolina, Ohio, South Caroina, South Dakota, Tennessee, Texas, Virginia, and Wisconsin. The experimental use permit is effective from March 15, 1983 to March 15, 1984. This permit is issued with the limitation that all crops are destroyed or used for research purposes only. (Robert Taylor, PM 25, Rm. 253, CM#2, (703-557-1800))

279-EUP-88. Extension. FMC Corporation, 2000 Market St., Philadelphia, PA 19103. This experimental use permit allows the use of 20,000 pounds of the insecticide (±) alpha-cyano-(3-phenoxyphenyl)-methyl (±)-*cis,trans*-3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropane-carboxylate on cotton to evaluate the control of various insects. A total of 50,000 acres are involved; the program is authorized only in the States of Alabama, Arizona, Arkansas, California, Georgia, Louisiana, Mississippi, Missouri, New Mexico, North Carolina, Oklahoma, South Carolina, Tennessee, and Texas. The experimental use permit is effective from June 7, 1983 to March 5, 1984. A temporary tolerance for residues of the active ingredient in or on cottonseed has been established. A food additive regulation for residues of the active ingredient in or on cottonseed oil has been established (21 CFR 193.87). (Timothy Gardner, PM 17, Rm. 207, CM#2, (703-557-2690))

8730–EUP–13. Issuance. Health-Chem Corporation, 1107 Broadway, New York, NY 10010. This experimental use permit allows the use of 2.75 pounds of the pheromone 9-dodecenyl acetate in forests and residential areas to evaluate the control of adult western pineshoot borer moths. A total of 125 acres are involved; the program is authorized only in the States of Idaho and Montana. The experimental use permit is effective from April 22, 1983 to April 22, 1984. (Timothy Gardner, PM 17, Rm. 207, CM#2, (703–557–2690))

10182–EUP–19. Extension. ICI Americas Inc., New Murphy Road and Concord Pike, Wilmington, DE 19897. This experimental use permit allows the use of 23,940 additional pounds (900 pounds originally authorized) of the insecticide (±)alpha-cyano-(3-phenoxyphenyl)-methyl (±)-*cis,trans*-3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropanecarboxylate on cotton to evaluate the control of various insects. A total of 57,000 acres are involved. (Timothy Gardner, PM 17, Rm. 207, CM#2, (703–557–2690))

10182–EUP–25. Extension. ICI Americas Inc., Concord Pike and New Murphy Road, Wilmington, Delaware 19897. This experimental use permit allows the use of 23,940 additional pounds (9,875 pounds originally authorized) of the insecticide (±) alpha-cyano-(3-phenoxy-phenyl) methyl (±)-*cis,trans*-3-(2,2-dichloroethenyl)-2,2-dimethyl-cyclopropane on cotton to evaluate the control of various insects. A total of 57,000 acres are involved. This program and the one above are authorized only in the States of Alabama, Arizona, Arkansas, California, Georgia, Louisiana, Mississippi, Missouri, North Carolina, Oklahoma, South Carolina, Tennessee, and Texas. Both permits are effective from March 5, 1983 to March 5, 1984. Temporary tolerances for residues of the active ingredient in or on cottonseed have been established. A food additive regulation for residues of the active ingredient in or on cottonseed oil has been established (21 CFR 193.87). The permits will use the same active ingredient but different formulations. (Timothy Gardner, PM 17, Rm. 207, CM#2, (703–557–2690))

618–EUP–10. Extension. Merck and Company, Inc., P.O. Box 2000, Rahway, NJ 07065. This experimental use permit allows the use of 178.13 grams of the insecticide mixture (5-0-demethyl-avermectin A_1a) and (5-0-demethyl)-25-de-(1-methylpropyl)-25-(1-methylethyl)avermectin A_1a) on non-grazed and non-croplands to evaluate the control of the imported fire ant. A total of 4,750 acres are involved; the program is authorized only in the States of Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, and Texas. The experimental use permit is effective from March 23, 1983 to March 23, 1984. (George LaRocca, PM 15, Rm. 204, CM#2, (703–557–2400))

524–EUP–30. Extension. Monsanto Company, 1101 17th St., NW., Washington, D.C. 20036. This experimental use permit allows the use of 2,020 pounds of the herbicide butachlor on rice to evaluate the control of weeds. A total of 800 acres are involved; the program is authorized only in the States of Arkansas, Louisiana, Mississippi, and Texas and the Territory of Puerto Rico. The experimental use permit is effective from April 23, 1983 to April 23, 1984. Temporary tolerances for residues of the active ingredient in or on rice and rice straw have been established. A feed additive regulation for residues of the active ingredient in or on rice hulls and rice bran has been established (21 CFR 561.55). (Report Taylor, PM 25, Rm. 253, CM#2, (703–557–1800))

201–EUP–74. Issuance. Shell Oil Company, Suite 200, 1025 Connecticut Ave., NW., Washington, D.C. 20036. This experimental use permit allows the use of 175 pounds of the insecticide cyano (3-phenoxyphenyl)methyl-4-chloro-alpha-(1-methylethyl)benzeneacetate on hardwood (deciduous) forests to evaluate the control of the gypsy moth. A total of 1,500 acres are involved; the program is authorized only in the State of Pennsylvania. The experimental use permit is effective from May 1, 1983 to May 1, 1984. (Timothy Gardner, PM 17, Rm. 207, CM#2, (703–557–2690))

47890–EUP–1. Extension. U.S. Department of Agriculture, 12th and Independence, SW., Washington, D.C., 20013. This experimental use permit allows the use of 0.1575 gram of the biological insecticide polyhedral inclusion bodies of the nuclear polyhedrosis virus of *N. lecontei* on forests to evaluate the control of the red-headed pine sawfly. A total of 1,650 acres are involved; the program is authorized only in the States of Florida, Michigan, Minnesota, and Wisconsin. The experimental use permit is effective from July 22, 1983 to July 22, 1984. (Timothy Gardner, PM 17, Rm. 207, CM#2, (703–557–2690))

Persons wishing to review these experimental use permits are referred to the designated product managers. Inquiries concerning these permits should be directed to the persons cited above. It is suggested that interested persons call before visiting the EPA Headquarters Office, so that the appropriate file may be made available for inspection purposes from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays.

(Sec. 5, 92 Stat. 819, as amended, (7 U.S.C. 136))

Dated: May 5, 1983.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 83-13080 Filed 5-17-83; 8:45 am]

BILLING CODE 6560-50-M

[PP 3G2821/T411; PH-FRL 2363-1]

Pesticides; Triforine; Establishment of Temporary Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established a temporary tolerance for residues of the fungicide triforine in or on the raw agricultural commodity almond nutmeats. This temporary tolerance was requested by FMC Corporation.

DATE: This temporary tolerance expires March 1, 1985.

FOR FURTHER INFORMATION CONTACT: Henry Jacoby, Product Manager (PM) 21, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 229, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703–557–1900).

SUPPLEMENTARY INFORMATION: FMC Corporation, Agricultural Chemical Group, 2000 Market St., Philadelphia, PA 19103, has requested, in pesticide petition PP 3G2821 the establishment of a temporary tolerance for residues of the fungicide triforine (*N,N'*-[1,4-piperazinediylbis(2,2,2-trichloroethylidene)] bis [formamide]) in or on the raw agricultural commodity almond nutmeats at 0.02 part per million (ppm).

This temporary tolerance will permit the marketing of the above raw agricultural commodity when treated in accordance with the provisions of experimental use permit 279-EUP-96 which is being issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, (92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that establishment of the temporary tolerance will protect the public health. Therefore, the temporary tolerance has been established on the condition that the pesticide be used in

accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. FMC Corporation must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

This tolerance expires March 1, 1985. Residues not in excess of this amount remaining in or on the raw agricultural commodity after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerance. This tolerance may be revoked if the experimental use permit is revoked of if any experience or scientific data with this pesticide indicate that such revocation is necessary to protect the public health.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164, 5 U.S.C. 610-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

Dated: May 5, 1983.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 83-13004 Filed 5-17-83; 8:45 am]

BILLING CODE 6560-01-M

FEDERAL MARITIME COMMISSION

Agreements Filed

The Federal Maritime Commission herby gives notice that the following agreements have been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and may request a copy of each agreement and the supporting statement at the Washington, D.C. office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 40573, within 20 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in §522.7 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: T-4106.

Title: Puerto Rico Ports Authority and Antilles Shipping Terminal Lease Agreement.

Parties: Puerto Rico Ports Authority (PRPA)/Antilles Shipping (Antilles).

Synopsis: Agreement No. T-4106 provides for the lease by PRPA to Antilles for the exclusive use of certain premises and the preferential use of certain other premises at Pier 8, San Juan. Antilles is to pay PRPA flat monthly rentals for each of the areas and minimum dockage and wharfage charges. The term of the agreement is 3 years.

Filing party: Nestor D. Ramirez Cuebas, General Counsel, Puerto Rico Ports Authority, G.P.O. Box 2829, San Juan, Puerto Rico 00936.

Agreement No. 6190-36.

Title: United States Atlantic & Gulf/Venezuela Conference.

Parties: Compania Anonima Venezolana De Navigacion (Venezuelan Line) and Delta Steamship Lines, Inc.

Synopsis: The basic agreement would be amended to (1) increase, from $25,000 to $50,000, the security deposit which each member is required to maintain as security for the fulfillment of its financial obligations under the agreement and, (2) require the countersignature of a member line of the Conference in addition to the signature of the Conference Chairman or Vice Chairman before the security deposit of a member line could be drawn upon.

Filing party: Nathan J. Bayer, Esq., Freehill, Hogan & Mahar, 80 Pine Street, New York, N.Y. 10005.

By Order of the Federal Maritime Commission.

Dated: May 13, 1983.

Francis C. Hurney,

Secretary.

[FR Doc. 83-13250 Filed 5-17-83; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Formation of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become bank holding companies by acquiring voting shares 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. **Board of Governors of the Federal Reserve System** (William W. Wiles, Secretary) Washington, D.C. 20551:

1. *Glasgow Bancshares Corporation,* Glasgow, Kentucky; to become a bank holding company by acquiring 84 percent of the voting shares of New Farmers National Bank, Glasgow, Kentucky. This application may be inspected at the offices of the Bord of Governors or the Federal Reserve Bank of St. Louis. Comments on this application must be received not later than June 10, 1983.

2. *Holcomb Bancshares, Inc.,* Ellsworth, Kansas; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank of Holcomb, Holcomb, Kansas. This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Kansas City. Comments on this application must be received not later than June 10, 1983.

Board of Governors of the Federal Reserve System, May 11, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-13261 Filed 5-17-83; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Board of Scientific Counselors, NIMH; Reestablishment

Pursuant to the Federal Advisory Committee Act of October 6, 1972 (5 U.S.C. Appendix I), the Alcohol, Drug Abuse, and Mental Health Administration announces approval and certification by the Secretary of Health and Human Services, with the concurrence of the General Services Administration Committee Management Secretariat, of the following advisory committee:

Designation: Board of Scientific Counselors, NIMH.

Purpose: The Committee shall advise the Secretary, the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, and the Director, National Institute of Mental Health on the NIMH Intramural Research Program through periodic visits to the laboratories. Its purpose is to assess the research in progress and to evaluate the productivity and performance of staff scientists.

Expiration Date: Authority for the Board of Scientific Counselors, MIMH, will expires January 4, 1985, unless the Secretary formally determines that continuance is in the public interest.

Dated: May 10, 1983.

William Mayer,

Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 83-13263 Filed 5-17-83; 8:45 am]

BILLING CODE 4160-20-M

Health Resources and Services Administration

Availability of Funds for Home Health Services and Training

AGENCY: Health Resources and Services Administration, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The Health Resources and Services Administration (HRSA) announces that funds are available for grants and loans for the development and expansion of home health programs and services. Public Law (Pub. L.) 98-8, The Emergency Expenditures to Meet National Needs Act of 1983, signed on March 24, 1983, appropriates $5 million under section 339 of the Public Health Service (PHS) Act (42 U.S.C. 255) to provide home health services and for the training of paraprofessionals to provide home health services. This notice contains information of interest to prospective applicants for such funding.

DATE: To receive consideration as being on time, mailed applications must be postmarked on or prior to June 30, 1983 and received in time for processing. Hand delivered applications must be received by COB, June 30, 1983.

FOR FURTHER INFORMATION CONTACT: Mr. Harold J. Dame, Director, Special Programs Branch, Division of Primary Care Services, Bureau of Health Care Delivery and Assistance, 5600 Fishers Lane, Room 7A-30, Rockville, Maryland 20857. Telephone 301-443-2270.

SUPPLEMENTARY INFORMATION: The Orphan Drug Act (Pub. L. 97-414), passed on January 1, 1983, revised title III of the PHS Act (the Act) to establish the Home Health Services program. Section 339(a) of the Act provides that the Secretary may make grants to public and private nonprofit entities to meet the initial costs of establishing and operating home health programs, and may make loans to proprietary entities for these purposes. Grants and loans may also be awarded to existing entities for expanding home health services to a new geographic service area. Under section 339(b) of the Act, the Secretary may award grants to public and private entities for programs to train paraprofessionals, including homemaker home health aides, to provide home health services.

HRSA has decided to allocate the $5 million provide by Pub. L. 98-8 for carrying out section 339 as follows: $4 million will be awarded as grants and loans under section 339(a) of the Act for expanding the availability of home health care services, including services in rural towns and villages, and $1 million will be awarded as grant under section 339(b) of the Act for training programs for home health paraprofessionals.

In making loans or awarding grants for the development of new home health service programs or the expansion of existing home health service programs into new areas, HRSA's present intention is to give preference to those applicants which intend to provide services in areas where there is a high percentage of the population composed of individuals who are elderly (persons over 65 years of age), medically indigent (persons at or below the HHS poverty income guidelines, see 48 FR 7010, February 17,1983), or disabled (those disabled persons receiving assistance under old age survivors disability insurance and supplemental security income programs). HRSA also intends to give special consideration to those applicants which propose to provide services in areas with inadequate means of transportation to obtain necessary health services.

HRSA intends to give special consideration in the award of grants for training paraprofessionals (including homemaker home health aides) to applicants which propose to train persons over 50 years of age and which propose to provide a program to train paraprofessionals for an entire State or a geographic area of at least one million persons.

Applicants should be aware that HRSA intends to accept applications for section 339(a) support only as follows: Applications for grants and loans to provide home health services under section 339(a) will be accepted from entities which are home health agencies, that is, entities which are recognized as providers of home health services by the Health Care Financing Administration (HCFA) and are eligible for reimbursement under the Medicare program, and from entities which intend to become home health agencies. Applications will also be accepted from entitites which are at the present time directly providing or can directly provide one or more of the kinds of services listed in section 1861(m) of the Social Security Act and which propose to provide home health services to an area under a co-applicant arrangement with a home health agency.

Application may be made by completing the standard PHS Grant Application (form PHS-5161) for services grants and loans and for training grants. This application form calls for a program narrative giving a full description of the proposed project, including current and proposed services, a description of the service area and a budget justification. A competitive review of applications will be the basis for selecting successful proposals for grants and loans.

Grants and Loans for Home Health Service Projects

Applicants applying for grants and loans for home health services projects may wish to consider including the following information in the narrative: a time-phased staffing plan, information on their status as a HCFA provider, evidence of community support and compliance with State and local certificate of need laws, proposed fee structure, and other information showing the need of the area for home health services.

A description of a plan, if any, to train paraprofessionals, including homemaker home health aides, to provide services

as described in section 339(b)(2)(C) would be helpful in reviewing applications.

Grants For Training Projects

Applicants for training grants may wish to consider including in their application a training plan and curriculum, a description of the need in the area for the persons to be trained, the number of persons to be trained, and plans or arrangements, if any, for the utilization of trainees.

Regulations are now being developed to implement fully the home health services program. However, since there is such a short period of time available to implement and fund this program, applicants are advised to begin developing applications for submission by June 30, 1983, based on the guidelines of this notice.

Consultation, technical assistance and additional information regarding applying for these funds are available from the appropriate HHS regional offices. Curriculum content information may be obtained in the document entitled *"A Model Curriculum and Teaching Guide for the Instruction of the Homemaker-Home Health Aide,* as published by the National Home Caring Council, 235 Park Avenue South, New York, N.Y., 10003, Telephone 212–674–4990.

(The Home Health program is listed as No. *13.888* in the OMB Catalog of Federal Domestic Assistance.)

Dated: May 16, 1983.

John Kelso,

Acting Administrator.

[FR Doc. 83-13404 Filed 5-17-83; 8:45 am]

BILLING CODE 4160-16-M

Office of the Secretary

Privacy Act of 1974; Proposed Amendment to System of Records

AGENCY: Office of the Assistant Secretary for Personnel Administration, Office of the Secretary, HHS.

ACTION: Notice of proposed new routine uses for existing system of record.

SUMMARY: The Department is giving notice that it intends to add two new routine uses to the following Privacy Act record system notice: 09–90–0017—Pay, Leave, and Attendance Records, HHS/OS/ASPER. Records in this system of records are used to insure that each employee receives the proper pay and allowances; that proper deductions and authorized allotments are made from employees' pay; that employees are credited and charged with the proper amount of sick and annual leave; and to enforce employee responsibilities through such actions as income tax levies, garnishments for child support/alimony, and deductions for the payment of debts owed the United States. We invite public comment on these new routine use disclosures (numbers 18 and 19 in notice below).

EFFECTIVE DATE: This amendment shall become effective without further notice June 17, 1983, unless comments are received on or before that date which would result in a contrary determination.

ADDRESS: Comments should be address to: Director, Division of Policy, Room 2316 Switzer Building, 300 C Street, S.W., Washington D.C. 20201.

FOR FURTHER INFORMATION CONTACT: Jim Wormley, OASPER, Division of Policy, telephone: 202–245–1984.

SUPPLEMENTARY INFORMATION: The U.S. Department of Labor (DOL), Office of the Inspector General, has asked the U.S. Department of Halth and Human Services (HHS) for certain information applicable to every HHS employee that was paid during pay periods ending between October 3, 1981 and October 2, 1982 inclusive. The DOL has made the request because they are conducting, under the auspices of the President's Council on Integrity and Efficiency, a computerized crossmatch to identify HHS employees who have drawn unemployment benefits in violation of unemployment insurance laws. The data items which DOL is requesting are as follows: Social Security Number, employee name, agency code, agency sub-element/Division code, geographic location code, record length, pay period beginning date, pay period ending date, number of hours/days worked during the pay period, and gross pay. With two exceptions, Social Security account number and number of hours/days worked per pay period, the information requested by DOL is public information under 5 CFR 294.702. The purpose of the DOL computerized matching program is to reduce fraud and abuse in State unemployment compensation programs. HHS is serving as a matching source agency in this DOL anti-fraud matching program. As such, HHS has made the determinations required for source agencies by the Office of Management and Budget Guidelines for the Conduct of Matching Program.

The U.S. Department of Agriculture (USDA), Office of the Inspector General, has asked HHS for certain wage information on a single HHS employee. The information, which will be used to confirm eligibility, is needed in conjunction with a USDA audit of the Food Stamp Program in Fulton County, Goergia. A purpose of this audit, and all audits of loan and benefit programs performed by USDA and other Federal Agencies, is to reduce fraud and abuse in the administration of these programs.

The propose of this notice is to establish the routine uses required for the Privacy Act record system from which information will be provided to the DOL and the USDA (numbers 18 and 19 in the notice below) under the circumstances described above and to other Federal agencies under similar circumstances in the future.

The Privacy Act allows disclosure of information under a routine use for purposes that are compatible with the purposes for which the information was collected. Disclosure under these proposed routine uses will assist Federal agencies in their efforts to eliminate fraud, waste and abuse in loan and benefit programs they administer and in State and local programs over which they have cognizance. This goal is compatible with the OASPER functional responsibility for oversight of HHS employees' conduct, particularly with the requirement that employees conduct themselves in a proper manner, not obtain financial benefits in a fradulent manner, and pay their just obligations (see the HHS Standards of Conduct regulations in 45 Code of Federal Regulations Part 735). This responsibility is appropriately achieved through the use of this record system which is used to enforce these employee responsibilities through actions such as income tax levies, garnishments for child support/alimony, and deductions for the payment of debts owed the United States

Routine use number 17 was inadvertently omitted from the last publication of this notice in **Federal Register,** Volume 47, Number 198, October 13, 1982, pages 45759–45761. That routine use was added to this record system notice in **Federal Register,** Volume 47, Number 70, April 12, 1982, pages 15647–15650. This notice also updates the organizations and addresses of Payroll Liaison Officers in Appendix 1 of the record system notice.

A notice will be issued annually informing employees that these records may be disclosed to Federal agencies for the purpose of conducting computer matching programs designed to eliminate fraud, waste and abuse in loan and benefit programs.

May 11, 1983.

Thomas S. McFee,

Assistant Secretary for Personnel Administration.

SYSTEM NAME:

Pay, Leave and Attendance Records, HHS/OS/ASPER.

SECURITY CLASSIFICATION

None.

SYSTEM LOCATION:

Pay System's Division, Department of Health and Human Services, 330 Independence Avenue SW., Washington, D.C. 20201.

Payroll Liaison Representatives. See Appendix 1, Timekeepers in organizational units serviced by Payroll Liaison Representatives shown in Appendix 1. Personnel offices shown in HHS System 09900006, Applicants for Employment Records, Appendix 1.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All paid employees of the Department of Health and Human Services including PHS Commissioned Corps Personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system consists of a variety of records relating to pay and leave determinations made about each employee of the Department of Health and Human Services. In addition to the name of the employee, the system includes information such as the employee's date of birth, social security number, home address, grade or rank, employing organization, timekeeper number, salary, Civil Service retirement fund contributions, pay plan, number of hours worked, annual and sick leave accrual rate and usage, annual and sick leave balance, FICA withholdings, Federal, state and city tax withholdings, Federal Employees Governmental Life Insurance withholdings, Federal Employees Health Benefits withholdings, garnishment documents, savings allotments, union and management association dues withholdings allotments, savings bonds allotments, and Combined Federal Campaign allotments; for Commissioned Corps Personnel, information such as the following is included: years of service, payroll number, base pay, incentive pay, hazardous pay, allowances and Servicemen's Group Life Insurance.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 5501 et seq., 5525 et seq., 6301 et seq.; 42 U.S.C. 201 et seq., and Pub. L. 90–83.

PURPOSE(S):

Records in this system are used to insure that each employee receives the proper pay and allowances; that proper reductions and authorized allotments are made from employees' pay; and that employees are credited and charged with the proper amount of sick and annual leave. These records are maintained in each component of the Department. See also "Retrievability" below.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in this system of records is used or may be used.

(1) To prepare W–2 Forms to submit to the Internal Revenue Service and to disclose to state and local government agencies having taxing authority pertinent records relating to employees, including name, home address, social security number (in accordance with Section 7 of Pub. L. 93–579), earned income, and amount of taxes withheld.

(2) In the event that this system of records indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether federal, or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

(3) A record from this system of records may be disclosed as a "routine use" to a federal, state or local agency maintaining civil, criminal or other relevant enforcement records or other pertinent records, such as current licenses, if necessary to obtain a record relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit.

A record from this system of records may be disclosed to a federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the record is relevant and necessary to the requesting agency's decision on the matter.

(4) In the event that this system of records indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use to the appropriate agency, whether state or local charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

(5) Where federal agencies having the power to subpoena other federal agencies' records, such as the Internal Revenue Service or the Civil Rights Commission, issue a subpoena to the Department for records in this system of records, the Department will make such records available.

(6) Where a contract between a component of the Department and a labor organization recognized under E.O. 11491 of 5 U.S.C. Chapter 71 provides that the agency will disclose personal records relevant to the organization's mission, records in this system of records may be disclosed to such organization.

(7) The Department contemplates that it will contract with a private firm for the purpose of collating, analyzing, aggregating or otherwise refining records in this system. Relevant records will be disclosed to such a contractor. The contractor shall be required to maintain Privacy Act safeguards with respect to such records.

(8) By the Office of Personnel Management, Merit Systems Protection Board (including its Office of the Special Counsel), Equal Employment Opportunity Commission, and the Federal Labor Relations Authority (including the General Counsel of the Authority and the Federal Service Impasses Panel) in carrying out their functions.

(9) By the Department of Labor to make compensation determination in connection with a claim filed by the employee for compensation on account of a job-connected injury or disease.

(10) To respond to court orders for garnishment of an employee's pay for alimony or child support.

(11) To respond to orders from IRS for garnishment of an employee's pay for Federal income tax purposes.

(12) To the Department of Treasury for the purposes of preparing and issuing employee salary and compensation checks and U.S. Savings Bonds.

(13) By state officers of unemployment compensation in connection with claims filed by former HHS employes for unemployment compensation.

(14) Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

(15) In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department of any of its components; or (c) any Department employe in his or her individual capacity where the Justice Department has agreed to represent such employee, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to present an effective defense, provided such disclosure is compatible with the purpose for which the records were collected.

(16) By financial organizations designate to receive labor organization or management association dues withheld from employee's pay, in order to account for the amounts of such withheld dues which they receive.

(17) A record from this system of records may be disclosed to a State or local agency for the purpose of conducting computer matching programs designed to reduce fraud, waste and abuse in Federal, State and local public assistance programs and operations.

(18) A record from this system of records may be disclosed to a Federal agency for the purpose of conducting computer matching programs designed to reduce fraud, waste and abuse using loan or benefit records of a Federal, State or local agency to identify employees improperly receiving loans or benefits and to facilitate the collection of debts owed the United States.

(19) A record from this system of records may be disclosed to a Federal agency in response to a written request from that agency, personally signed by a supervisor, specifying the particular portion desired and the law enforcement activity for which the record is sought. The request for the record must be connected with the agency's auditing and investigative functions designed to reduce fraud, waste and abuse; it must be based on information which raises questions about an individual's eligibility for benefits or payments; and it must be made reasonably soon after the information is received.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic tape, microfilm, punch cards and forms.

RETRIEVABILITY:

Records are maintained by pay period and are retrievable by name, SSN and Timekeeper number within each pay period. Records are also used to produce summary descriptive statistics and analytical studies in support of the functions for which the records are collected and maintained and for related personnel management functions or pay studies, and for other purposes compatible with the intent for which the records system was created.

SAFEGUARDS:

Access to and use of these records are limited to personnel whose official duties require such access. Personnel screening is employed to prevent unauthorized disclosure.

RETENTION AND DISPOSAL:

Records submitted by the individual, such as allotment authorization forms, home address forms, and tax withholding forms are retained until superseded by new forms of until the individual leaves the Department. Most of these records are then destroyed. Some of these records must be retained for an additional period, or forwarded to the new employing agency. Time and attendance records are retained for five years and are then destroyed. The automated payroll master record, established when the individual is first employed and continually updated throughout the period of his or her employment, is retained until the individual leaves the Department.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Pay Systems Division, P.O. Box 1825, Washington, D.C. 20013.

NOTIFICATION PROCEDURE:

An individual may contact the system manager. An individual also may contact, as appropriate, Payroll Liaison Representatives in Appendix 1 or Personnel Officers shown in HHS System 09900006, Applicants for Employment Record, Appendix 1. Provide name, social security number, timekeeper number and pay period about which inquiring.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. (These access procedures are in accordance with Department Regulations (45 CFR 5b.5(a)(2)) Federal Register, October 8, 1975, page 47410).

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under notification procedures above, and reasonably identify the record and specify the information to be contested, and state the corrective action sought and the reasons for the correction with supporting justification. (These procedures are in accordance with Department Regulations (45 CFR 5b.7) *Federal Register*, October 8, 1975, page 47411.).

RECORD SOURCE CATEGORIES:

Information in this system of records is (1) supplied directly by the individual, or (2) derived from information supplied by the individual, or (3) supplied by timekeepers and other Department officials.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Appendix 1

Office of the Secretary

Payroll Liaison Officer, Room 4355 HHS North Bldg., 330 Independence Ave., SW., Washington, D.C. 20201

Health Care Financing Administration

Payroll Liaison Officer, HCFA, East Low Rise Building, P.O. Box 17255, Baltimore, MD 21203

Office of Human Development Services

Payroll Liaison Officer, Room 347 D, Hubert H. Humphrey Building, 200 Independences Ave., SW., Washington, DC 20201

Office of Child Support Enforcement

Payroll Liaison Officer, Room 1010 Beltway View Bldg., 6110 Executive Blvd, Rockville, MD 20852.

Social Security Administration Headquarters

Payroll Liaison Officer, SSA Headquarters, Room L 1100 West Low Rise Bldg., 6401 Security Blvd., Baltimore, MD 21235

Payroll Liasion Officer, SSA, ORS, Universal Bldg., Room 934, 1975 Connecticut Ave., NW., Washington, D.C. 20009

Regional Offices

Region I, Payroll Liaison Officer, JFK Federal Bldg., Room 1503, Government Center, Boston, MA 00203

Region II, Payroll Liaison Officer, Personnel Support Branch, Room 39-120, 26 Federal Plaza, New York, NY 10007

Region III, Payroll Liaison Officer, P.O. Box 13716, Philadelphia, PA 19101

Region IV, Payroll Liaison Officer, 101 Marietta Tower, Suite 1601, Atlanta, GA 30331

Region V, Office of Personnel 31st Floor, Payroll Liaison Officer, 300 South Wacker Drive, Chicago, IL 60606

Region VI, Regional Personnel Office, Room 1035, 1200 Main Street, Dallas, TX 75020
Region VII, Payroll Liaison Officer, Retional Personnel Office, 601 E 12th Street, Kansas City, MO 64106
Region VIII, Payroll Liaison Officer, Federal Office Building, Room 1028, 19th and Stout Street, Denver, CO 80294
Region IX, Regional Personnel Office, Room 138A, 50 United Nations Plaza, San Francisco, CA 94102
Region X, Payroll Liaison Officer, Regional Personnel, Arcade Plaza Bldg., Mail Stop 627, 1321 Second Avenue, Seattle, WA 98007
Regional Personnel Branch Office, Payroll Liaison Officer, 24000 Avila Road, 5th Floor, Laguna Niguel, CA 92677
Regional Personnel Branch Office, Payroll Liaison Officer, 1301 Superior Avenue—Suite 240, Cleveland, OH 44114

Social Security Administration Program Centers

Mid Atlantic, Payroll Liaison Officer, Program Service Center, P.O. Box 3579, Philadelphia, PA 19122
Great Lakes, Payroll Liaison Officer, Program Service Center, 600 West Madison St., Chicago, IL 60606
Southeastern, Payroll Liaison Officer, Birmingham Program Service Center, P.O. Box 10384, Birmingham, AL 35202
North Eastern Payroll Liaison Officer, Program Service Center, 9605 Horace Harding Expressway, Flushing, NY 11368
Mid-American, Payroll Liaison Officer, Program Service Center, 601 East 12th Street, Kansas City, MO 64106
Western, Payroll Liaison Officer, Richmond Personnel Operations Center, Program Service Center, P.O. Box 2431, Richmond, CA 94802

Social Security Administration District Offices

New York, SSA, Payroll Liaison Officer, 26 Federal Plaza, Room 40-114, New York, NY 10007
Philadelphia,SSA, Payroll Liaison Officer, P.O. Box 13716, Philadelphia, PA 19101
Chicago, SSA, Payroll Liaison Officer, 300 South Wacker Drive, Chicago, IL 60606
Kansas City, SSA, Payroll Liaison Officer, 601 E 12th Street, Kansas City, MO 64106
San Francisco, Payroll Liaison Officer, Room 138A, 50 United Nations Plaza, San Francisco, CA 94102
Cleveland, SSA, Payroll Liaison Officer, 1301 Superior Avenue—Suite 240, Cleveland, OH 44114
SSA, Wilkes Barre Data Operations Center, Room 903, VA Bldg., 19 N. Main Street, Wilkes Barre, PA 18701
SSA Data Operations Center, Payroll Liaison Officer, P.O. Box 4429, Station A, Albuquerque, NM 87106
Boston, SSA, Payroll Liaison Officer, SSA, Room 1105, JFK Bldg., Government Center, Boston, MA 02203
Atlanta, SSA, Payroll Liaison Officer, 101 Marietta Tower, Suite 1601, Atlanta, GA 30331
Dallas, SSA, Payroll Liaison Officer, Room 1035, 1200 Main Street, Dallas, TX 75020
Denver, SSA, Payroll Liaison Officer, Federal Office Building, Room 1196, 19th and Stout Street, Denver, CO 80294
Seattle, SSA, Payroll Liaison Officer, Regional Personnel, Arcade Plaza Bldg., Mail Stop 627, 1321 Second Avenue, Seattle, WA 98007
SSA, Record Center, P.O. Box 25, Boyers, PA 16020
SSA Data Operations Center, Payroll Liaison Officer, 100 East Alvin Drive, Salinas, CA 93906
SSA, Office of Hearings and Appeals, Room 102, Braedon Building, 3833 Fairfax Drive, Arlington, VA 22203

Public Health Service

Center for Disease Control, Payroll Liaison Officer, Personnel Management Office, 1600 Clifton Road NE., Atlanta, GA 30333
National Inst. of Environmental Health Services Payroll Liaison Officer, P.O. Box 12233, Research Triangle Park, NC 27709
Food & Drug Administration, Payroll Liaison Officer, HFA 125 Parklawn Bldg., Room 1182, 5600 Fishers Lane, Rockville, MD 20857
Alcohol, Drug Abuse and Mental Health Administration, Payroll Liaison Officer, Room 1397, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD 20857
National Institute of Health, Payroll Liaison Officer, Bldg. 31, Room B1B 30, 9000 Rockville Pike, Bethesda, MD 20014
Health Resources and Services Admin & Office of Asst. Sec. for Health, Payroll Liaison Officer, Room 1649, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD 20852
CDC, NIOSH, Payroll Liaison Officer, Financial Management Branch, Parklawn Bldg. 8A-10, 5600 Fishers Lane, Rockville, MD 20857

Indian Health Service

Payroll Liaison Officer, Indian Health Service Area Office, Room 215, Federal Building, Aberdeen, SD 57401
Payroll Liaison Officer, Albuquerque Indian Health Service, Federal Office Building and U.S. Courthouse, Room 4005, 500 Gold SW., Albuquerque, NM 87101
Payroll Liaison Officer, Alaska Area Native Health Service, Area Personnel and Training Branch, P.O. Box 7-741, Anchorage, AK 99501
Payroll Liaison Officer, Phoenix Area Indian Health Service, 3738 N. 16th Street, Suite A, Phoenix, AZ 85014
Payroll Liaison Officer, Oklahoma City Area Indian Health Service, 388 Old Post Office & Courthouse Bldg., Oklahoma City, OK 73102
Payroll Liaison Officer, Indian Health Service, 1220 SW. 3rd Avenue, Room 476, Portland, OR 97204
Payroll Liaison Officer, Indian Health Service Area Office, P.O. Box 2143, Billings, MT 59101
Payroll Liaison Officer, Navajo Area Indian Health Service, P.O. Box G, Attn: Financial Management Branch, Window Rock, AZ 86515
Payroll Liaison Officer, Indian Health Service, Data Processing Center, 2401 12th Street NW.—Room 3N, Alburquerque, NM 87198
Payroll Liaison Officer, Phoenix Indian Medical Center, 4212 N. 16th St., Phoenix, AZ 85016
Payroll Liaison Officer, Office of Research and Development, P.O. Box 11340, tucson, AZ 85734
Payroll Liaison Officer, Gallup Indian Medical Center, P.O. Box 1337, Gallup NM

Public Health Service Hospitals

Payroll Liaison Officer, St Elizabeth's Hospital, Room 101 E. Building, 2700 Martin Luther King Ave., SE., Washington, D.C. 20032
Payroll Liaison Officer, USPHS Hospital, Carville, LA 70721

[FR Doc. 13267 Filed 5-17-83; 8:45 am]
BILLING CODE 4150-04-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[I-18576]

Realty Action; Competing Sale of Public Lands in Camas County, Idaho

Correction

In FR Doc. 83-11160 beginning on page 19083 in the issue of Wednesday, April 27, 1983 make the following correction: In the second column, under **"Boise Meridian, Idaho"**, line two, "Sec. 11: W½NW¼—comprising 20 acres" should read "Sec. 11: W½NW¼NW¼—comprising 20 acres".

BILLING CODE 1505-01-M

[Serial No. AZ-AZ027-000005]

Arizona: Realty Action; Competitive Sale of Public Land in Maricopa County

The Bureau of Land Management will offer the following described lands for sale at a public autcion on July 21, 1983, at 1:00 p.m. at the Ruth Fisher School in Tonopah, Arizona. There will be six tracts of land offered for sale. It has been determined that the sale of these tracts is consistent with Section 203 of the Federal Land Policy and Management Act of October 21, 1976. The lands will be offered for sale at no less than the appraised fair market value indicated below. It has also been determined that Clifford Wolfswinkel will have a preference bid for Tract 5 and will be allowed the opportunity to meet the high bid.

GILA AND SALT RIVER MERIDIAN, ARIZONA

[Maricopa sale area]

Tract No.	Legal description	Acres	Value
1	T. 2 N., R. 7 W., Sec. 20, E½SE¼	80.0	$106,000
2	T. 2 N., R. 7 W., Sec. 20, W½SE¼	80.0	110,000
3	T. 2 N., R. 7 W., Sec. 21, E½SE¼	80.0	112,000
4	T. 2 N., R. 7 W., Sec. 21, W½SE¼	80.0	108,000
5	T 4 S., R. 8 W., Sec. 15, SE¼NW¼	40.0	15,000
6	T. 1 S., R. 9 W., Sec. 7, Lots 1, 2, 3, 4; E½W½	303.0	61,500

The above aggregates 663.0 acres of land in Maricopa County.

Upon publication of this notice in the **Federal Register**, the land described above will be segregated from all forms of nondiscretionary appropriation under the public land laws, including the mining laws, except the mineral leasing laws, for a period of 2 years or until the lands are sold. The segregative effect may otherwise be terminated by the authorized officer by publication of a termination notice in the **Federal Register** prior to the expiration of the 2-year period.

Lands not sold on July 21, 1983, will be reoffered for sale by competitive bid at the Phoenix District Office at 10:00 a.m. on October 5, 1983. Any remaining unsold lands will be available for over-the-counter purchase for the reminder of the 2 years.

All of the tracts listed will be subject to the following reservations when patented:

1. A right-of-way for ditches and canals constructed by the authority of the United States. (Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945.)

2. A reservation of all oil and gas to the United States with the right to prospect for, mine and remove such deposits.

3. A reservation of all minerals to the United States with the right to prospect for, mine, and remove such deposits.

The following tracts in Maricopa County have the following reservations:

Tracts 1, 2, 3, and 4

1. Will be sold subject to Arizona Public Service Company's powerline right-of-way AR–010364.

2. Will be subject to American Telephone and Telegraph Company telephone-telegraph line right-of-way PHX–093322.

3. Will be sold subject to oil and gas lease A–14241.

Tract 3

1. The eastern most 33' will be reserved to the United States for a public easement.

Tract 5

1. Will be sold subject to oil and gas lease A–16989.

Tract 6

1. Will be sold subject to El Paso Natural Gas Company's pipeline right-of-way AR–035846.

2. Will be sold subject to oil and gas lease A–16897.

There are no known mineral values in the land. If the successful bidder wishes, he/she may apply for the reserved mineral estate (by submitting a $50.00 filing fee) under the provisions of Section 209 of the Federal Land Policy and Management Act of October 21, 1976.

Additional information concering these lands, terms and conditions of the sale, and bidding instructions may be obtained from the Phoenix District Manager, 2929 West Clarendon Avenue, Phoenix, Arizona 85017 or by calling (602) 241–2511.

For a period of 45 days from the date of this notice, interested parties may submit comments regarding the Proposed Action. Any adverse comments will be evaluated by the District Manager who may vacate or modify this realty action and issue a final determination. In the absence of any action by the District Manager, this realty action will become the final determination of the Department of the Interior.

Dated: May 12,1983.

W. K. Barker,

District Manager.

[FR Doc. 83-12366 Filed 5-17-83; 8:45 am]

BILLING CODE 4310-84-M

Bureau Forms Submitted for Review

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions should be made directly to the Bureau's clearance officer and the Office of Management and Budget reviewing official at 202–395–7340.

Title: Permit Fee Envelope
Bureau Form Number: 1370–36
Frequency: On occasion
Description of Respondents: Individuals using fee campgrounds
Annual Responses: 30,000
Annual Burden Hours: 1,500
Bureau Clearance Officer (alternate): Linda Gibbs 202–653–8853

James M. Parker,

Associate Director.

March 28, 1983.

[FR Doc. 83-13365 Filed 5-17-83; 8:45 am]

BILLING CODE 4310-84-M

[U-50824]

Realty Action; Private Exchange; Public Lands in Uintah County, Utah

The following described lands have been determined to be suitable for a surface only private exchange under Section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716. The federal lands that have been identified as suitable for disposal by exchange are:

Salt Lake Meridian, Utah

T. 3 S., R. 19 E.,
Sec. 14, NW¼NW¼.
Comprising 40 acres.

In exchange for these federal lands, the United States will acquire the surface estate of the following non-federal lands from Mr. Elden Gardner:

Salt Lake Meridian, Utah

T. 3 S., R. 19 E.,
Sec. 12, NE¼NW¼.,
Comprising 40 acres.

Upon publication of this notice, the federal lands are hereby segregated from appropriation under the public land laws, including the mining laws.

Lands to be transferred from the United States will be subject to the following reservations:

1. A reservation of a right-of-way for ditches and canals constructed by the authority of the United States in accordance with 43 U.S.C. 945.

2. All minerals with the right to prospect for, mine and remove the same under applicable laws and such regulations as the Secretary may prescribe.

For a period of 45 days from the date of the notice, interested parties may submit comments to the District

Manager, Vernal District, 170 South 500 East, Vernal, Utah 84078.

Lloyd H. Ferguson,

District Manager.

[FR Doc. 83-13363 Filed 5-17-83; 8:45 am]

BILLING CODE 4310-84-M

[M 348]

Revocation of Recreation and Public Purposes Classification

May 9, 1983.

Effective September 14, 1966, the following public lands were classified for lease under the Recreation and Public Purposes Act of June 14, 1926, as amended (43 U.S.C. 869) under serial number M 348:

Principal Meridian

T. 7 N., R. 47 E.,
Sec. 4.

Metes and Bounds

Beginning at a point on the south boundary of Tract No. 2 of the Montana Fish and Game Department, said point being S. 87°04' E. a distance of 497.5 feet from the Government Monument marking the ¼ corner common to Section 5 and Section 4; thence S. 48°25' E. along the Fish and Wildlife fence a distance of 1613.7 feet to an iron pipe B; thence S. 77°11' E. a distance of 755.7 feet to pipe C; thence N. 72°00' E. a distance of 401.6 feet to pipe D; thence N. 18°06' E. a distance of 457.3 feet to pipe E; thency N. 1°31' W. a distance 620.8 feet to pipe F; thence N. 26°32' W. a distance of 791.7 feet to pipe G; thence N. 12°20' W. a distance of 917.1 feet to pipe H; thency N. 52°17' W. a distance of 356.4 feet to pipe I; thence N. 16°21' W. a distance of 213.7 feet to pipe J; thence N. 20°56' E. a distance of 462.4 feet to pipe K; thence N. 15°34' W. a distance of 229.2 feet to pipe L which is the Government Witness Corner to the Meander Corner on the West Bank of Tongue River; thence N. 89°47' W. along the Township Line a distance of 145.1 feet to the south right-of-way line of the Northern Pacific Railway; thence S. 41°30' W. along said right-of-way line a distance of 1877.9 feet to point N the northeast corner of Tract No. 2 of the Montana Fish and Game Department; thence S. 48°30' E. a distance of 600 feet to Point O being the southeast corner of Tract No. 2 of the Montana Fish and Game Department; thence S. 41°30' W. along the south line of said Tract No. 2 a distance of 1089.2 feet to Point A the Point of Beginning.

The area described above contains approximately 123 acres in Custer County.

This classification segregated the lands from all forms of appropriation under the public land laws except the Recreation and Public Purposes Act and from location and entry under the general mining laws, but not from leasing under the mineral leasing laws.

The purposes for classification are no longer valid as the above lands have been conveyed by Pub. L. 97-401 to the City of Miles City subject to the reservation of all minerals to the United States, and the classification is hereby revoked.

At 8 a.m. on June 13, 1983, the lands will be open to location under the United States Mining laws, subject to valid existing rights and requirements of applicable law.

Inquiries concerning the lands may be addressed to the Bureau of Land Management, P.O. Box 30157, Billings, Montana, Montana 59107.

Kannon Richards,

Acting State Director.

[FR Doc. 83-13341 Filed 5-17-83; 8:45 am]

BILLING CODE 4310-84-M

Yuma District Advisory Council; Meeting

Notice is hereby given in accordance with Section 309 of the Federal Land Policy and Management Act of 1976 that the first meeting of the newly appointed Yuma District Advisory Council will be held on June 30 and July 1, 1983 at 9:00 AM at the Stardust Resort Motor Inn, 2350 South Fourth Avenue, Yuma, Arizona.

Agenda for the meeting will include:

1. Introduction of Arizona State Director, District Manager, and Advisory Council members.
2. Discussion of Charter, committees and functions of the Council.
3. Introduction of Area Managers and programs.
4. Election of chairperson, vice-chairperson and committee formation.
5. Discuss public input to Resource Management Plan from public participation meetings.
6. Make recommendations on issues identified at public meetings.
7. Accept oral statements from public.

The meeting is open to the public. Anyone wishing to make an oral statement must notify the District Manager at the Yuma District Office, 2450 South Fourth Avenue, P.O. Box 5680, Yuma, Arizona 85364 by June 22, 1983. Written comments will also be accepted for the council's consideration.

Summary minutes will be maintained in the District Office and will be available for public inspection and reproduction during regular business hours 30 days following the meeting.

Dated: May 9, 1983.

J. Darwin Snell,

District Manager.

[FR Doc. 83-13347 Filed 5-17-83; 8:45 am]

BILLING CODE 4310-84-M

Minerals Management Service

Information Collection Submitted to OMB for Review

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and explanatory material may be obtained by contacting William Cook at 703-860-7564. Comments and suggestions on the requirement should be made directly to the Bureau Clearance Officer and the Office of Management and Budget Interior Desk Officer at 202-395-7340.

Title: Accidents and Malfunctions, 30 CFR 250.45
Bureau Form Number: N/A
Frequency: Nonrecurring
Description of Respondents: Federal Outer Continental Shelf Lessees
Annual Responses: 137
Annual Burden Hours: 548
Bureau Clearance Officer: Dorothy Christopher, 703-435-6213.

Dated: April 13, 1983.

Robert L. Rioux,

Associate Director for Offshore Minerals Management Minerals Management Service.

[FR Doc. 83-13344 Filed 5-17-83; 8:45 am]

BILLING CODE 4310-MR-M

Oil and Gas and Sulphur Operations in the Outer Continental Shelf

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development and Production Plan.

SUMMARY: Notice is hereby given that Pennzoil Exploration and Production Company has submitted a Development and Production Plan describing the activities it proposes to conduct on Lease OCS-G 5186, Block 252, West Cameron Area, offshore Louisiana.

The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the Plan and that it is available for public review at the Office of the Regional Manager, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Public Records, Room 147, open weekdays 9

a.m. to 3:30 p.m., 3301 North Causeway Blvd., Metairie, Louisiana 70002, Phone (504) 837–4720, Ext. 226.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in Development and Production Plans available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in a revised § 250.34 of Title 30 of the Code of Federal Regulations.

Dated: May 11, 1983.

John L. Rankin,

Acting Regional Manager, Gulf of Mexico OCS Region.

[FR Doc. 83-13364 Filed 5-17-83; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Appalachian National Scenic Trail Land Protection Plan

AGENCY: National Park Service, Interior.

ACTION: Notice of availability.

SUMMARY: Notice is hereby given of the availability for public review of the final draft of the land protection plan for the Appalachian National Scenic Trail. This plan was prepared in response to the Department of the Interior's policy for the Federal portion of the Land and Water Conservation Fund (47 FR 19784). It has been prepared in compliance with the National Environmental Policy Act, other Congressional Guidelines, Executive Orders, and Departmental and National Park Service Policies. Copies of the Plan are available for review at the following locations:

Appalachian Trail Land Acquisition Office, P.O. Box 908, Martinsburg, WV 25401

Appalachian Trail Land Acquisition Office, 850 No. 5th Street, Allentown, PA 18102

Appalachian Trail Land Acquisition Office, 8 Campbell Street, Lebanon, NH 03766

or may be obtained by writing the Appalachian Trail Project Office, Harpers Ferry Center, Harpers Ferry, WV 25425. The public is invited to comment. Comments should be submitted by June 17, 1983. Comments should be addressed to Project Manager, Appalachian Trail Project Office, Harpers Ferry Center, Harpers Ferry, WV 25425.

FOR FURTHER INFORMATION CONTACT: David A. Richie, Project Manager, Appalachian Trail Project Office, Harpers Ferry Center, Harpers Ferry, WV 25425.

SUPPLEMENTARY INFORMATION: On May 7, 1982 the Department of the Interior published a new final policy statement on Use of the Federal Portion of the Land and Water Conservation Fund (47 FR 19784). In response to this policy, the National Park Service began preparation of land protection plans for each unit in the National Park System containing non-Federal land or interest in land within its authorized boundary. The policy, as stated in 47 FR 19784, is to utilize, to the maximum extent possible, the most cost-effective methods of protecting nationally important natural, cultural and recreational resources. The Land Protection Plan for the Appalachian National Scenic Trail is simple, concise, has been prepared with public participation, and identifies protection techniques and priorities for protection.

Dated: May 4, 1983.

David A. Richie,

Project Manager.

[FR Doc. 83-13304 Filed 5-17-83; 8:45 am]

BILLING CODE 4310-70-M

Cape Cod National Seashore Advisory Commission, South Wellfleet, Massachusetts; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770 (5 U.S.C. App. 1 § 10)), that a meeting of the Cape Cod National Seashore Advisory Commission will be held at 1:30 pm on Friday, June 3, 1983 at the Headquarters building, Cape Cod National Seashore.

The Commission was established pursuant to Pub. L. 91–383 to meet and consult with the Secretary of the Interior on general policies and specific matters relating to the development of Cape Cod National Seashore.

At the meeting at 1:30 pm the Commission will consider the following:

1. Record of Decisions on:
   a. Water Resource Management Plan Alternatives.
   b. Dune Revegetation/Stabilization Alternatives.
2. Report on Mosquitoes of the Herring River Basin—1982.
3. Review of Gas Station Use.

The meeting is open to the public. It is expected that 30 persons will be able to attend the session in addition to the Commission members.

Interested persons may make oral/written presentations to the Commission or file written statements. Such requests should be made to the official listed below at least seven days prior to the meeting.

Further information concerning this meeting may be obtained from Herbert Olsen, Superintendent, Cape Cod National Seashore, South Wellfleet, MA 02663, Telephone (617) 349–3785. Minutes of the meeting will be available for public information and copying two weeks after the meeting at the Office of the Superintendent, Cape Code National Seashore, South Wellfleet, Massachusetts.

Herbert Olsen,

Superintendent, Cape Cod National Seashore.

May 5, 1983.

[FR Doc. 83-13303 Filed 5-17-83; 8:45 am]

BILLING CODE 4310-70-M

Office of the Secretary

Transfer of Surface Mining and Reclamation Appeals Functions

Notice is hereby given that the Secretary of the Interior has issued Order Number 3092 dated April 26, 1983. The order consolidates the functions of the Board of Surface Mining and Reclamation Appeals with the Interior Board of Land Appeals. The Order is published in its entirety below.

Additional information regarding the order may be obtained from the Director, Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203, telephone 703–235–3810.

Dated: May 12, 1983.

John N. Stafford,

Director.

[Order No. 3092]

Subject: Consolidation of the Functions of the Board of Surface Mining and Reclamation Appeals into the Interior Board of Land Appeals

Section 1. *Purpose.* This order consolidates the functions of the Board of Surface Mining and Reclamation Appeals into the Interior Board of Land Appeals. The purpose of this action is to achieve greater economy in the use of Office of Hearings and Appeals resources in view of the declining number of appeals arising under the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. §§ 1201–1328.

Section 2. *Authority.* This order is issued in accordance with the authority provided by Section 2 of Reorganization Plan No. 3 of 1950 (64 Stat. 1262).

Section 3. *Transfer of Function.* All of the functions and responsibilities delegated to the Board of Surface Mining and Reclamation Appeals with respect to appeals arising under the Surface Mining Control and Reclamation Act of 1977 are transferred to the Interior Board of Land Appeals.

Section 4. *Abolishment.* The Board of Surface Mining and Reclamation Appeals is abolished.

Section 5. *Implementation.*

(a) The Assistant Secretary—Policy, Budget and Administration is responsible for implementing this order with respect to personnel, property, records and funds.

(b) The Director, Office of Hearings and Appeals, in consultation with the Assistant Secretary—Policy, Budget and Administration, shall make such organizational arrangements for the performance of transferred functions as he deems necessary. In making these arrangements, the Director shall seek to ensure that the rights of parties bringing appeals under the Surface Mining and Reclamation Act of 1977 are protected and that no undue delay in consideration of such appeals occurs.

(c) On or after the effective date of this order, all notices of appeal and other filings required by 43 CFR Part 4, Subpart L, to be made with the Board of Surface Mining and Reclamation Appeals must be made with the Interior Board of Land Appeals, 4015 Wilson Boulevard, Arlington, VA 22203.

(d) Changes to Departmental regulations made necessary by this order will be published in the **Federal Register**.

Section 6. *Effective Date.* This order is effective immediately. The provisions of this order will terminate on December 31, 1983.

Dated: April 26, 1983.

James G. Watt,

Secretary of the Interior.

[FR Doc. 13271 Filed 5-17-83; 8:45 am]

BILLING CODE 4310-01-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Privacy Act of 1974; System of Records Amendment

AGENCY: Agency for International Development, IDCA.

ACTION: System of Records Amendment.

SUMMARY: The Agency for International Development is amending its System of Records AID–21, "Public Information Records", to make the system hybrid and update all other categories associated with this change.

DATE: This amendment becomes effective May 18, 1983.

FOR FURTHER INFORMATION CONTACT: Mr. Rhea Johnson, Area Code (202) 632–9614.

SUPPLEMENTARY INFORMATION: Pursuant to 5 U.S.C. 552a(e)(11), Pub. L. 93–579 the Agency is amending its System of Records AID–21, "Public Information Records", to change it from manual to hybrid. The full text of the System appeared at 42 FR 47384 on September 20, 1977. Changes associated with the amendment are: category of records in the system, the routine uses, the method of storage, safeguards retention and disposal and the records source category.

Because no substantive changes have been made that would significantly affect the public at large, the sixty day notification period has been waived. However, comments are invited and may be sent to James Harper, Public Information Specialist, Agency for International Development, Washington, D.C. 20523.

For easy reference, we are publishing the full text of the revised system below.

Kate Semerad,

Associated Deputy Administrator, Bureau for External Relations, Office of Public Affairs.

A.I.D.–21

SYSTEM NAME:

Public Information Records.

SYSTEM LOCATION:

a. Principal files are maintained in the Office of Public Affairs, A.I.D., 320 21st Street, NW., Washington, D.C. 20523.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of A.I.D., Members of Congress, individuals associated with foreign economic assistance, and individuals requesting information under the Freedom of Information and Privacy Acts.

CATEGORIES OF RECORDS IN THE SYSTEM:

Biographical information on Members of Congress, individuals officials within the agency. Biographical information on employees who serve as public speakers, press releases, news clippings, photographs, requests for access to A.I.D. records under the Freedom of Information and Privacy Acts, and related correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Foreign Assistance Act of 1961 as amended, especially Secs. 621, 634(b); Pub. L. 93–502; 5 U.S.C. 301; and the Freedom of Information Act (5 U.S.C. 552).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Administrator and Deputy Administrator for personal contacts.

Persons or organizations requesting A.I.D. to make available an employee to speak in public on A.I.D. activities are provided a biographical sketch of the speaker in order to select and introduce the speaker.

To law enforcement agencies, U.S. Government agencies, courts, the Department of State, foreign governments and international agencies, Members of Congress, and individuals' medical advisers for the purposes set forth in the Statement of General Routine Uses immediately preceding these specific notices of systems of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper copies and photographs in file folders. Automated records on magnetic discs and permanently on line at the computer center.

RETRIEVABILITY:

By name of individual.

SAFEGUARDS:

Located in metal file cabinets with three-way combination lock in a secure space or secured premises with access limited to those whose official duties require access. The Resource Allocation Control Facility, in use on our computer system, lessens the potential for unauthorized use.

RETENTION AND DISPOSAL:

Destroyed after five years by burning. Computerized records are deleted fro(m the system when no longer needed for daily operations.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Public Affairs, Agency for International Development, 320 21st Street, NW., Washington, D.C. 20523.

NOTIFICATION PROCEDURE:

Requests by individuals concerning the existence of a record may be addressed to: Director, Office of Public Affairs, Attn: Privacy Liaison Officer, Agency for International Development, 320 21st Street NW., Washington, D.C. 20523, or presented in person at 320 21st Street NW., Washington, D.C. 20523.

For offices abroad, to the Privacy Liaison Officer at the applicable address in Appendix A.

Information Required: Individual's name, place and date of birth. The determination as to the existence of a record will be facilitated by the provision of the individual's Social Security Account Number and dates and places of service.

RECORD ACCESS PROCEDURE:

Requests from individuals should be addressed or presented in person to the same addresses as stated in the Notification Section above.

Requests should be accompanied by information sufficient to identify the individual pursuant to 22 CFR 215.4 (c) or (d).

CONTESTING RECORD PROCEDURES:

Written requests from individuals to amend their record should be mailed or presented in person to the same address as stated in the Notification Section above.

Requests for review of a refusal to amend a record should be made in writing and mailed or delivered to: Administrator, Agency for International Development, 320 21st Street NW., Washington, D.C. 20523, Attention: Executive Secretary—Privacy Review Request.

Both the envelope and the letter should be clearly marked Attention: Executive Secretary, Privacy Review Request.

RECORD SOURCE CATEGORIES:

Members of Congress, employees, public media information, A.I.D. records, and individuals requesting access to records under the Freedom of Information and Privacy Acts.

[FR Doc. 83-13337 Filed 5-17-83; 8:45 am]

BILLING CODE 6116-01-M

Voluntary Foreign Aid Advisory Committee; Meeting

Pursuant to the Federal Advisory Committee Act, notice is hereby given of a meeting sponsored by the Advisory Committee on Voluntary Foreign Aid (ACVFA) which will be held June 15, 1983 (from 9:00 a.m. to 5:00 p.m.) and June 16, 1983 (from 9:00 a.m. to 12 noon) in the Lloyd Henderson International Conference Room, Department of State Building. Use the Diplomatic Entrance, C Street, between 21st and 23rd Streets, N.W., Washington, D.C.

The morning session on June 15 will be a plenary session on the subject of Food for Peace. The afternoon will be devoted to individual subcommittee meetings: Food for Peace, AID/PVO Policy, PVO/Corporate Relations, PVO/University Relations, Development Education, and Women in Development. On June 16 a plenary session will be held to hear reports on results of the subcommittee meetings.

The meeting will be open to the public. Any interested person may attend, request to appear before, or file statements with the Advisory Committee, in accordance with procedures established by the Committee. Written statements should be filed prior to the meeting and should be available in twenty (20) copies.

Persons wishing to attend the ACVFA meeting must contact Lillian Halter in the ACVFA office not later than May 31, 1983 to arrange entrance to the Department of State Building.

There will be AID representatives at the meeting. Those desiring further information may contact Lillian Halter, (703) 235-3336, or by mail, c/o The Advisory Committee on Voluntary Foreign Aid, Room 227, SA-8, Agency for International Development, Washington, D.C. 20523.

Dated: May 9, 1983.

Julia Chang Bloch,

Assistant Administrator, Bureau for Food for Peace and Voluntary Assistance.

[FR Doc. 83-13345 Filed 5-17-83; 8:45 am]

BILLING CODE 6116-01-M

INTERNATIONAL TRADE COMMISSION

Termination of Investigation No. 731-TA-94 (Final)—Bicycle Tires and Tubes from Taiwan

AGENCY: United States International Trade Commission.

ACTION: Termination of final antidumping investigation.

FOR FURTHER INFORMATION CONTACT: Mr. Jim McClure, Supervisory Investigator, Telephone No. 202-523-0289.

SUPPLEMENTARY INFORMATION: On December 7, 1982, the Department of Commerce (Commerce) preliminarily determined that there was a reasonable basis to believe or suspect that certain bicycle tires and tubes from Taiwan were being sold in the United States at less than fair value (LTFV). Accordingly, effective December 7, 1982, the Commission instituted antidumping investigation No. 731-TA-94 (Final), bicycle tires and tubes from Taiwan. The purpose of the investigation was to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry is materially retarded by reason of the LTFV imports from Taiwan of bicycle tires and tubes, provided for in items 772.48 and 772.57, respectively, of the Tariff Schedules of the United States (1983).

On April 29, 1983, Commerce published tires in the **Federal Register**, a final determination with respect to bicycle and tubes from Taiwan. The notice states that bicycle tires and tubes from Taiwan are not being, nor are likely to be, sold in the United States at less than fair value and, therefore, Commerce is terminating its investigation. As a result, pursuant to its authority under section 207.20 of the Commission's Rules of Practice and Procedure, the Commission's antidumping investigation (No. 731-TA-94 (Final)), bicycle tires and tubes from Taiwan, is also hereby terminated.

By order of the Commission.

Issued: May 12, 1983.

Kenneth R. Mason,

Secretary.

[FR Doc. 83-13380 Filed 5-17-83; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-147]

Certain Papermaking Machine Forming Sections for the Continuous Production of Paper and Components Thereof; Order Designating Presiding Officer for Investigation

Pursuant to my authority as Chief Administrative Law Judge of this Commission, I hereby designate Administrative Law Judge Janet D. Saxon as Presiding Officer in this investigation.

The Secretary shall serve a copy of this order upon all parties of record and shall publish it in the **Federal Register**.

Issued: May 11, 1983.

Donald K. Duvall,

Chief Administrative Law Judge.

[FR Doc. 83-13381 Filed 5-17-83; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 701-TA-201 and 731-TA-133 (Preliminary)]

Forged Undercarriage Components From Italy; Clarification of Scope of Preliminary Countervailing Duty and Antidumping Investigations

AGENCY: United States International Trade Commission.

ACTION: Clarification of the scope of the preliminary countervailing duty and antidumping investigations.

EFFECTIVE DATE: May 13, 1983.

SUMMARY: The U.S. International Trade Commission hereby givens notice of clarification of the scope of its investigations to determine whether there is a reasonable indication that an industry in the United States is materially injured, or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Italy of forged components for the undercarriages of crawler-mounted machinery, provided for in items 664.08, 692.34, or 692.35 of the Tariff Schedules of the United States, upon which bounties or grants are alleged to be paid and which are alleged

to be sold in the United States at less than fair value.

FOR FURTHER INFORMATION CONTACT: Ms. Mirian A. Bishop, Office of Investigation, U.S. International Trade Commission, telephone 202–523–0291.

This notice is published pursuant to § 207.12 of the Commission's Rule of Practice and Procedure (19 CFR 207.12).

By order of the Commission.

Issued: May 13, 1983.

Kenneth R. Mason,

Secretary.

[FR Doc. 83-13378 Filed 5-17-83; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. TA-203-14]

Certain Mushrooms; Institution of Investigation

AGENCY: United States International Trade Commission.

ACTION: Institution of an investigation under section 203(i)(3) of the Trade Act of 1974 (19 U.S.C. 2253(i)(3)) and scheduling of a hearing to be held in connection therewith.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission, following receipt on April 29, 1983, of a petition filed by certain domestic producers of prepared or preserved mushrooms, instituted investigation No. TA–203–14 under section 203(i)(3) of the Trade Act of 1974 for the purpose of gathering information in order that it might advise the President of its judgment as to the probable economic effect on the domestic industry concerned of the termination of the import relief presently in effect with respect to certain prepared or preserved mushrooms, provided for in item 144.20 of the Tariff Schedules of the United States (TSUS). Such import relief is in the form of increased rates of duty and is provided for in Presidential Proclamation 4801 of October 29, 1980 (45 FR 72617); the relief is described in item 922.56 of the Appendix to the TSUS. The relief is scheduled to terminate on November 1, 1983, unless extended by the President.

EFFECTIVE DATE: May 11, 1981.

FOR FURTHER INFORMATION CONTACT: Woodley Timberlake (202–523–4618), Office of Investigations, U.S. International Trade Commission.

SUPPLEMENTARY INFORMATION:

Participation in the investigation.—Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's Rules of Practice and Procedure (19 CFR 201.11) not later than 21 days after the publication of this notice in the **Federal register.** Any entry of appearance filed after this date will be referred to the Chairman, who shall determine whether to accept the late entry for good cause shown by the person desiring to file entry.

Upon the expiration of the period for filing entries of appearance, the Secretary shall prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation, pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)). Each document filed by a party to this investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certtificate of service (19 CFR 201.16(c), as amended by 47 FR 33682, Aug. 4, 1982).

Hearing.—The Commission will hold a hearing in connection with this investigation beginning at 10:00 a.m. on August 2, 1983, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, D.C. 20436. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on July 8, 1983. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 10:00 a.m. on July 13, 1983, in room 117 of the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is July 27, 1983.

Testimony at the public hearing shall be limited to a nonconfidential summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs. Posthearing briefs shall not exceed ten (10) pages of textual material, double spaced, on stationery measuring 8½ x 11 inches, and must be submitted not later than the close of business on August 8, 1983. In addition, the presiding offical may permit persons to file answers to questions or requests made by the Commission at the hearing within a specified time. The Secretary shall not accept for filing posthearing briefs or answers which do not comply with the provisions contained in this notice.

Written submissions.—As mentioned, parties to this investigation may file prehearing and posthearing briefs by the dates show above. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before August 8, 1983. A signed original and fourteen (14) true copies of each submission must be filed with the Secretary to the Commission in accordance with section 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired shall be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of section 201.6 of the Commission's rules (19 CFR 201.6).

For further information concerning the conduct of the investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR Part 201, as amended by 47 FR 33682, Aug. 4, 1982).

This notice is published pursuant to section 206.20 of the Commission's rules (19 CFR 206.20).

By order of the Commission.

Issued: May 12, 1983.

Kenneth R. Mason,

Secretary.

[FR Doc. 83-13379 Filed 5-17-83; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. TA-201-48]

Report to the President on Investigation; Stainless Steel and Alloy Tool Steel

Determination

On the basis of the information developed in the course of investigation No. TA–201–48, the Commission [1] determines that bars; wire rods; and plates, sheets, and strips, not cut, not pressed, and not stamped to nonrectangular shape; all the foregoing of stainless steel or certain alloy tool steel; and round wire of high speed tool steel, provided for in items 606.90 606.93

[1] Commissioner Stern dissenting with respect to plates.

606.94, 606.95, 607.26, 607.28, 607.34, 607.43, 607.46, 607.54, 607.72, 607.76, 607.88, 607.90, 608.26, 608.29, 608.34, 608.43, 608.49, 608.57, 608.64, and 609.45 of the Tariff Schedules of the United States, are being imported into the United States in such increased quantities as to be a substantial cause of serious injury to the domestic industries producing articles like or directly competitive with the imported articles.

Findings and Recommendations

Commissioners Stern and Haggart find and recommend that, in order to remedy the serious injury found to exist—

(1) It is necessary to impose quantitative restrictions for the 3-year period beginning January 1, 1983, as follows—

(a) For stainless steel sheet and strip, 8 percent of forecasted U.S. consumption, but not less than 62,900 short tons;

(b) For stainless steel plate, 10 percent of forecasted U.S. consumption, but not less than 10,700 short tons;

(c) For stainless steel bar, 17 percent of forecasted U.S. consumption, but not less than 27,000 short tons;

(d) For stainless steel wire rod, 42 percent of forecasted U.S. consumption, but not less than 19,100 short tons;

(e) For alloy tool steel, 20 percent of forecasted U.S. consumption, but not less than 22,400 short tons.

(2) The following articles should be exempted from any relief—[1]

(a) Razor blade steel provided for in TSUS item 608.26;

(b) Chipper knife steel provided for in the following items of the TSUSA (Annotated)—

606.9300	607.5405	608.3405
606.9400	607.7205	608.4905
607.3405	607.8805	608.6405

(c) Band saw steel provided for in the following TSUSA items:

606.9520	607.5405	607.3405
606.9525	607.7205	608.4905
607.3405	607.8805	607.6405

(d) The first 6,000 short tons of the following stainless steel sheet, which is provided for in TSUSA item 607.9020—

Stainless steel sheet not under 0.055 inch and not over 0.065 inch in thickness, not under 25.5 inches and not over 26.25 inches in width, which contains in addition to iron, each of the following elements by weight in the amounts specified and which is certified at the time of entry to be imported for use in the manufacture of stainless steel-clad aluminum automotive trim:

Carbon: not more than 0.12 percent;

Chromium: not less than 16 percent nor more than 18 percent;

Molybdenum: not less than 0.75 percent nor more than 1.25 percent;

(3) The period 1972–82, exclusive of 1975 and 1982, is the recent period most representative of imports of these articles;

(4) No more than 30 percent of each of the respective aggregate quantities specified in (1), above, for each class of articles may be entered during any calendar quarter; and

(5) In order to provide for a more equitable distribution of imports among supplying countries, the quantities specified in (1), above, for each class of articles should be allocated on a country-by-country basis.

Chairman Eckes finds and recommends that, in order to remedy the serious injury found to exist—

(1) It is necessary to impose quantitative restrictions for the 3-year period beginning January 1, 1983, as follows—

(a) For stainless steel sheet and strip, 7.3 percent of forecasted U.S. consumption, but not less than 56,887 short tons;

(b) For stainless steel plate, 4.8 percent of forecasted U.S. consumption, but not less than 5,919 short tons;

(c) For stainless steel bar, 19.8 percent of forecasted U.S. consumption, but not less than 33,513 short tons;

(d) For stainless steel wire rod, 38.0 percent of forecasted U.S. consumption, but not less than 21,729 short tons;

(e) For alloy tool steel, 26.9 percent of forecasted U.S. consumption, but not less than 29,592 short tons.

(2) The following articles should be exempted from any relief—

(a) Razor blade steel provided for in TSUS item 608.26;

(b) Chipper knife steel provided for in the following items of the TSUSA (Annotated)—

606.9300	607.5405	608.3405
606.9400	607.7205	608.4905
607.3405	607.8805	608.6405

(c) Band saw steel provided for in the following TSUSA items:

606.9520	607.5405	608.3405
606.9525	607.7205	608.4905
607.3405	607.8805	608.6405

(3) The period 1979–81 is the most recent period representative of imports of these articles; and

(4) The quantities of each class of articles should be allocated on a country-by-country basis.

[1] Commissioner Stern further finds that there would be no adverse economic effect on the domestic industries if the following items were to be exempted from relief, providing any necessary adjustments were to be made to the market share quotas and providing that such exemptions be specific to end uses: stainless flapper valve steel, Lummis strip steel, rotor steel for hysteresis motors, grade 253 MA stainless steel, grade 254 SMO stainless steel, and stainless steel sheet 72 to 80 inches in width.

Background

On December 9, 1982, the United States International Trade Commission instituted investigation No. TA–201–48, under section 201(b)(1) of the Trade Act of 1974, to determine whether bars; wire rods; and plates, sheets, and strips, not cut, not pressed, and not stamped to nonrectangular shape; all the foregoing of stainless steel or certain alloy tool steel; and round wire of high speed tool steel, provided for in items 606.90, 606.93 606.94, 606.95, 607.26, 607.28, 607.34, 607.43, 607.46, 607.54, 607.72, 607.76, 607.88, 607.90 608.26, 608.29, 608.34, 608.43, 608.49, 608.57, 608.64, and 609.45 of the Tariff Schedules of the United States, are being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industries producing articles like or directly competitive with the imported articles.

The investigation was instituted following the receipt of a letter on November 23, 1982, from the United States Trade Representative (USTR), requesting an expedited investigation under section 201 concerning imports of certain stainless steel and alloy tool steel products. The USTR's request was in accordance with a determination of the President on November 17, 1982 (47 FR 51717), under section 301(a)(2)(A) of the Trade Act of 1974 (19 U.S.C. 2411(a)(2)(A)). The President's action followed the completion of investigations under section 301 of the act initiated by USTR on February 26, 1982 (47 FR 10107) and on August 9, 1982 (47 FR 36387). These investigations were instituted on the basis of petitions, filed by the Tool and Stainless Steel Industry Committee and the United Steel Workers of America, alleging that the European Community, Belgium, France, Italy, the United Kingdom, Austria, and Sweden had subsidized the production of stainless and alloy tool steel (specialty steel) in a manner inconsistent with their obligations under Articles 8 and 11 of the Agreement on the Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade (Subsidies Code).

Notice of the institution of the investigation and the scheduling of a public hearing to be held in connection with the investigation was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, D.C., and by publishing the notice in the **Federal Register** of December 15, 1982 (47 FR 56218). A public hearing was held

on February 9–10, 1983, at which time all persons who requested the opportunity were afforded an opportunity to be present, to present evidence, and to be heard.[3] On March 24, 1983, the Commission, meeting in public session, announced its affirmative injury determination.

As a result of the Commission's affirmative injury determination in this investigation, a public hearing on the subject of remedy recommendations was held on April 5, 1983, at which time all persons who requested the opportunity were afforded an opportunity to be present, to present evidence, and to be heard. The Commission announced its remedy findings and recommendations in a public meeting held April 27, 1983.

The Commission transmitted its report on the investigation to the President on May 6, 1983. A public version of the Commission's report, Stainless Steel and Alloy Tool Steel (investigation No. TA–201–48, USITC Publication 1377, 1983) contains the views of the Commission and information developed during the investigation.

Issued: May 6, 1983.

By Order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 83-13382 Filed 5-17-83; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[No. 39203 et al.[1]]

Motor Carriers; Cryogenic Carrier, Inc.—Petition for Exemption From Tariff Filing Requirements

AGENCY: Interstate Commerce Commission.

ACTION: Notice of provisional exemption.

SUMMARY: Eight motor contract carriers have each requested exemption from the tariff filing requirements of 49 U.S.C. 10702, 10761, and 10762. The sought relief is provisionally granted for future as well as existing contracts.

DATES: Comments are due on June 2, 1983. The sought relief will become final on June 17, 1983, unless, in response to timely filed adverse comments, the Commission issues a further decision withdrawing this relief.

ADDRESS: Send an original and 15 copies of comments to: No. 39203, Room 2139, Interstate Commerce Commission, Washington, D.C. 20423.

FOR FURTHER INFORMATION CONTACT:

Barbara Gardner (202) 275–0961

or

Howell I. Sporn (202) 275–7691

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commissions' decision. To purchase a copy of the full decision, write to T. S. Infosystems, Inc., Room 2227, Washington, DC 20423, or call 289–4357 in the DC metropolitan area or toll free (800) 424–5403.

Decided: May 11, 1983.

By the Commission, Division 1, Commissioners Andre, Taylor, and Sterrett. Commissioner Taylor is assigned to this Division for the purpose of resolving tie votes. Since there was no tie in this matter, Commissioner Taylor did not participate.

Agatha L. Mergenovich

Secretary.

[FR Doc. 83-13275 Filed 5-17-83; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. 38955 et al [1]]

Motor Carriers; Ericon International Corp.—Petition for Exemption From Tariff Filing Requirements

AGENCY: Interstate Commerce Commission.

ACTION: Notice of final exemption of existing operations and provisional exemption of future operations.

SUMMARY: The provisional exemption of petitioners' existing operations granted at 48 Fed. Reg. 3429 (January 25, 1983) is made final. Additionally, in accordance with current Commission policy, a provisional exemption of petitioners' future contracts is granted.

DATES: Comments are due on June 2, 1983. The provisional exemption of petitioners' future contracts will become final on June 17, 1983, unless in response to timely filed adverse comments, the Commission issues a future decision withdrawing this relief.

ADDRESS: Send an original and 15 copies of comments to: No. 38955 et al., Room 2139, Interstate Commerce Commission, Office of Proceedings, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT:

Robin Williams (202) 275–7697

or

Howell I. Sporn (202) 275–7691

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T. S. Infosystems, Inc., Room 2227, 12th and Constitution Ave., N.W., Washington, D.C. 20423, or call 289–43578 in the DC metropolitan area or toll free (800) 424–5403.

Decided: May 11, 1983.

By the Commission, Division 1, Commissioners Andre, Taylor, and Sterrett. Commissioner Taylor is assigned to this Division for the purpose of resolving tie votes. Since there was no tie in this matter, Commissioner Taylor did not participate.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83-13276 Filed 5-17-83; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Finance Applications; Decision Notice

As indicated by the findings below, the Commission has approved the following applications filed under 49 U.S.C. 10924, 10926, 10931 and 10932.

We find:

Each transaction is exempt from section 11343 of the Interstate Commerce Act, and complies with the appropriate transfer rules.

This decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

Petitions seeking reconsideration must be filed within 20 days from the date of this publication. Replies must be filed within 20 days after the final date for filing petitions for reconsideration; any interested person may file and serve a reply upon the parties to the proceeding. Petitions which do not comply with the relevant transfer rules at 49 CFR 1181.4 may be rejected.

If petitions for reconsideration are not timely filed, and applicants satisfy the conditions, if any, which have been imposed, the application is granted and they will receive an effective notice. The notice will recite the compliance

[3] A transcript of the hearing and copies of briefs submitted by interested parties in connection with the investigation were attached to the original report sent to the President. Copies are available for inspection at the U.S. International Trade Commission, except for material submitted in confidence.

[1] This proceding embraces Nos. 39204 Foote & Davies Transport Co., 39205 Armour Food Express Company, 39206 D–S Transport, Inc., 39207 Daggett Truck Line, Inc., 39208 Edwards Bros., Inc., 39209 Trans West Systems, Inc., and 39210 Teton Stage Lines, Inc.

[1] This proceeding embraces twelve petitions filed by motor contract carriers: No. 38955, Ericon International Corporation; No. 38957, Central Southern, Inc., No. 38958, Cherokee Lines, Inc., No. 38961, Trans-United, Inc., No. 38965, Dennis Moss and Gary Moss, d/b/a Motor West, No. 38966, Boncosky Transportation, Inc., No. 38967, Chemical Leaman Tank Lines, Inc., No. 38969, Motor Cargo Transport Corp., No 38970, Carrier Development Corporation, No. 38975, Watkins Motor Lines, Inc., No. 38980, Plate Valley Freightways, Inc., No. 38982, A. Luurtsema Truck Lines, Inc.

requirements which must be met before the transferee may commence operations.

Applicants must comply with any conditions set forth in the following decision-notices within 20 days after publication, or within any approved extension period. Otherwise, the decision-notice shall have no further effect.

It is ordered:

The following applications are approved, subject to the conditions stated in the publication, and further subject to the administrative requirements stated in the effective notice to be issued hereafter.

Please direct status inquiries about the following to Team 4 at (202) 275–7669.

Volume No. OP4 FC–291

By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell.

MC–FC–81328, filed March 22, 1983. By decision of May 10, 1983 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1181, Review Board Number 3 approved the transfer to COMANCHE ROAD TRANSPORT, LTD, of Calgary, Alberta, Canada, of Certificate No. MC–140656 (Sub-No. 7)X, issued July 10, 1981, and the underlying authority in MC–140656 (Sub-No. 4), issued March 12, 1981, to TROCHU TRUCKING SERVICES, LTD, of Calgary, Alberta, Canada, authorizing the transportation in foreign commerce only, of *dry fertilizer*, between ports of entry on the International Boundary line between the U.S. and Canada in WA, ID, MT and ND, on the one hand, and, on the other, those points in the U.S. in and west of MN, IA, MO, AR, and LA. Representative: William E. Seliski, 2 Commerce St., P.O. Box 8255, Missoula, MT 59807. (406) 543–8369, for both transferee and transferor.

Please direct status inquiries about the following to Team 5 at (202) 275–7289.

Volume No. OP5 FC–228

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier.

MC–FC–81403. By decision of May 10, 1983, issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1181, Review Board Number 1 approved the transfer to GREGORY V. ETCHISON, Springfield, OR, of Certificates Nos. MC–161309 and MC–161309 Sub 1, issued August 17, 1982, and May 28, 1982, respectively, to WILLIE K. HOLLAND AND GREGORY V. ETCHISON, d.b.a. VAIL NORTHWEST, Springfield, OR, authorizing the transportation of (1) glass, between points in WA, OR, CA, TX, OK, and MO, (2) sawmill machinery, between points in CA, AZ, WA, ID, and MT, (3) farm supplies and equipment, between points in TX, KS, NM, CA, NE, OK, MN, WY, and IA, on the one hand, and, on the other, points in CO, (4) lumber, between points in OR, WA, MI, IL, KY, TN, TX, CO, NM, NV, AZ, and CA, and (5) iron and steel articles, (a) between points in AZ, CA, LA, MI, OR, SD, and WA, and (b) between points in IN, NE, UT, and MN, on the one hand, and, on the other, points in CO, IA, ID, IL, IN, MN, NE, NM, OK, OR, UT, and WI; and (6) lumber and wood products, between points in OR, WA, and CA, and (7) metal products, machinery, and clay, concrete, glass or stone products, between points OR and WA. Representative: Gregory V. Etchison, P.O. Box 645, Springfield, OR 97477.

Volume No. OP5FC–229

By the Commission, Review Board No. 2, Members Carleton, Williams and Ewing. Member Ewing not participating.

MC–FC–81370. By decision of May 10, 1983 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR Part 1181, Review Board Number 2 approved the transfer to LUKE G. BURKHOLDER, of Mohnton, PA, of Certificate No. MC–142988 issued March 2, 1978, authorizing the transportation of pulverized agricultural limestone, from the facilities of Martin Limestone, Inc., located in Lancaster County, PA, to points in Delaware, Maryland, New Jersey, and Virginia. An application for temporary authority has been filed. Representative: John W. Metzger, 49 North Duke Street, Lancaster, PA 17602.

MC–FC–81442. By decision of May 10, 1983 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR Part 1181, Review Board Number 2 approved the transfer to A TRANSPORT COMPANY of Woodinville, WA, of certificate No. MC–147649 Sub 2 issued February 19, 1981, Sub 3 issued June 16, 1981 and Sub 4 issued Janury 22, 1982 to AMERICAN CONTAINER TRANSPORT, INC., of Seattle, WA., authorizing the transportation of (1) *General commodities* between points in WA, ID, MT, OR and CA restricted to traffic having a prior or subsequent movement by water, (2) *general commodities* for and on behalf of the U.S. Government between points in the U.S., and (3) *general commodities* (with exceptions) between points in WA, OR, CA, UT and MT. Representative: Kaaren Trott, 23809 57th Ave., South-East Woodinville, WA 98072.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83–13281 Filed 5–17–83; 8:45 am]

BILLING CODE 7035–01–M

[No. 38749 (Sub-No. 1) et al.*]

Motor Carriers; UTF Carriers, Inc.—Petition for Exemption From Filing Requirements

AGENCY: Interstate Commerce Commission.

ACTION: Notice of provisional exemption.

SUMMARY: Five motor contract carriers have each requested exemption from the tariff filing requirements of 49 U.S.C. 10702, 10761, and 10761. The sought relief is provisionally granted for future as well as existing contracts.

DATE: Comments are due on June 2, 1983. The sought relief will become final on June 17, 1983, unless, in response to timely filed adverse comments the Commission issues a further decision withdrawing this relief.

ADDRESS: Send an oringinal and 15 copies of comments to: Room 2139, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT:

Barbara Gardner, (202) 275–0961

or

Howell I. Sporn, (202) 275–7691.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. Infosystems, Inc., Room 2227, Washington, DC 20423, or call 289–4357 in the DC metroporitan area or toll free (800) 424–5403.

Decided, May 10, 1983.

By the Commission, Division 1, Commissioners Andre, Taylor, and Sterrett. Commission Taylor is assigned to this Division for the purpose of resolving tie votes. Since there was no tie in this matter, Commissioner Taylor did not participate.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83–13277 Filed 5–17–83; 8:45 am]

BILLING CODE 7035–01–M

---

* This proceeding embraces Nos. 39212 Bigbee Transportation Company, 39213 John D. Perfetti, 39216 Transfer, Inc. and 39217 Advance Express, Incorporated.

[Volume OP3-MFC-215]

Motor Carriers; Permanent Authority Decisions; Decision-Notice

The following applications seek approval to consolidate, purchase, merge, lease operating rights and properties, or acquire control of motor carriers pursuant to 49 U.S.C 11343 or 11344. Also, applications directly related to these motor finance applications (such as conversions, gateway eliminations, and securities issuances) may be involved.

The applications are governed by 49 CFR 1182.1 of the Commission's Rules of Practice. See Ex Parte 55 (Sub-No. 44), *Rules Governing Applications Filed By Motor Carriers Under 49 U.S.C. 11344 and 11349*, 363 I.C.C. 740 (1981). These rules provide among other things, that opposition to the granting of an application must be filed with the Commission in the form of verified statements within 45 days after the date of notice of filing of the application is published in the **Federal Register**. Failure seasonably to oppose will be construed as a waive of opposition and participation in the proceding. If the protest includes a request for oral hearing, the request shall meet the requirements of Rule 242 of the special rules and shall include the certification required.

Persons wishing to oppose an application must follow the rules under 49 CFR 1182.2. A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00, in accordance with 49 CFR 1182.2(d).

Amendments to the request for authority will not be accepted after the date of this publication. However, the Commission may modify the operating authority involved in the application to conform to the Commission's policy of simplifying grants of operating authority.

We find, with the exception of those applications involving impediments (e.g., jurisdictional problems, unresolved fitness questions, questions involving possible unlawful control, or improper divisions of operating rights) that each applicant has demonstrated, in accordance with the applicable provisions of 49 U.S.C. 11301, 11302, 11343, 11344, and 11349, and with the Commission's rules and regulations, that the proposed transaction should be authorized as stated below. Except where specifically noted this decision is neither a major Federal action significantly affecting the quality of the human environment nor does it appear to qualify as a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests as to the finance application *or* to any application directly related thereto filed within 45 days of publication (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (unless the application involves impediments) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice. To the extent that the authority sought below may duplicate an applicant's existing authority, the duplication shall not be construed as conferring more than a single operating right.

Applicant(s) must comply with all conditions set forth in the grant or grants of authority within the time period specified in the notice of effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

Decided: May 4, 1983.

By the Commission, Review Board Number 2, Members Carleton, Ewing, and Williams. Menber Ewing not participating.

Agatha L. Mergenovich,

Secretary.

Please direct status inquiries to Team 3 (202) 275-5223.

MC-F-15252, filed April 20, 1983. GROSS COMMON CARRIERS, INC. (GROSS) (660 West Grand Ave., Wisconsin Rapids, WI 54494)—PURCHASE (PORTION)— G.M.W., INC., (GMW) (1665 West County Road C, Roseville, MN 55113). No. MC-1494 (Sub-No. 32), filed simultaneously with the above—GATEWAY ELIMINATION. Representative: James E. Ballenthin, 1016 Conwed Tower, 444 Cedar Street, St. Paul, MN 55101. Gross seeks authority to purchase a portion of the interstate operating rights and property of GMW. Ruth M. Gross, individually and as trustee under the Will of Florence Weinbauer and under the agreement of July 15, 1975, and First National Bank of Stevens Points, as trustee under the Residual Trust of Louis L. Gross, who controls Gross, seeks authority to acquire control of the operating rights and property through the transaction. Gross is seeking to acquire that portion of GMW's operating rights in Certificate No. MC-43475 (Sub-No. 59), which authorizes the transportation of general commodities (except classes A and B explosives) between points in the Upper Peninsula of Michigan. Gross is authorized to operate as a motor common carrier in MC-1494 and sub-numbers thereunder. Gross also seeks to eliminate gateways: general commodities (except classes A and B explosives, household goods, and commodities in bulk), between points in Illinois, Iowa, Minnesota, Upper Peninsula of Michigan, and Wisconsin.

Note.—A temporary authority application has been filed.

[FR Doc. 83-13273 Filed 5-17-83; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Permanent Authority Decisions

Motor Common and Contract Carriers of Property (except fitness-only); Motor Common Carriers of Passengers (public interest); Freight Forwarders; Water Carriers; Household Goods Brokers. The following applications for motor common or contract carriers of property, water carriage, freight forwarders, and houshold goods brokers are governed by Subpart A of Part 1160 of the Commission's General Rules of Practice. See 49 CFR Part 1160, Subpart A, published in the **Federal Register** on November 1, 1982, at 47 FR 49583, which redesignated the regulations at 49 CFR 1100.251, published in the **Federal Register** December 31, 1980. For compliance procedures, see 49 CFR 1160.19. Persons wishing to oppose an application must follow the rules under 49 CFR Part 1160, Subpart B.

The following applications for motor common carriage of passengers, filed on or after November 19, 1982, are governed by Subpart D of 49 FR Part 1160, published in the **Federal Register** on November 24, 1982 at 47 FR 53271. For compliance procedures, see 49 CFR 1160.86. Carriers operating pursuant to an intrastate certificate also must comply with 49 U.S.C. 10922(c)(2)(E). Persons wishing to oppose an application must follow the rules under 49 CFR Part 1160, Subpart E. In addition to fitness grounds, these applications may be opposed on the grounds that the transportation to be authorized is not consistent with the public interest.

Applicant's representative is required to mail a copy of an application, including all supporting evidence, within three days of a request and upon payment to applicant's representative of $10.

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 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.

We make an additional preliminary finding with respect to each of the following types of applications as indicated: common carrier of property—that the service proposed will serve a useful public purpose, responsive to a public demand or need; water common carrier—that the transportation to be provided under the certificate is or will be required by the public convenience and necessity; water contract carrier, motor contract carrier of property, freight forwarder, and household goods broker—that the transportation will be consistent with the public interest and the transportation policy of section 10101 of chapter 101 of Title 49 of the United States Code.

These presumptions 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 mjaor regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient opposition in the form of verified statements filed on or before 45 days from date of publication (or, if the application later becomes unopposed), appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verfied 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." Applications filed under 49 U.S.C. 10922(c)(2)(B) to operate in intrastate commerce over regular routes as a motor common carrier of passenger are duly noted.

Please direct status inquiries about the following to Team One at (202) 275-7992.

Volume No. OP1-171

Decided: May 10, 1983.

By the Commission Review Board No. 2. Members Carleton, Williams and Ewing. Member Ewing not participating.

MC 121810 (Sub-1), filed April 26, 1983. Applicant: G.A.C. TRUCKING COMPANY, INC., P.O. Box 646, Clearwater, SC 29822. Representative: Jack L. Schiller, 111-56 76th Dr., Forest Hills, NY 11375, (212) 263-2078. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in GA, NC, and SC, 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's prior or coincidental cancellation at applicant's written request of its certificate of registration in No. MC-121810 issued February 15, 1978.

MC 126421 (Sub-15), filed April 28, 1983. Applicant: GYPSUM TRANSPORT, INC., East Highwy 80, P.O. Drawer 2679, Abilene, TX 79604. Representative: Jerry Prestridge, P.O. Box 26126, Austin, TX 78755, (512) 345-8596. Transporting *lumber and wood products, and building materials*, between points in AL, AR, MS, LA, TX, OK, CO and NM.

MC 139010 (Sub-7), filed April 26, 1983. Applicant: BLACKLINE AMERICAN CORPORATION, 1918 W. Grant St., Phoenix, AZ 85009. Representative: Andrew V. Baylor, 337 East Elm St., Phoenix, AZ 85012, (602) 274-5146. Transpoorting *building and construction materials, equipment, and supplies*, between points in the U.S. (except AK and HI). NOTE: The purpose of this application is to convert existing contract carrier authority to common carrier authority. CONDITION: Issuance of a certificate in this proceeding is conditioned upon applicant's prior or coincidental cancellation at applicant's written request of its permits in No. MC-139010 (Sub-Nos. 1, 3, 5, and 6X) issued October 31, 1975, September 21, 1976, June 30, 1978, and May 24, 1982, respectively.

MC 146251 (Sub-11), filed May 2, 1983. Applicant: CLAXTON TRANSPORT, INC., Route 3, Box 135, Wrightsville, GA 31096. Representative: Ronald K. Kolins, One IBM Plaza, Suite 3100, Chicago, IL 60611, (312) 467-9300. 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 149040 (Sub-4), filed April 28, 1983. Applicant: BANNER TRANSFER COMPANY, INC., 1403 Rowan St., Louisville, KY 40203. Representative: Robert H. Kinker, 314 West Main St., P.O. Box 464, Frankfort, KY 40602, (502) 223-6244. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in AL, IL, IN, KY, OH and TN.

MC 150820 (Sub-3), filed April 25, 1983. Aplicant: LEXINGTON TRANSFER, INC., 1036 McKay Drive, N.E., Anoka, MN 55303. Representative: Stanley C. Olsen, Jr., 5200 Willson Road, Suite 307, Minneapolis, MN 55424, (612) 927-8855. Transporting *general commodities* (except classes A and B explosives and household goods), between points in MT, WY, CO, ND, SD, NE, KS, OK, MN, IA, MO, WI, IL, MI, IN, OH, KY, WV, PA and NY.

MC 155510 (Sub-2), filed April 28, 1983. Applicant: ORANGE DISTRIBUTION, INC., Main St., P.O. Box 729, Louisa, VA 23093. Representative: David L. Bolyard, 112 South Pitt St., P.O. Box 453, Alexandria, VA 22313, (703) 548-3301. 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 American Brokerage Systems, Inc., of Allston, MA.

MC 160950 (Sub-1), filed April 29, 1983. Applicant: JAMES L. ANDRUS TRUCKING, P.O. Box 130, Mesquite, NV 89024. Representative: James L. Andrus (same address as applicant), (702) 346-5462. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in CA, CO, ID, NV, UT, TX, WY, FL, IL, KS, MA, MO, NJ, SC, TN, and VA.

MC 157500 (A), filed April 22, 1983. Applicant: PERCY M. RHINES, JR., d.b.a. P. RHINES & SONS TRUCKING CO., 5635 North Broadway, Denver, CO 80216. Representative: David E. Driggers, 1660 Lincoln St., 1600 Lincoln Center, Denver, CO 80264, (303) 861-4028. Transporting *furniture, and lumber and wood products*, between points in CO, AL, CA, OR and WA.

Note.—Applicant has also filed for authority under the fitness procedures docketed MC-157500 (B), published in this same **Federal Register** issue.

MC 167611, filed April 25, 1983. Applicant: JOHN J. AND KATHLEEN JOHNER, d.b.a. HIGH LINE TRANSPORTATION, Box 161, Hettinger, ND 58639. Representative: Mark Perry, c/o OOIDA, 5030 N. 35th St., Arlington, VA 22205, (703) 534–1823. Transporting *lumber and wood products*, between those points in the U.S. in and west of WI, IA, MO, AR, and LA (except AK and HI).

MC 167621, filed April 25, 1983. Applicant: DICK GAUNT TRUCKING & EXCAVATING, INC., R.R. #2, Washington, IL 61571. Representative: Robert T. Lawley, 300 Reisch Bldg., Springfield, IL 62701, (217) 544–5468. Transporting (1) *contractor's equipment, tools, supplies, and building materials*, between points in IL, IA, IN, KY, MO, and WI, and (2) *road, mining, forestry and construction and equipment*, between points in the U.S. (except AK and HI).

MC 167680, filed April 28, 1983. Applicant: TRANS MUTUAL ASSOCIATES, 18 Henry Rd., Somerville NJ 08876. Representative: Colin Barrett, 11764, Indian Ridge Rd., Reston, VA 22091 (703) 860–8521. As a *broker* of *general commodities* (except household goods), between points in the U.S.

Please direct status inquiries about the following to team 2 at (202) 275–7293.

Volume No. OP2–218

Decided: May 5, 1983.
By the Commission, Review Board No. 2. Members Carleton, Williams and Ewing. Member Ewing not participating.

MC 16682 (Sub-101), filed April 8, 1983. Applicant: MURAL TRANSPORT, INC., P.O. Box 1785, Black Horse Lane, North Brunswick, NJ 08902. Representative: W. C. Mitchell (same address as applicant) (201) 297–6400. 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 ITOFCA, Inc. and ITOFCA Consolidators, Inc., both of Downers Grove, IL.

MC 52793 (Sub-129), filed April 22, 1983. Applicant: BEKINS VAN LINES CO. 333 South Center St., Hillside, IL 60162. Representative: David A. Gallagher (same address as applicant), (312) 547–2184. Transporting *displays and exhibits*, between points in the U.S. (except AK and HI), under continuing contract(s) with Basic Four Corporation, of Tustin, CA.

MC 87113 (Sub-33), filed April 19, 1983. Applicant: WHEATON VAN LINES, INC., 8010 Castleton Rd., Indianapolis, IN 46250. Representative: Alan F. Wohlstetter, 1700 K St., NW, Washington, DC 20006, (202) 833–8884. Transporting *household goods*, between points in the U.S., under continuing contract(s) with Thousand Trails, Inc., of Seattle, WA, and its subsidiaries.

MC 87113 (Sub-34), filed April 22, 1983. Applicant: WHEATON VAN LINES, INC., 8010 Castleton Rd., Indianapolis, IN 46250. Representative: Alan F. Wohlstetter, 1700 K St., NW, Washington, DC 20006, (202) 833–8884. Transporting *household goods*, between points in the U.S., under continuing contract(s) with Lockheed Corporation, of Burbank, CA and its subsidaries.

MC 107012 (Sub-815), filed April 20, 1983. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Hwy 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: David D. Bishop (same address as applicant), 219–429–2110. Transporting *household goods*, between points in the U.S., under continuing contract(s) with Days Inn of America, Inc., of Atlanta, GA.

MC 107403 (Sub-1354.), filed April 18, 1983. Applicant: MATLACK, INC., 10 W. Baltimore Ave., Lansdowne, PA 19050. Representative: Martin C. Hynes, Jr. (same address as applicant), (215) 259–9800. Transporting *general commodities* (except classes A and B explosives), between points in the U.S., under continuing contract(s) with Amoco Oil Company, of Chicago, IL.

MC 112713 (Sub-338), filed April 25, 1983. Applicant: YELLOW FREIGHT SYSTEM, INC., P.O. Box 7270, Shawnee Mission, KS 66207. Representative: William F. Martin, Jr. (same address as applicant), 913–383–3000. 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 Foremost-McKesson, Inc., of San Francisco, CA.

MC 118202 (Sub-180), filed April 25, 1983. Applicant: SCHULTZ TRANSIT, INC., 323 Bridge St., P.O. Box 406, Winona, MN 55987. Representative: Val M. Higgins, 1600 TCF Tower, 121 S. 8th St., Minneapolis, MN 55402, 612–333–1341. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except HI).

MC 125853 (Sub-7), filed April 28, 1983. Applicant: TOWNE AIR FREIGHT, INC., 4135 West Progress Drive, South Bend, IN 46628. Representative: Andrew K. Light, 1301 Merchants Plaza, Indianapolis, IN 46204, 317–638–1301. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in IL, IN, MI, and OH, on the one hand, and, on the other, point in the U.S. (except AK and HI).

MC 135113 (Sub-3), filed April 21, 1983. Applicant: DORIN, INC., GA Hwy 83, Madison, GA 30650. Representative: Archie B. Culbreth, Suite 570, 2200 Century Parkway, Atlanta, GA 30345, 404–321–1765. Transporting (1) *rubber and plastic products, textile mill products, sporting or athletic goods, parts and related products*, between points in the U.S. (except AK and HI), (2) *pulp, paper and paper products and plastic and plastic products*, between points in GA, IL, NJ, CA, and CT, on the one hand, and, on the other, points in the U.S. (except AK and HI), (3) *textile and textile products* and *such commodities* as are dealt in by manufacturers or distributors of craft products, between points in GA and FL, on the one hand, and, on the other, points in the U.S. (except AK and HI), and (4) *fabricated plastic and metal products, wearing apparel, plumbing fittings, plumbing fixtures, plumbing supplies, vanities, vanity cabinets and plastic products*, between points in GA, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 143713 (Sub-14), filed April 25, 1983. Applicant: AGRICULTURAL TRANSPORTATION ASSOCIATION OF ILLINOIS, 37 Forest Ridge, Springfield, IL 62707. Representative: Marshall D. Becker, 7171 Mercy Rd., Suite 610, Omaha, NE 68106, 402–392–1220. Transporting *general commodities* (except classes A and B explosives and household goods), between points in the U.S. (except HI).

MC 146892 (Sub-16), filed April 18, 1983. Applicant: R & L TRANSFER, INC., P.O. Box 271, Wilmington, OH 45177. Representative: Boyd B. Ferris, 50 W. Broad St., Columbus, OH 43215–3339, (614) 464–4103. Transporting *general commodities* (except classes A and explosives, and household goods), between points in the U.S. (except AK and HI).

MC 156072 (Sub-1), filed April 25, 1983. Applicant: CHARLES WARREN d.b.a. WARREN AUTO SERVICE, P.O. Box 83, Washington St., Saratoga, IN 47382. Representative: Robert B. Hebert, One Indiana Square-Suite 1600, Indianapolis, IN 46204, 317–632–6262. Transporting *beverages*, between points in the U.S. (except AK and HI), under continuing contract(s) with Coca-Cola Bottling Company, of Portland, Indiana, Inc., of Portland, IN.

MC 157763 (Sub-3), filed April 25, 1983. Applicant: PRESTO TRANSPORTATION, INC., P.O. Box 469, Peru, IL 61354. Representative: Raymond Bradfield, Rural Route 1, Hennepin, IL 61327, 815-223-8968. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between those points in the U.S. east of MT, WY, CO, and NM.

MC 163032, filed April 22, 1983. Applicant: ALLEN RENCHER, P.O. Box 963, Hayden Lake, ID 83835. Representative: Timothy R. Stivers, P.O. Box 1576, Boise, ID 83701, 208-343-3071. Transporting (1) *general commodities* (except classes A and B explosives and household goods), between points in AZ, CA, CO, ID, MT, NV, OR, UT, WA, and WY, (2) for or on behalf of the United States Government of *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).

Note.—Part (1) is published in the **Federal Register**, this issue, under the preface with regular application.

MC 163163 (Sub-3), filed April 13, 1983. Applicant: EAGLE BUS, INC., 805 Avenue "C", Bayonne, NJ 07002. Representative: Edward F. Bowes, 7 Becker Farm Rd., P.O. Box Y, Roseland, NJ 07068, (201) 992-2200. *Over regular routes,* transporting *passengers,* between New York, NY, and Atlantic City, NJ: (1) From New York over Interstate Hwy 495 to junction Interstate Hwy 95, then over Interstate Hwy 95 to junction Garden State Parkway, then over Garden State Parkway to junction Atlantic City Expressway, then over Atlantic City Expressway to Atlantic City, and (2) from New York over Interstate Hwy 495 to junction U.S. Hwy 1, then over U.S. Hwy 1 to junction NJ Hwy 501, then over NJ Hwy 501 to Bayonne Bridge, then over Bayonne Bridge to junction NY Hwy 440, then over NY Hwy 440 to Outerbridge Crossing, then over Outerbridge Crossing to NJ Hwy 440, then over NJ Hwy 440 to Garden State Parkway, then over Garden State Parkway to Atlantic City Expressway to Atlantic City, and return over the same routes, serving all intermediate points, and off-route points in Hudson and Union Counties, NJ, and serving Elizabeth, NJ for purpose of joinder with applicant's existing route.

Note.—Applicant seeks to provide regular-route service in interstate or foreign commerce.

MC 167622, filed April 25, 1983. Applicant: MARION WOODS, d.b.a. RAINBOW TRUCKING, Rte 2, Box 1-A, Winthrop, MN 55396. Representative: William J. Gambucci, 525 Lumber Exchange Bldg., Minneaplis, MN 55402, 612-340-0808. Transporting *food and related products,* between points in the U.S. (except AK and HI).

Please direct status inquiries about the following to Team 3 at (202) 275-5223.

Volume No. OP3-216

Decided: May 5, 1983.

By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell. Member Krock not participating.

MC 167595, filed April 22, 1983. Applicant: NORTH TO ALASKA, INC., 321 Upland Dr., Tukwila, WA 98134. Representative: Michael A. Jonson, 300 Central Bldg., Seattle, WA 98104, (206) 624-2521. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in WA.

Please direct status inquires about the following to Team 4 at (202) 275-7669.

Volume No. OP4-283

Decided: April 7, 1983.

By the Commission, Division 1, acting as an Appellate Division, Commissioners Andre, Taylor and Sterrett, Chairman Taylor not participating.

MC 128497 (Sub-23), filed December 16, 1982. Applicant: JACK LINK TRUCK LINE, INC., P.O. Box 127, Dyersville, IA 52040. Representative: Jack H. Blanshan, 21363 N. Pheasant Trail, Barrington, IL 60010. In a decision, by the Commission, Division 1, acting as an Appl. Div. decided April 7, 1983, and finds tht performance by applicant: To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) machinery and metal products, between points in Washington County, MN; and White County and Moline, IL, on the one hand, and, on the other, points in Illinois, Indiana, Kansas, Kentucky, Michigan, Minnesota, Missouri, Nebraska, South Dakota, and Wisconsin; (2) building materials, between points in Illinois and Wisconsin, on the one hand, and, on the other, points in Mower and Freeborn Counties, MN; and Minneapolis, MN; and (3) machinery and metal products, between points in Washington County, MN and Whiteside County and Moline, IL, on the one hand, and, on the other, points in Arkansas, Colorado, North Dakota, Oklahoma, and Texas.

Volume No. OP4-287

Decided: May 9, 1983.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier.

MC 165557, filed April 28, 1983. Applicant: J & D TRUCKING, Rt. 2 Box 1296M Pearl River, LA 70452. Representative: Charles D. Crawford (same address as applicant) (504) 863-2362. Transporting *coal and coal products,* between points in Orleans and St. Tammany Parishes, LA, on the one hand, and, on the other points in Washington, Parish, LA, under continuing contract(s) with Crown, Zellerbach, of Bogalusa, LA.

MC 165947, filed May 2, 1983. Applicant: HOWARD LOVE, d.b.a. HOWARD LOVE MACHINERY & SUPPLY CO., 1717 E. Loop, Suite 330, Houston, TX 77029. Represenative: Doyle G. Owens, P.O. Box 7735, Beaumont, TX 77706 (409) 898-8086. Transporting *coal tar and asphalt,* between points in the U.S. (except AK and HI).

MC 166166, filed May 3, 1983. Applicant: DALE JOHNSON TRUCKING, INC., Rte. 1, Sandwich, IL 60548. Representative: Philip A. Lee 120 W. Madison, Suite 618, Chicago, IL 60602 (312) 236-8225. Transporting *food and related products,* between points in the U.S. (except AK and HI).

MC 166967, filed May 3, 1983. Applicant: CARE-FREE STEEL HOME CORP., d.b.a. CARE FREE TRANSIT, Junction 41 & D, Allentown, WI 53002. Representative: James A. Speigel, Olde Towne Office Park, 6333 Odana Rd., Madison, WI 53719 (608) 272-103. Transporting *general commodities* (except classes A and B explosives, households goods, and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Jack Walters & Sons Corp., of Allenton, WI, and Walter Square Post Buildings, of Fairfield, IL.

MC 167796, filed May 4, 1983. Applicant: NORMAN RICHARD RFD No. 1, Box 43, Champlain, NY 12919. Representative: Norman Richard (same address as applicant), (518) 298-57690. Transporting *general commodities* except classes A and B explosives and household goods), between points in Clinton County, NY, on the one hand, and, on the other, points in NY, VT, NH, ME, MA, CT, RI, NJ, MD, DE, WV, VA, NC, SC, GA, FL, TN, KY, IL, IN, OH, PA, MI, and WI, under continuing contract(s) with Harris Graphics Corp., and Champlain Agway Cooperative, Inc., both of Champlain, NY.

Volume No. OP4-290

Decided: May 11, 1983.

By the Commission, Review Board No. 3, Members Krock, Joyce and Dowell.

MC 167186, filed April 28, 1983. Applicant PETROLEUM SALES & TRANSPORT, INC., 603 W. 2nd St., Atlantic, IA 50022. Representative: James M. Hodge, 3730 Ingersoll Ave., Des Moines, IA 50312, (515) 274–4965. Transporting *Chemicals and petroleum products*, between points in IA and NE.

Volume No. OP4–293

Decided: May 11, 1983.
By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier.

MC 22147, (Sub-3), filed April 29, 1983. Applicant OSBRO & SON TRUCKING CO., INC., 221 W. Hohnson St., Fond du Lac, WI 54935. Representative: James A. Spiegel, Olde Towne Office Park, 6333 Odana Rd., Madison, WI 53719, (608) 273–1003. Transporting *general commodities* (except classes A and B explosives, commodities in bulk, and household goods), between points in the U.S. (except AK and HI).

MC 140686, (Sub-6), filed May 4, 1983. Applicant VSM TRUCKING, INC., 211 S. Main St., Abingdon, IL 61410. Representative: Ronald Henson, 139 S. Cherry St., Galesburg, IL 61401, (309) 343–4193. Transporting *food and related products*, between points in IL, AL, AZ, CA, FL, GA, ID, KY, LA, MI, MN, MS, NM, TX, SD, ND, WA, OR, TN, NC, SC, WI, CO, IA, AR, and MO.

MC 148867, (Sub-8), filed May 3, 1983. Applicant TRANS–ADVO, INC., 239 Service Rd., West, Hartford, CT 16101. Representative: Frank M. Cushman, 36 S. Main St., Sharon, MA 02067, (617) 784–6041. Transporting *printed matter*, between points in the U.S. (except AK and HI), under continuing contract(s) with Wal-Mart Stores, Inc., of Bentonville, AR.

MC 149546, (Sub-35), filed May 3, 1983. Applicant: D & T TRUCKING CO., INC., P.O. Box 12505, New Brighton, MN 55112. Representative: Samuel Rubenstein, P.O. Box 5, Minneapolis, MN 55440, (612) 542–1121. Transporting *general commodities* (except household goods), between points in the U.S. (except AK and HI), under continuing contract(s) with S–R–F–T–C Brokers, of Minneapolis, MN.

MC 150106 (Sub-3), filed May 3, 1983. Applicant: GOLDEN ARCH EXPRESS, INC., 635 Executive Drive, Willow Brook Court, Willow Brook, IL 60521. Representative: Arnold L. Burke, 180 N. LaSalle St., Room 3520, Chicago, IL 60601, (312) 332–5106. 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 157817 (Sub-1), filed May 2, 1983. Applicant: SUPERTONE TRANSPORTATION LIMITED, 58 Marathon Crescent, Willowdale, Ontario, Canada M2R 2L7. Representative: John L. Trigilio, Can-Am Bldg., 101 Niagara St., Buffalo, NY 14202, (716) 854–5870. Transporting (1) *furniture, fixtures, and office equipment;* (2) *pulp, paper and related products;* and (3) *Textile mill products*, between points in the U.S., under continuing contract(s) with Gobal Upholstering Company Limited, of Downsview, Ontario, Canada; Consolidated Fibres Inc., of Buffalo, NY; Quigly Trading Company Inc., of Snyder, NY; and Mike Jacobs Inc., of Fort Lauderdale, FL.

MC 167226 (Sub-1), filed May 3, 1983. Applicant: FOLWERS MOVING, INC., 3660 N. Elston Ave., Chicago, IL 60618. Representative: Lillie A. Folwers (same address as applicant), (312) 588–8133. Transporting *household and office goods and furniture*, between points in IL.

MC 167736, filed April 29, 1983. Applicant: CHARLES ALVES, DONALD DOYLE, AND DAVID LONG d.b.a. TOY TOWN EXPRESS, 44 Pine St., P.O. Box 158, Hudson, MA 01749. Representative: Curtis L. Wood, 14 New England Executive Part, Burlington, MA 01803 (617) 272–7540 Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in CT, ME, MA, NH, NJ, NY, PA, RI, AND VT.

MC 167747, filed May 2, 1983. Applicant: FRIERSON TRUCKING, 93 Franklin Rd., Teaneck, NJ 07666. Representative: Alexander Frierson (same address as applicant) (201) 833–2412. Transporting *general commodities* (except classes A and B explosives and household goods), between points in CT, DE, MD, NJ, NY, and PA.

Please direct status inquiries about the following to Team 5 at (202) 275–7289.

Volume No. OP–213.

Decided: April 29, 1983.
By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell.

MC 29929 (Sub-9), filed April 15, 1983. Applicant: CANNY TRUCKING CO., INC., 6–18 Spring Forest Ave., Binghamton, NY 13905. Representative: Thomas F. X. Foley, P.O. Box F, Colts Neck, NJ 07722, (201) 946–2020. Transporting *construction, mining, drilling and industrial machinery and equipment*, between points in CT, NJ, and PA, on the one hand, and, on the other, points in the U.S. (except AK and HI), under continuing contract(s) with Ingersoll-Rand Company, of Piscataway, NJ.

MC 35628 (Sub-453), filed April 21, 1983. Applicant: IMFS, d.b.a. INTERSTATE SYSTEM, 110 Ionia Ave, NW., Grand Rapids, MI 49503. Representative: Michael P. Zell (same address as applicant), 616–774–0400. 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 T. G. & Y. Stores Co. of Oklahoma City, OK; General Motors Corporation of Troy, MI; and Dana Corporation of Hagerstown, IN.

MC 79658 (Sub-66), filed April 18, 1983. Applicant: ATLAS VAN LINES, INC., 1212 St. George Rd., P.O. Box 509, Evansville, IN 47711. Representative: Robert C. Mills (same address as applicant) (812) 424–2222. Transporting *household goods* between points in the U.S. (except AK and HI), under continuing contract(s) with Land O'Lakes, Inc., of Arden Hills, MN, and its subsidiaries.

MC 79658 (Sub-69), filed April 18, 1983. Applicant: ATLAS VAN LINES, INC., 1212 St. George Road, P.O. Box 509, Evansville, IN 47711. Representative: Robert C. Mills (same address as applicant), (812–424–2222). Transporting *household goods*, between points in the U.S. (except AK and HI), under continuing contract(s) with Citicorp, of New York, NY.

MC 126899 (Sub-154), filed April 18, 1983. Applicant: USHER TRANSPORT, INC., 3925 Old Benton Rd., P.O. Box 3156, Paducah, KY 42001. Representative: George M. Catlett, Suite 700–702 McClure Bldg., Frankfort, KY 40601, 502–227–7384. Transporting *malt beverages*, between St. Paul, MN, Baltimore, MD, Newport, KY and points in St. Clair County, IL, La Crosse County, WI, Saginaw County, MI, Houston County, GA, Vanderburgh County, IN and Polk County, FL, on the one hand, and, on the other, those points in the U.S. in and east of MN, IA, MO, AR, and TX.

MC 138879 (Sub-2), filed April 18, 1983. Applicant: RUSSEL L. RODGERS, d.b.a. ROGERS TRUCK SERVICE, Box 21, Fairfield, IL 62837. Representative: Wayne E. Klinckhardt, 378 Scenic Dr., St. Louis, MO 63137, 314–868–7927. 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 Airtex Products and its divisions Airtex Automotive, Master Parts Div., and LC Products Div., all of Fairfield, IL; Champion Labs and its

divisions Luber-Finer, Inc., and Pyroil Div., of Albion, IL and Mid South Manufacturing of Marked Tree, AR.

MC 145768 (Sub-9), filed April 15, 1983. Applicant: KREILKAMP TRUCKING, INC., Route 1, Allenton, WI 53002. Representative: Charles E. Dye, Swan Lake Village, Saddle Ridge #832, Portage, WI 53901, 608–742–3579. Transporting *metal products*, between Chicago, IL and points in Milwaukee and Racine Counties, WI.

MC 146969 (Sub-3), filed April 18, 1983. Applicant: STAN KOCH & SONS TRUCKING, INC., 4901 Excelsior Blvd., St. Louis Park, MN 55416. Representative: Stanley C. Olsen, Jr., 5200 Willson Rd., Suite 307, Minneapolis, MN 55424, (612) 927–8855. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except HI).

MC 155329 (Sub-1), filed April 18, 1983. Applicant: CLARK MOTOR EXPRESS, INC., P.O. Box 323, Lilburn, GA 30247. Representative: David P. Clark (same address as applicant), (404) 923–2348. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in St. Clair, Livingston, and Oakland Counties, MI, and points in GA, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 165048, filed April 1, 1983. Applicant: SMITH TRUCKING COMPANY, INC., 2810 East Chestnut, P.O. Box 865, Enid, OK 73702–865. Representative: William P. Parker, P.O. Box 54657, Oklahoma City, OK 73154, (405) 424–3301. Transporting (1) *Mercer commodities*,(2) *metal and metal products*, (3) *building materials*, and (4) *machinery*, between those points in the U.S. in and west of NY, PA, and MD (except AK and HI).

MC 166298, filed February 17, 1983. Applicant: EVANS EXXON, INC., 63 Southside Ave., Asheville, NC 28801. Representative: John Evans (same address as applicant), 704–253–5319. Transporting *wrecked and disabled motor vehicles*, between points in U.S. under continuing contract(s) with Fredrickson Motor Express Corporation and Carolina Freight Carriers Corporation both of Ashville, NC.

MC 167239, filed April 18, 1983. Applicant: ROGER G. DOLE, d.b.a DUSTY'S TRUCKING, 2100 So. Marion St., Janeville WI 53545. Representative: Wayne W. Wilson, 150 East Gilman St., Madison, WI 53703, (608) 256–7444. Transporting (1) *rubber and plastic products*, and (2) *fittings, and materials equipment and supplies* used or useful in the installation of the commodities in (1) above, between points in the U.S. (except AK and HI), under continuing contract(s) with Freedom Plastics, Inc., of Janesville, WI.

MC 1613478, fiked April 14, 1983. Applicant: ALBANY TRANSPORT, INC., 7177 Industrial Pkwy., Plain City, OH 43064. Representative: Paul F. Beery, 275 E. State St., Columbus, OH 43215, 614–228–8575. Transporting *food and related products*, between points in the U.S. (except AK and HI), under continuing contract(s) with Seaboard Allied Milling Department of Cargill, Inc. of Albany, NY.

MC 167459, filed April 15, 1983. Applicant: DENNIS R. FOX, d.b.a. FOX TRANSPORTATION, 16940 Ruby Lane, Brookfield, WI 53005. Representative: Dennis R. Fox (same address as applicant), 414–784–0364. Transporting (1) *Metal products*, (2) *Textile mill products*, and (3) *rubber and plastic products*, between points in the U.S. under continuing contract(s) with Oster (Division of Sunbeam Corp.) of Milwaukee, WI, Hart Schaffner & Marx of Chicago, IL and Schaefer Brush Mfg. of Waukesha, WI.

MC 167478, filed April 18, 1983. Applicant: PIRES TRUCKING, INC., 140 Edward Rd., Raynham, MA 02767. Representative: Jeremy Kahn, Suite 733, Investment Bldg., 1511 K St. N.W., Washington, DC 20005, 202–783–3525. Transporting *petroleum products*, between points in MA and RI, under continuing contract(s) with Agway Petroleum Corp., of Syracuse, NY.

MC 167529, filed April 18, 1983. Applicant: D. L. BELKNAP TRUCKING, INC., 1127 Seventh St., N.E., Canton, OH 44704. Representative: Paul F. Beery, 275 E. State St., Columbus, OH 43215, (614) 228–8575. Transporting *metal products*, between points in Stark County, OH, on the one hand, and, on the other, points in the U.S. (except AK and HI).

Volume No. OP5–222

Decided: May 6, 1983.

By the Commission, Review Board No. 1, Members Parker, Chandler and Fortier.

MC 16499 (Sub-5), filed April 25, 1983. Applicant: ROHDE CARTAGE, INC., P.O. Box 475, Mundelein, IL 60060. Representative: D. R. Beeler, P.O. Box 482, Franklin, TN 37064, (615) 790–2510. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in IL, on the one hand, and, on the other, points in IN, IA, KY, MI, MO, OH, TN, and WI. Condition: The person or persons who appear to be engaged in common control of another regulated carrier must either (1) state that a petition has been filed under 49 U.S.C. § 11343(e) seeking an exemption from the requirements of 49 U.S.C. § 11343, (2) file an application under 49 U.S.C. § 11343(A), or (3) submi' an affidavit indicating why such approval is unnecessary to the Secretary's office. In order to expedite issuance of any authority please submi' a copy of this filing to Team 5, Room 2414.

MC 140889 (Sub-34), filed April 25, 1983. Applicant: FIVE STAR TRUCKING, INC., 1638 Pioneer Way, El Cajon, CA 92020. Representative: Ignatius B. Trombetta, One Public Square Bldg. #1001, Cleveland, OH 44113, (216) 589–0448. Transporting *building materials*, between points in the U.S., under continuing contract(s) with Tremco, Inc., of Cleveland, OH.

MC 145138 (Sub-1), filed April 22, 1983. Applicant: GOLDEN VALLEY TRANSPORTATION, INC., P.O. Box 130, Roberts, ID 83444. Representative: Todd R. Clement (same address as applicant), (208) 524–3331. Transporting *pulp, paper and related products*, between points in Cowlitz County, WA, on the one hand, and, on the other, points in Twin Falls County, ID, under continuing contract(s) with Longview Fiber Company, of Longview, WA.

MC 152068 (Sub-6), filed April 25, 1983. Applicant: HOC-EXPRESS, INC., 125 North Elizabeth, Wichita, KS 67203. Representative: Mark F. Anderson, 1100 Broadway Plaza, 105 South Broadway, Wichita, KS 67202, (316) 262–0667. Transporting *machinery* and *metal products*, between points in Sedgwick County, KS, on the one hand, and, on the other, points in TX, IA, and NM.

Note.—Applicant intends to tack to existing authority.

MC 161708, (Sub-1), filed April 18, 1983. Applicant JUTTA UNIVERSAL SYSTEMS, INC., Crystal Brook Professional Bldg., State Highway #35, Eatontown, NJ 07724. Representative: John R. Dillon, III, One Leonardville Road, Atlantic Highlands, NJ 07716, (201) 291–8770. Transporting *food and related products*, between points in the U.S. (except AK and HI), under continuing contract(s) with Holland House, Inc., of Ridgefield, NJ, and Hunt-Wesson Foods, Inc., of Fullerton, CA.

MC 165779, filed April 25, 1983. Applicant RICHMOND EXPRESS CO., INC., 1201 Corbin Street, Elizabeth, NJ 07201. Representative: Robert B. Pepper, 168 Woodbridge Ave., Highland Park, NJ 08904, (201) 572–5551. Transporting *general commodities* (except classes A

and B explosives, household goods, and commodities in bulk), between New York, NY, on the one hand, and, on the other, points in CT, DE, IL, IN, ME, MD, MA, NH, NJ, NY, OH, PA, RU, VT, VA, and DC.

MC 164638, filed April 21, 1983. Applicant COMMODITY CARRIERS, INC., P.O. Box 11040, Denver, CO 80211. Representative: Chester A. Zyblut, 366 Executive Bldg., 1030 15th St., N.W., Washington, DC 20005, (202) 296–3555. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in CO, and NM, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 167638, filed April 26, 1983. Applicant B & W TRUCK TRANSFER, INC., 5025 Van Buren St., Anchorage, AK 99503. Representative: Russell A. Evans, P.O. Box 5613, Bellevue, WA 98006, (206) 644–2100. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in AK, under continuing contract(s) with Washington Oregon Shippers Cooperative Association, Pacific Northwest Shippers Association and Trailer Express, Inc., all of Seattle, WA.

Volume No. OP5–224

Decided- May 6, 1983.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier.

FF 689, filed April 29, 1983. Applicant: ALLIANCE FORWARDING, INC., P.O. Box 92252, Long Beach, CA 90809–2252. Representative: Sol Ho. Proctor, 1101 Backstone Bldg., Jacksonville, FL 32202, 904–632–2300. As a freight forwarder in connection with the transportation of *used household goods, unaccompanied baggage and used automobiles,* between points in the U.S.

W 1338 (Sub-4), filed April 28, 1983. Applicant: THE BINKLEY CO., d.b.a. NORTHWEST NAVIGATION, P.O. Box 1065, Bethel, AK 99559. Representative: Jim Pitzer, 15 South Grady Way, Suit 321, Renton, WA 98055, 206–235–1111 Transporting *general commodities* by water vessel between points in AK on the Kuskokwim River and its tributaries from its mouth to and including Medfra, AK.

W 1369 (Sub-1), filed April 28, 1983. Applicant: JAMES OTIS PEARCY, d.b.a. PEARCY MARINE, 18128 Bal Harbour Dr., Houston, TX 77058. Representative: James Otis Pearcy (same address as applicant), (713) 333–5793. Transporting *general commodities* (except classes A and B explosives) between all U.S. ports on the Gulf of Mexico.

MC 79658 (Sub-71), filed April 26, 1983. Applicant: ATLAS VAN LINES, INC., 1212 St. George Rd., P.O. Box 509, Evansville, IN 47711. Representative: Robert C. Mills (same address as applicant), (812) 424–2222. Transporting *household goods,* between points in the U.S. (except AK and HI), under continuing contract(s) with The Limited, Incorporated, of Columbus, OH.

MC 79658 (Sub-72), filed April 29, 1983. Applicant: ATLAS VAN LINES, INC., 1212 St. George Rd., P.O. Box 509, Evansville, IN 47711. Representative: Robert C. Mills (same address as applicant), (812) 424–2222. Transporting *water purification systems,* between points in the U.S. (except AK and HI), under continuing contract(s) with Fluid Systems Division UOP Inc., of San Diego, CA.

MC 121439 (Sub-3(a)), filed April 27, 1983. Applicant: THOMAS TRANSFER, INC., 1800 15th St., Denver, CO 80202. Representative: Charles M. Williams, McCullough Bldg., 1750 Gilpin St., Denver, CO 80218, (303) 333–3774. Transporting *general commodities* (except commodities in bulk and household goods), between points in CO, WY, and NE. Condition: Any certificate issued in this proceeding to the extent it authorizes transportation of classes A and B explosives shall be limited in point of time to a period expiring 5 years from the date of issuance of the certificate.

Note.—Applicant seeks additional authority in MC–121439 Sub-1 1(b) published in this same **Federal Register.**

MC 146238 (Sub-2), filed April 27, 1983. Applicant: C & R TRUCKING, INC., West Hwy. 66, P.O. Box 815, Kingman, AZ 86402. Representative: Cecil E. Groves (same address as applicant) (602) 753–5814. Transporting *such commodities* as are dealt in or used by manufacturers and distributors of aluminum ventilation products between points in the U.S., under continuing contract(s) with Lomanco, Inc., of Jacksonville, AR.

MC 154438 (Sub-1), filed April 27, 1983. Applicant: J. T. TAYLOR d.b.a. MILRON TRUCK LINE, 3808 Sago Court, El Paso, TX 79927. Representative: J. T. Taylor (same address as applicant) (915) 779–5732. Transporting (1) *medical materials and supplies,* between points in El Paso County, TX, on the one hand, and, on the other, Columbus, MS, and points in TX, and (2) *iron and steel products,* between points in El Paso County, TX, on the one hand, and, on the other, points in AZ, AR, CA, CO, ID, LA, MS, MT, NV, OK, OR, TX, UT, WA, and WY.

MC 161229 (Sub-2), filed April 27, 1983. Applicant: LOVE TRANSPORT COMPANY, INC., P.O. Box 546, Wichita, KS 67201. Representative: Robert W. Love (same address as applicant), (316) 838–0851. Transporting *metal products,* between points in the U.S., under continuing contract(s) with Kawasaki Motors Manufacturing Corp., USA, of Lincoln, NE.

MC 161258 (Sub-1), filed April 29, 1983. Applicant: MANUFACTURERS WAREHOUSE, INC., 7800 Ball Road, Fort Smith, AR 72906. Representative: Charles H. Schmidly, 4110 So. 25th St., Fort Smith, AR 72901, (501) 646–1510. Transporting *alcoholic beverages,* between points in AR, CA, IL, KY, LA, MI, and NJ, on the one hand, and, on the other, points in the U.S. under continuing contract(s) with Hiram Walker & Sons, Inc., of Fort Smith, AR.

MC 163429 (Sub-1), filed April 29, 1983. Applicant: GENE TRIPP JR. AND DAVID SAUERBIER, d.b.a. BEARMOUTH EXPRESS, P.O. Box 7103, Missoula, MT 59807. Representative: William E. Seliski, 2 Commerce St., P.O. Box 8255, Missoula, MT 59807, (406) 543–8369. Transporting *such commodities* as are dealt in or used by lumber yards, between points in WA, OR, CA, ID, and MT, on the one hand, and, on the other, points in the U.S. in and west of OH, IN, IL, MO, AR, and TX (except AK and HI).

MC 166959, filed April 21, 1983. Applicant: CLIFFORD A. PHILLIPS, d.b.a. CAM'S TRUCKING, 2123 S. Barcliff, Springfield, MO 65804. Representative: Bruce McCurry, 910 Plaza Towers, Springfield, MO 65804, (417) 883–7311. Transporting *food and related products, building materials,* and *farm products,* between points in AL, AR, FL, GA, IL, IN, IA, KS, LA, MI, MN, MS, MO, NE, NC, OH, OK, SC, TN, TX, and WI.

MC 166589, filed April 29, 1983. Applicant: WARD COMPANY, INC., 904 North Lincoln St., Arlington, VA 22201. Representative: Stephen Sale, 1825 Eye St., N. W., Suite 1200, Washington, DC 20006, 202–828–5830. Transporting *such commodities* as are dealt in or used by collectors, distributors and exhibitors of fine arts objects and antiques of extra ordinary value, between points in CT, DE, MD, NJ, NY, PA, VA and DC.

MC 167369, filed April 15, 1983. Applicant: BILL KUHNS TRUCKING, 7907 Santa Fe Ave., Huntington Park, CA 90255. Representative: Miles L. Kavaller, 315 So. Beverly Drive, Suite 315, Beverly Hills, CA 90212, (213) 277–2323. Transporting *metal products* between points in the U.S. (except AK and HI), under continuing contract(s)

with Stead Industries, Inc., DBA Hoyt Heater Company, of Reno-Stead, NV.

MC 167559, filed April 25, 1983. Applicant: A B C RAPID DELIVERY, INC., 1219 Dalbigne St., Belvidere, IL 61008. Representative: Abraham A. Diamond, 29 South La Salle St., Chicago, IL 60603, (312) 236–0548. Transporting *building materials*, between points in the U.S. (except AK and HI), under continuing contract(s) with Apache Building Products, of Belvidere, IL.

MC 167599, filed April 22, 1983. Applicant: SHERWOOD BROS. INC., 5222 Pinemont Dr., Murray, UT 8410.7. Representative: Irene Warr, Suite 280, 311 S. State St., Salt Lake City, UT 84111, (801) 531–1300. Transporting *building materials*, between points in the U.S. in and west of MT, WY, CO, NM, and TX (except AK and HI).

MC 167619, filed April 25, 1983. Applicant: ORDELL SIMONSEN, d.b.a. S & R TRUCKING, Rural Route 2, Box 12, Viberg, SD 57070. Representative: A. J. Swanson, P.O. Box 1103, Sioux Falls, SD 57101–1103, 605–335–1777. Transporting *lumber and wood products*, and *construction materials*, between points in CA, IA, ID, IL, MI, MN, MT, OR, WA and WY, on the one hand, and, on the other, points in IA, MN, NE, and SD.

MC 167629, filed April 25, 1983. Applicant: HGC TRUCKING COMPANY, 1400 Gadsden St., Quincy, FL 32351. Representative: William H. Borghesani, Jr., 1150 17th St., NW, Suite 1000, Washington, DC 20036, (202) 457–1122. Transporting *food and related products, farm products*, and *paper products*, between points in MS, AL, TN, GA, and FL.

MC 167658, filed April 27, 1983. Applicant: COMMERCIAL TRUCKING & LEASING, INC., 1115 E. Hennepin Ave., Minneapolis, MN 55414. Representative: Samuel Rubenstein, P.O. Box 5, Minneapolis, MN 55440, 612–542–1121. Transporting *chemicals and related products*, between points in Reno County, KS, on the one hand, and, on the other, points in MN and ND.

MC 167659, filed April 27, 1983. Applicant: W.O.W. TRUCK LINES, INC., P.O. Box 209, Stigler, OK 74462. Representative: June E. Edmondson, 1101 Connecticut Ave., NW., Washington, DC 20036, 202–659–8201. Transporting (1) *coal and coal products*, (2) *clay, concrete, glass or stone products*, (3) *commodities in bulk*, between points in AR, CO, KS, LA, MO, MS, NM, OK, TN, and TX.

MC 167678, filed April 27, 1983. Applicant: LAWRENCE MOVING & STORAGE, INC., P.O. Box 37, Reno, NV 89504. Representative: Robert J. Gallagher, 1000 Connecticut Ave., NW., Suite 1200, Washington, DC 20036, (202) 785–0024. Transporting *household goods*, between points in WA, OR, CA, NV, ID, UT, AZ, NM, CO, WY, and MT.

MC 167709, filed April 29, 1983. Applicant: RICHARD AND SHIRLEY BANDY, P.O. Box 655, Talent, OR 97540. Representative: Richard Bandy (same address as applicant), (503) 535–1183. Transporting *general commodities* (except classes A and B explosives, and household goods) between points in the U.S. under continuing contract(s) with R & R Truck Brokers, Inc., of Medford, OR, and Siskiyou West, Inc., of Yreka, CA.

Volume No. OP5–227

Decided: May 10, 1983.

By the Commission, Review Board No. 3, members Krock, Joyce, and Dowell.

MC 167558, filed April 21, 1983. Applicant: K & L TRUCKING COMPANY, INC., 7350 Lockport Pl., Lorton, VA 22079. Representative: David H. Baker, 600 Maryland Ave., NW., Washington, DC 20024, 202–484–9090. Transporting *paper and related products*, between Baltimore, MD, Washington, DC, and points in Fairfax, Loudoun, Arlington, Prince, William and Spotsylvania Counties, VA, Montgomery, Prince Georges, Charles and Baltimore Counties, MD, on the one hand and, on the other, points in MD, VA, DE, PA, NJ, NY, CT, MA, and NH.

Agatha L Mergenovich

Secretary.

[FR Doc. 83–13283 Filed 5–17–83; 8:45 am]

BILLING CODE 7035–01–M

[Permanent Authority Volume No. OP2–224]

Motor Carriers; Republications of Grants of Operating Rights Authority Prior to Certification

The following grant(s) of operating right authority is republished by order of the Commission to give proper notice of the fact that this application is "public interest" in nature, which was not disclosed in the prior publication in the **Federal Register**, on December 29, 1982.

In addition to fitness grounds this application may be opposed on the grounds that the transportation to be authorized is not consistent with the public interest.

An original and one copy of an appropriate petition for leave to intervene, setting forth in detail the precise manner in which petitioner has been prejudiced, must be filed with the Commission within 30 days after the date of this **Federal Register** notice.

By the Commission.

Agatha L. Mergenovich,

Secretary.

MC 164973, (Republication), filed December 2, 1982, published in the FR issue of December 29, 1982, and republished this issue. Applicant: MANCHESTER TRANSIT AUTHORITY, 110 Elm St., Manchester, NH 03103. Representative: Jeremy Kahn, Suite 733 Investment Bldg., 1511 K St. NW., Washington, DC 20005. A decision of the Commission, *Review Board 2*, decided April 25, 1983, and served May 4, 1983, finds that the present and future public convenience and necessity require operations by applicant in interstate or foreign commerce, over irregular routes, as a *common carrier*, by motor vehicle, transporting *passengers*, in charter and special operations, beginning and ending at points in New Hampshire, and extending to points in the United States (including Alaska, but excluding Hawaii), that applicant is fit, willing, and able properly to perform the granted service and to conform to statutory and administrative requirements. The purpose of this republication is to give proper notice of the fact that this application is "public interest" in nature.

Note.—Applicant receives governmental financial assistance for the purchase or operation of buses, or is an operator for such a recipient.

[FR Doc. 83–13272 Filed 5–17–83; 8:45 am]

BILLING CODE 7035–01–M

Motor Carriers: Notice of Approved Exemptions

AGENCY: Interstate Commerce Commission.

ACTION: Notices of approved exemptions.

SUMMARY: The motor carriers shown below have been granted exemptions pursuant to 49 U.S.C. 11343(e), and the Commission's regulations in Ex Parte No. 400 (Sub-No. 1), *Procedures for Handling Exemptions Filed by Motor Carriers of Property Under 49 U.S.C. 1343*, 367 I.C.C. 113 (1982), 47 FR 53303 (November 24, 1982).

DATES: The exemptions will be effective on June 17, 1983. Petitions for reconsideration must be filed by June 7, 1983. Petitions for stay must be filed by May 31, 1983.

FOR FURTHER INFORMATION CONTACT: Warren C. Wood, (202) 275–7977.

SUPPLEMENTARY INFORMATION: For further information, see the decision(s) served in the proceeding(s) listed below. To purchase a copy of the full decision

contact: TS Infosystems, Inc., Room 2227, 12th and Constitution Ave., NW., Washington, D.C. 20423; or call (202) 289–4357 in the D.C. metropolitan area; or (800) 424–5403 toll-free outside the DC area.

By the Commission, Division 2, Commissioners Gradison, Taylor, and Sterrett. Commissioner Taylor is assigned to this Division for the purpose of resolving tie votes. Since there was no tie in this matter, Commissioner Taylor did not participate.

Agatha L. Mergenovich,

Secretary.

MC–F–15116, FIVE STAR TRUCKING, INC.—PURCHASE EXEMPTION—CHISM, INC. Addresses: Send pleadings to: (1) Motor Section, Room 2139 Interstate Commerce Commissions Washington, D.C. 20423 and (2) Petitioners' representatives Max W. Lilley, Esq., Lilley & Cowan, P.C. Suite 221, Woodruff Building, P.O. Box 1305, S.S.S., Springfield, MO 65805 and David M. O'Boyle, Esq., Wick, Rich, Fluke & Streiff, 1610 Two Chatham Center, Pittsburgh, PA 15219. Pleadings should refer to No. MC–F–15116. Decided: May 10, 1983. Under 49 U.S.C. 11343(e), the Interstate Commerce Commission exempts from the requirement of prior review and approval under 49 U.S.C. 11343(a)(2), the purchase by Five Star Trucking Inc. (No. MC–140889) of all of the operating authority of Chism, Inc. (No. MC–156329).

MC–F–15130, TRANSX LTD.—CONTROL EXEMPTION—P.M.E., LTD. Addresses: Send pleadings to: (1) Motor Section, Room 2139, Interstate Commerce Commission, Washington, D.C. 20423 and (2) Petitioner's representatve: Robert L. Cope, 1730 M Street NW., Washington, D.C. 20036. Pleadings should refer to No. MC–F–15130. Decided: May 11, 1983. Under 49 U.S.C. 11343(e), the Interstate Commerce Commission exempts from the requirement of prior review and approval under 49 U.S.C. 11343(a)(3) the purchase by Transx Ltd. (MC–153367) of all the outstanding stock of P.M.E. Ltd. (MC–145337).

[FR Doc. 83-13278 Filed 5-17-83; 8:45 am]
BILLING CODE 7035-01-M

[Volume No. OP1–172]

Motor Carriers; Permanent Authority Decisions; Restriction Removals; Decision-Notice

Decided: May 11, 1983.

The following restriction removal applications are governed by 49 CFR Part 1165. Part 1165 was published in the **Federal Register** of December 31, 1980, at 45 FR 86747 and redesignated at 47 FR 49590, November 1, 1982.

Persons wishing to file a comment to an application must follow the rules under 49 CFR 1165.12. A copy of any application can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the restriction removal applications are not allowed.

Some of the applications may have been modified prior to publication to conform to the special provisions applicable to restriction removal.

Findings

We find, preliminarily, that each applicant has demonstrated that its requested removal of restrictions or broadening of unduly narrow authority is consistent with the criteria set forth in 49 U.S.C. 10922(h).

In the absence of comments filed within 25 days of publication of this decision-notice, appropriate reformed authority will be issued to each applicant. Prior to beginning operations under the newly issued authority, compliance must be made with the normal statutory and regulatory requirements for common and contract carriers.

By the Commission, Review Board No. 1, Members Parker, Chandler and Fortier.

Agatha L. Mergenovich,

Secretary.

Please direct status inquiries to Team 1, at (202) 275–7992.

MC 108220 (Sub-5X), filed April 15, 1983. Applicant: EDWARD DARBY LAVENDER, d.b.a. LAMBERT-MARKS EXPRESS, P.O. Box 369, Marks, MS 38646. Representative: Henry E. Seaton, 1024 Pennsylvania Bldg., 425 13th St., N.W., Washington, D.C. 20004, (202) 347–8862. Lead and Sub 2 certificates: (1) Provide for service at all intermediate points over described regular routes extending (a) between Memphis, TN, and Lambert, MS, (b) between Memphis, TN, and junction MS Hwy 6 and U.S. Hwy 61, and (c) between Lambert, MS, and Vance, MS, and (2) broaden the off-route points of Belen, Buxton, Crowder, and Sarah, MS, to "Tunica, Quitman, Panola, Tallatchie, and Coahoma Counties, MS", in the lead certificate.

[FR Doc. 83-13280 Filed 5-17-83; 8:45 am]
BILLING CODE 7035-01-M

[Finance Docket No. 30138]

Rail Carriers; Cairo Terminal Railroad Company—Trackage Rights Exemption—Illinois Central Gulf Railroad Company

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts the acquisition of trackage rights by Cairo Terminal Railroad Company over 4.5 miles of Illinois Central Gulf Railroad Company track between milepost 500 and Cairo, IL, via Davis IL, from the requirements of 49 U.S.C 11343, subject to standard employee protective conditions. Related connecting track construction is exempted from the requirements of 49 U.S.C. 10901.

DATES: The decision is effective on May 18, 1983. Petitions to reopen must be filed by June 7, 1983.

ADDRESSES: Send petitions to reopen referring to Finance Docket No. 30138 to: (1) Rail Section, Room 5349, Interstate Commerce Commission, Washington, DC 20423 and (2) Petitioners' representative: Peter A. Gilbertson, Suite 350, 1575 Eye Street, N.W., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289–4357 (D.C. Metropolitan area) or toll-free (800) 424–5403.

Decided: May 5, 1983.

By the Commission, Chairman Taylor, Vice Chairman Sterrett, Commissioners Andre and Gradison.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83-13279 Filed 5-17-83; 8:45 am]
BILLING CODE 7035-01-M

[I.C.C. Order No. P–53]

Passenger Train Operation; Union Pacific Railroad Co. and The Western Pacific Railroad Co.

It appearing, that the National Railroad Passenger Corporation (Amtrak) has established through passenger train service between Oakland, California and Chicago, Illinois. The operation of these trains requires the use of the tracks and other facilities of Southern Pacific

Transportation Company (SP). A portion of the SP tracks in Utah over the Great Salt Lake are temporarily out of service because of flooding. An alternate route is available via The Western Pacific Railroad Company between Alizon, Nevada, and Salt Lake City, Utah.

It is the opinion of the Commission that the use of such alternate route is necessary in the interest of the public and the commerce of the people; that notice and public procedure herein are impracticable and contrary to the public interest; and that good cause exists for making this order effective upon less than thirty days' notice.

It is ordered,

(a) Pursuant to the authority vested in me by order of the Commission decided April 29, 1981, and of the authority vested in the Commission by Section 402(c) of the Rail Passenger Service Act of 1970 (45 U.S.C. 562(c)), The Western Pacific Railroad Company (WP), is directed to operate trains of the National Railroad Passenger Corporation (Amtrak) between a connection with Southern Pacific Transportation Company (SP) at Alizon, Nevada, and Salt Lake City, Utah.

(b) In executing the provisions of this order, the common carriers involved shall proceed even though no agreements or arrangements now exist between them with reference to the compensation terms and conditions applicable to said transportation. The compensation terms and conditions shall be, during the time this order remains in force, those which are voluntarily agreed upon by and between said carriers; or upon failure of the carriers to so agree, the compensation terms and conditions shall be as hereafter fixed by the Commission upon petition of any or all of the said carriers in accordance with pertinent authority conferred upon it by the Interstate Commerce Act and by the Rail Passenger Service Act of 1970, as amended.

(c) *Application.* The provisions of this order shall apply to intrastate, interstate and foreign commerce.

(d) *Effective date.* This order shall become effective at 3:00 a.m., May 9, 1983.

(e) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., May 13, 1983, unless otherwise modified, amended, or vacated by order of this Commission.

This order shall be served upon Union Pacific Railroad Company, The Western Pacific Railroad Company, and upon National Railroad Passenger Corporation (Amtrak), and a copy of this order shall be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., May 9, 1983.

J. Warren McFarland,

Interstate Commerce Commission.

[FR Doc. 83-13274 Filed 5-17-83; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Attorney General

Proposed Consent Judgment in an Action Involving Claims by The United States To Enjoin Discharge of Water Pollutants

In accordance with Department Policy, 28 CFR 50.7, notice is hereby given that on April 29, 1983, a proposed Judgment (on consent) in *Township of Franklin Sewage Authority* v. *Middlesex County Utilities Authority* v. *The State of New Jersey, et al.*, Civil No. 80-4041 (D.N.J.), was lodged with the United States District Court for the District of New Jersey. The proposed judgment requires the City of Perth Amboy, New Jersey to meet the secondary treatment requirements of Section 301 of the Clean Water Act, 33 U.S.C. 1311.

The Department of Justice will receive for thirty (30) days from the date of publication of this notice, written comments related to the proposed judgment. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *Township of Franklin Sewage Authority* v. *Middlesex County Utilities Authority* v. *The State of New Jersey, et al.*, D.J. Ref. #90-5-1-6-260.

The proposed judgment may be examined at the Region II Office of the Environmental Protection Agency, 26 Federal Plaza, New York, New York 10278, and at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice (Room 1515), Tenth Street and Pennsylvania Avenue, N.W. Washington, D.C. 20530. A copy of the proposed judgement may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice.

Carol E. Dinkins,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 83-13369 Filed 5-17-83; 8:45 am]

BILLING CODE 4410-01-M

Proposed Final Judgment (on Consent) in Action To Enforce the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that on May 3, 1983, a proposed final judgment (on consent) in *United States* v. *The Shultz Company, Inc.*, Civil Action No. 83-Civ-3551, was lodged with the United States District Court for the Southern District of New York. The proposed final judgment (on consent) enjoins defendant to comply with the volatile organic compounds standards of the New York State Clean Air Act Implementation Plan (SIP) and requires defendant to pay a civil penalty of $2,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this notice written comments relating to the proposed final judgment (on consent). Comments should be addressed to the Assistant Attorney General for the Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *The Shultz Company, Inc.*, DOJ No. 90-5-2-1-570.

A copy of the proposed final judgment (on consent) may be examined at the offices of the United States Attorney, Southern District of New York, One St. Andrews Plaza, New York, New York 10007; the Environmental Protection Agency, 26 Federal Plaza, New York, New York 10278; and the Environmental Enforcement Section, Land and Natural Resources Division, United States Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, N.W., Washington, D.C. 20530. A copy of the proposed final judgment (on consent) may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice.

Carol E. Dinkins,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 83-13362 Filed 5-17-83; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

Manufacturer of Controlled Substances; Application

Pursuant to § 1301.43(a) of Title 21 Code of Federal Regulations (CFR), this is notice that on October 18, 1982, Hoffman La Roche Inc., Kingland Road and Bloomfield Avenue, Nutley, New Jersey 07110, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer

of the basic classes of controlled substances listed below:

Drug	Schedule
Alphaprodine (9010)	II
Levorphanol (9220)	II

Any other such applicant and any person who is presently registered with DEA to manufacture such substances, may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street, N.W., Washington, D.C. 20537, Attention: DEA Federal Register Representative (Room 1203), and must be filed no later than June 17, 1983.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

May 9, 1983.

[FR Doc. 83-13337 Filed 5-17-83; 8:45 am]

BILLING CODE 4410-09-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 83-44]

NASA Advisory Council, Aeronautics Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aeronautics Advisory Committee, Informal Executive Subcommittee.

DATE: Time: June 22, 1983, 8:30 a.m. to 5:45 p.m.; June 23, 1983, 8:30 a.m. to 3 p.m.

ADDRESS: National Aeronautics and Space Administration, 600 Independence Ave., SW, Room 625, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. C. Robert Nysmith, National Aeronautics and Space Administration, Code R, Washington, DC 20546 (202/755-8550).

SUPPLEMENTARY INFORMATION: The Informal Executive Subcommittee was established to provide overall guidance and direction to the discipline and vehicle class oriented activities of the Aeronautics Advisory Committee. The Subcommittee, chaired by Dr. Robert Loewy, is comprised of fourteen members. The meeting will be open to the public up to the seating capacity of the room (approximately 50 persons including the Subcommittee members and participants).

Type of meeting: Open.

Agenda

June 22, 1983:
- 8:30 a.m.—Chairperson's Remarks.
- 8:45 a.m.—Review of NASA Aeronautics Long Range Plan.
- 11 a.m.—Subcommittee Chairperson's Reports.
- 5:45 p.m.—Adjourn.

June 23, 1983:
- 8:30 a.m.—Reports of Ad Hoc/Special Subcommittee Activities.
- 10:45 a.m.—Discussion and Consolidation of Subcommittee Reports.
- 2 p.m.—Summary of Meeting Results to the Office of Aeronautics and Space Technology Management.
- 3 p.m.—Adjourn.

Dated: May 5, 1983.

Ann P. Bradley,

Acting Associate Administrator for Management, Office of Management.

[FR Doc. 83-13254 Filed 5-17-83; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL COMMUNICATIONS SYSTEM

National Security Telecommunications Advisory Committee; Meeting

A meeting of the National Security Telecommunications Advisory Committee (NSTAC) Funding & Regulatory (F&R) Working Group will be held beginning at 9:00 a.m. on Thursday, June 2, 1983. The meeting will be held in the Westgate Building of the MITRE Corporation, 1820 Dolley Madison Boulevard, McLean, Virginia. The agenda is as follows:

A. Opening Remarks.

B. Presentation of the National Coordinating Mechanism (NCM) Report to the F&R Working Group.

C. Presentation of the Commercial Satellite Survivability (CSS) Report to the F&R Working Group.

D. NIAC Presentation on F&R Matters Pertaining to the NCM and CSS Reports.

E. Presentation and Analysis of Funding Alternatives.

F. Development of F&R Recommendations to the Industry Executive Subcommittee (IES).

G. Adjournment.

Any person desiring information about the meeting may telephone (Area Code 202-692-9274) or write the Office of the Manager, National Communications System, Washington, D.C. 20305.

Dated: May 12, 1983.

Joseph C. Wheeler,

Colonel, USAF, National Communications System, NSC Joint Secretariat.

[FR Doc. 83-13302 Filed 5-17-83; 8:45 am]

BILLING CODE 3610-05-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Subcommittee on Plant Features Important to Safety; Meeting

The ACRS Subcommittee on Plant Features Important to Safety will hold a meeting on June 7, 1983, Room 1046, 1717 H Street, NW., Washington, D.C. The Subcommittee will obtain a status report and program plans on equipment qualification and classification systems dealing with both mechanical and electrical components. New initiatives in the quality assurance area such as a graded approach to quality assurance will be explored.

In accordance with the procedures outlined in the **Federal Register** on October 1, 1982 (47 FR 43474), oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the Cognizant Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The entire meeting will be open to public attendance except for those sessions during which the Subcommittee finds it necessary to discuss proprietary information. (Sunshine Act Exemption 4.) One or more closed sessions may be necessary to discuss such information. To the extent practicable, these closed sessions will be held so as to minimize inconvenience to members of the public in attendance.

The agenda for subject meeting shall be as follows:

Tuesday, June 7, 1983—1:00 p.m. until the conclusion of business.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary

views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, their consultants and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportuntiy to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant Designated Federal Employee, Mr. Richard K. Major (telephone 202/634–1414) between 8:15 a.m. and 5:00 p.m., EDT

I have determined, in accordance with Subsection 10(d) of the Federal Advisory Committee Act, that it may be necessary to close some portions of this meeting to public attendance to protect proprietary information. The authority for such closure is Exemption (4) to the Sunshine Act, 5 U.S.C, 552(b)(c)(4).

Dated: May 13, 1983.

Samuel J. Chilk,

Acting Advisory Committee Management Officer.

[FR Doc. 83 13377 Filed 5–17–83; 8:45 am]

BILLING CODE 7590–01–M

Applications for Licenses To Import/Export Nuclear Facilities or Materials

Pursuant to 10 CFR 110.70(b) "Public notice of receipt of an application", please take notice that the Nuclear Regulatory Commission has received the following applications for import/export licenses. A copy of each application is on file in the Nuclear Regulatory Commission's Public Document Room located at 1717 H Street, N.W., Washington, D.C.

A request for a hearing or petition for leave to intervene may be filed within 30 days after publication of this notice in the **Federal Register.** Any request for hearing or petition for leave to intervene shall be served by the requester or petitioner upon the applicant, the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, the Secretary, U.S. Nuclear Regulatory Commission and the Executive Secretary, Department of State, Washington, D.C. 20520.

In its review of applications for licenses to export production or utilization facilities, special nuclear material or source material, noticed herein, the Commission does not evaluate the health, safety or environmental effects in the recipient nation of the facility or material to be exported. The table below lists all new major applications.

Dated this 11th day of May, at Bethesda, Maryland.

For the Nuclear Regulatory Commission.

James V. Zimmerman,

Assistant Director, Export/Import and International Safeguards, Office of International Programs.

FEDERAL REGISTER (EXPORTS/IMPORTS)

Name of applicant, date of application, date received, application number	Material type	Material in kilograms		End-use	Country of destination
		Total element	Total isotope		
Nissho Iwai Corp., May 4, 1983, May 6, 1983, XSNM01778 (Amend 01).	45.40 pct enriched uranium	33.701 additional	15.300 additional	Increase quantity for use as fuel in JMTR reactor.	Japan.
Nissho Iwai Corp., May 4, 1983, May 6, 1983, XSNM01779 (Amend 01).	45.40 pct enriched uranium	12.314 additional	5.591 additional	Increase quantity for use as fuel for JRR–2 reactor.	Japan.
Exxon Nuclear Co., May 5, 1983, May 9, 1983, XSNM02043.	3.85 pct enriched uranium	52,000	2,000	Reload fuel for Blayais I and Blayais II	France.
Exxon Nuclear Co., Apr. 29, 1983, May 9, 1983, ISNM83010.	3.50 pct enriched uranium	28,600	1,000	For fabrication of fuel for Tihange Unit 1—Belgium.	From France.
Transnuclear, Inc., May 3, 1983, May 3, 1983, XSNM01920(02).	3.3 pct enriched uranium	1,141 additional	31.180 additional	Increase quantity for Bugey 3 reload	France.
Exxon Nuclear Co., May 5, 1983, May 9, 1983, XSNM01929(01).	3.5 pct enriched uranium	0	134 additional	Amend to increase quantity of U-235 for Tihange 1.	Belgium.

[FR Doc. 83–13371 Filed 5–17–83; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–293]

Boston Edison Co.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 70 to Facility Operating License No. DPR–35 issued to Boston Edison Company (the licensee) which revised the Technical Specifications for operation of the Pilgrim Nuclear Power Station (the facility) located near Plymouth, Massachusetts. The amendment is effective as of its date of issuance.

The amendment revises the Technical Specifications to change the Minimum Critical Power Ratio limits as necessitated by the "spectral shift" mode of operation being used in the present cycle.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since it does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with the issuance of the amendment.

For further details with respect to this action, see: (1) The Application for amendment dated April 5, 1983, (2) Amendment No. 70 to License No. DPR-35, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C., and at the Plymouth Public Library on North Street in Plymouth, Massachusetts 02360. A single copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Md., this 3d day of May 1983.

For the nuclear Regulatory Commission.

Vernon L. Rooney,

Acting Chief, Operating Reactors Branch No. 2, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 83-13372 Filed 5-17-83; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-366]

Georgia Power Co., et al.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-5, issued to Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, and City of Dalton, Georgia (the licensees), for operation of the Edwin I. Hatch Nuclear Plant, Unit No. 2 (the facility), located in Appling County, Georgia.

The amendment involves two principal sets of changes. The first set provides additional and revised trip setpoints that reflect design modifications to reduce containment loads from plant transients. These changes would: (1) Lower the opening and closing setpoints for subsequent actuation of selected safety relief valves, and (2) lower the main steam isolation valve water level trip setpoint. The second set relates to changes to the core design for the third fuel reload of Unit No. 2, to include operation with a new fuel type, 7 x 7 bundles. This requires numerical changes to the curves which specify maximum average planar linear heat generation rates and minimum critical power ratios. These changes are in accordance with the licensees' application for amendment dated February 23, 1983, as supplemented April 19, 1983, and application for amendment dated March 30, 1983.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibiity of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The Commission has provided guidance concerning the application of these standards by providing certain examples (48 FR 14870). One of the examples of actions likely to involve no significant hazards considerations relates to reload amendments involving no fuel assemblies significantly different than those previously found acceptable at the facility in question. While the fuel assemblies involved in this application are somewhat different from those previously authorized for Hatch Unit No. 2, 7 x 7 rather than 8 x 8, the Commission proposes to determine that the application does not involve a significant hazards consideration since fuel elements of this design have been previously reviewed and approved for use in Hatch Unit No. 1. While there are some differences between Hatch Unit No. 1 and Hatch Unit No. 2 operating characteristics which require a plant specific analysis for the use of the new fuel, these differences are not significant.

With respect to the changes in the trip setpoints, one of the examples of actions likely to involve significant hazards considerations relates to changes in plant operation designed to improve safety but which, due to other factors, allow plant operation with safety margins significantly reduced from those believed to have been present when the plant was licensed. The installation of the Low Level Set Safety Relief Valve (SRV) logic system is intended to mitigate the problems of containment loads during SRV operations identified in NUREG-0661, and as required by Order modifying the license dated January 13, 1981 (46 FR 9280, January 28, 1981) and Modification Order dated January 19, 1982 (47 FR 3901, January 27, 1982). In the present case, the changes involved in the Low Level Set SRV logic system, together with actions previously taken in response to the prior Commission Orders, essentially restore safety margins and consequently the changes would not have the effect of permitting plant operation with safety margins significantly reduced from those believed to be present before the problems discussed in NUREG-0661 were identified. Accordingly, the Commission proposes to determine that these changes do not involve a significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attn: Docketing and Service Branch.

By June 17, 1983, the licensees may file a request for a hearing with respect to issuance of the amendment to the subject facility operating licesne and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be

made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment requests involve no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments recieved. Should the Commission take this action, it will publish a notice if issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission,Washington, D.C. 20555, Atttention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, N.W. Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to John F. Stolz: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to G. F. Trowbridge, Shaw, Pittman, Potts and Trowbridge, 1800 M Street, NW, Washington, D.C. 20036, attorney for the licensees.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presidingg officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the applications for amendment which are available for public inspection at the Commission's Public Document Room, 1717, H Street, NW., Washington, D.C. 20555, and at the Appling County Public Library, 301 City Hall Drive, Baxley, Georgia.

Dated at Bethesda, Md., this 12th day of May 1983.

For the Nuclear Regulatory Commission.

John F. Stolz,

Chief, Operating Reactors Branch No. 4, Division of Licensing.

[FR Doc. 83-13373 Filed 5-17-83; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-285]

Omaha Public Power District; Consideration of Issuance of Amendment to Facility Operating License and Proposed no Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–40, issued to Omaha Public Power District (the licensee), for operation of the Fort Calhoun Station, Unit No. 1 located in Washington County, Nebraska.

A reactor coolant system's (RCS) pressure-temperature limits must be revised periodically to take into account irradiation of the reactor pressure vessel. Various curves are used to analyze the RCS's pressure-temperature limits. The amendment would make more restrictive the curves that are use to make decisions about heating up and cooling down the reactor coolant system. These curves, specified in the licensee's technical specifications, must be changed periodically because of irradiation to the reactor pressure vessel, which is an integral part of the reactor coolant system. The pressure-temperature limits contained in the curves are needed to ensure that the reactor pressure vessel maintains adequate ductility while pressurized, in accordance with the licensee's applicaton for amendment dated March 7, 1983, as supplemented by letter dated April 28, 1983.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility or a new or different kind of accident from any accident previously evaluated; or (3)

involve a significant reduction in a margin of safety.

The proposed changes constitute an additional limitation, not presently included in the technical specifications, which ensures that current margins of safety are maintained with respect to the periodic revision of the RCS's pressure-temperature limits. The proposed amendment is an example of an amendment that is considered not likely to involve significant hazards considerations such that the change constitutes an additional limitation, restriction, or control not presently in the technical specifications (*see* Example ii in the not likely category in 48 FR 14870, April 6, 1983).

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attn: Docketing and Service Branch.

By June 17, 1983, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination of the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Robert A. Clark: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to LeBoeuf, Lamb, Leiby and MacRae, 1333 New Hampshire Avenue, N.W., Washington, D.C. 20036, attorneys for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C., and at the W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102.

Dated at Bethesda, Maryland, this 12th day of May 1983.

For the Nuclear Regulatory Commission.

Robert A. Clark,

Chief, Operating Reactors Branch No. 3, Division of Licensing.

[FR Doc. 83-13374 Filed 5-17-83; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-272 and 50-311; License Nos. DPR-70 and DPR-75]

Public Service Electric and Gas Co. (Salem Nuclear Generating Station, Units 1 & 2); Order Modifying License Effective Immediately

I

Public Service Electric and Gas Company (the licensee) holds License Nos. DPR-70 and DPR-75 which authorize operation of Units 1 and 2 of the Salem Nuclear Generating Station. The facilities are Westinghouse pressurized water reactors (PWRs) located at the licensee's site at Hancock's Bridge, Salem County, New Jersey.

II

On February 25, 1983, an event occurred at Unit 1 of the Salem Nuclear Generating Station when the control rods failed to insert when the reactor-trip circuit breakers failed to automatically open following receipt of a valid trip signal from the Reactor Protection System (RPS). The manual trip system was used to shut down the reactor. Subsequently, it was concluded by the licensee that the failure to trip was caused by a malfunction of the undervoltage (UV) trip attachments in both reactor-trip circuit breakers. Evaluation of the event of February 25, 1983 revealed that a similar failure had occurred on February 22, 1983, at Salem 1.

The NRC review of the event revealed a number of significant deficiencies. This review is set forth in NUREG-0977, "NRC Fact-Finding Task Force Report on the ATWS Events at Salem Nuclear Generating Station, Unit 1, on February 22 and 25, 1983," March 1983, which is hereby incorporated by reference.

If there were a potentially severe transient, from a worst case set of initial conditions, and the reactor shutdown system did not function, an extremely severe accident could occur in the absence of timely operator action. Therefore, the aforementioned failures are technically very serious.

III

Analysis of the event described in Section II reveals operational and management issues at the Salem facilities which are discussed in the staff's Safety Evaluation Report.

By letters dated March 1, March 8, March 14, March 18, March 23, April 4, April 7, April 8, April 11, April 13, April 22, April 27, and April 28, 1983, the licensee submitted its Corrective Action Program related to the reactor trip breaker failures. This program includes short-term remedial actions to be completed prior to startup of the unit and a number of longer term items which have not be completed but for which the licensee has established completion dates. The licensee's letter dated April 28, 1983 summarizes the licensee's commitments for corrective action.

The various remedial actions involve equipment, operational and management issues. The equipment issues involve (1) safety classification of breakers, (2) identification of cause of failure, (3) verification testing and (4) maintenance and surveillance procedures. The operational issues involve (1) operating procedure for reactor trips and anticipated transients without scram (ATWS), (2) operator training, and (3) operator response. The management issues involve (1) master equipment list, (2) procurement procedures, (3) work-order procedures, (4) post-trip review, (5) timeliness of event notification, (6) updating vendor-supplied information, (7) involvement of QA personnel with other station departments, (8) post-maintenance operability testing and (9) overall management capability and performance.

The NRC staff has reviewed the corrective action program as discussed in the staff's Safety Evaluation Report, and determined that the licensee's actions are necessary to assure continued safe operation of the facility. In addition, I have determined that because of the history of the Salem facility described above, the need for further long-term actions to increase the reliability of the mitigation features of the Salem facility must also be addressed.

Accordingly, in view of the importance of these issues to safe operation, I have determined that the licensee's corrective actions are required by the public health, safety, and interest, and, therefore, should be confirmed by an immediately effective Order.

IV

In view of the foregoing, pursuant to Sections 103, 161(i), and 182 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, it is hereby ordered effective immediately that:

1. The licensee shall implement and/or maintain the items specified in the licensee's letter dated April 28, 1983.

V

The Licensee may request a hearing on this Order within 30 days of the date of this Order. Any request for a hearing shall be submitted to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy of the request or answer shall also be sent to the Executive Legal Director at the same address. Any request for a hearing shall not stay the immediate effectiveness of this Order.

If a hearing is held on this Order, the Commission will issue an order designating the time and place of hearing. If a hearing is held, the issue to be considered at such a hearing shall be whether this Order should be sustained.

Dated at Bethesda, Maryland this 6th day of May 1983.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 83-13375 Filed 5-17-83; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-395]

Virgil C. Summer Nuclear Station, Unit No. 1; Issuance of Amendment to Facility Operating License No. NPF-12

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 16 to Facility Operating License No. NPF-12, issued to South Carolina Electric & Gas Company and South Carolina Public Service Authority (the licensees) for the Virgil C. Summer Nuclear Station, Unit No. 1 (the facility) located in Fairfield County, South Carolina. The amendment changes a license condition and the related Technical Specifications to permit operation of the modified Model D-3 steam generator. The license amendment is effective as of its date of issuance.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required

since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see: (1) South Carolina Electric & Gas Company letters, dated February 14, April 13 (two letters), May 3, and May 4, 1983, (2) Amendment No. 16 to Facility Operating License No. NPF-12 with Appendix A Technical Specifications page change, and (3) the Commission's related Safety Evaluation.

All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. 20555 and the Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180. A copy of Amendment No. 16 may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 5th day of May 1983.

For the Nuclear Regulatory Commission.

Elinor G. Adensam,

Chief, Licensing Branch No. 4, Division of Licensing.

[FR Doc. 83-13376 Filed 5-17-83; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF MANAGEMENT AND BUDGET

Inquiry Concerning Federal Communications Commission Form 730, "Application for Registration of Equipment To Be Connected to the Telephone Network"

AGENCY: Office of Management and Budget, Office of Information and Regulatory Affairs.

ACTION: Notice of inquiry.

SUMMARY: Pursuant to the Paperwork Reduction Act of 1980, the Office of Management and Budget (OMB) solicits public comment on the above-named information collection. Comments will be considered when OMB decides whether to renew its approval of the information collection, and will be reviewed to determine how OMB can better implement the Paperwork Reduction Act.

FOR FURTHER INFORMATION CONTACT: Jim J. Tozzi, Room 3236 NEOB, Office of Management and Budget, Washington, D.C. 20503. Telephone (202) 395-5897.

SUPPLEMENTARY INFORMATION: On August 10, 1981, the Office of Management and Budget (OMB) approved a Federal Communications Commission (FCC) information collection entitled "FCC Form 730, Application for Registration of Equipment to be Connected to the Telephone Network" (OMB number 3060-0056). Under the Paperwork Reduction Act of 1980, a Federal agency may not conduct any collection of information that has not received OMB approval (44 U.S.C. 3507(a)). Approval for FCC Form 730 will expire on August 31, 1984, and we anticipate that the FCC will apply for renewal of OMB approval so that the information collection may continue.

Typically, public comment is solicited by an agency at the same time it submits an information collection for OMB approval or renewal. In this case, we are directly soliciting public comment regarding FCC Form 730 substantially before its approval expires. This is to give respondents a longer period to prepare comments and to give us a longer period to review them. This atypical treatment does not reflect any perceived deficiencies in FCC Form 730. Indeed, the FCC has been a leader in reducing Federal paperwork burden on the public,[1] and FCC Form 730 incorporates many principles central to the Paperwork Reduction Act and to the President's program of regulatory relief, such as self-certification and use of performance standards rather than design standards. In addition to the routine renewal evaluation of FCC Form 730, we want to determine through this inquiry whether an information collection that in some ways exemplifies the "state of the art" could be further improved.

This inquiry is pursuant to several provisions of the Paperwork Reduction Act (the Act). The Act gives the Director of OMB the functions of "evaluating agency information management practices" and "conduct of research with respect to, Federal collection * * * and use of information." (44 U.S.C. 3504(b) (5) and (6)) It also states that in determining whether an information collection is necessary, "the Director may give the agency and other interested persons an opportunity to be heard or to submit statements in writing." (44 U.S.C. 3508) Further, it directs that "in development of information policies, plans, rules, regulations, procedures, and guidelines and in reviewing information collection requests, the Director shall provide interested agencies and persons early and meaningful opportunity to comment." (44 U.S.C. 3517)

FCC Form 730 collects information from suppliers of equipment to be connected to the telephone network, known as "Interconnect equipment."[2] The information is used by FCC to determine whether the equipment conforms to standards in Part 68 of the FCC rules intended to prevent damage to the telephone network. We invite comment on the following topics from foreign and domestic suppliers of interconnect equipment, and other interested persons:

1. *Burden:* The FCC estimates that it takes an average of 24 work hours of effort for a respondent to complete FCC Form 730, including all time spent reading and understanding the form and its instructions, and developing, compiling, recording, and reviewing the required information.

a. Does this estimate appear accurate in light of respondents' experience?

b. Under what circumstances is more or less effort required?

c. How does this compare to the effort required to secure interconnect equipment approval in other countries?

2. *Non-discrimination:*

a. Does FCC Form 730 provide non-discriminatory treatment and direct and complete access to the registration procedure for interconnect equipment from all domestic and foreign producers?

b. How does it compare in this respect to other countries' interconnect equipment approval procedures?

c. Should FCC Form 730 solicit information regarding treatment of U.S.-made interconnect equipment in the home country of foreign applicants?

3. *Instructions:*

a. Do the instructions, regulations, and other guidance associated with FCC Form 730 provide full information regarding the interconnect equipment standards FCC applies and the procedures applicants must follow?

b. Is all this information readily available from a single contact point?

[1] The Paperwork Reduction Act set a target of a 25% reduction from FY 1980 to FY 1983 in the paperwork burden the Federal government imposes on the public. The FCC expects to achieve a 69% reduction during this period, reducing the annual paperwork burden it imposes on the public by 19.2 million hours.

[2] For convenience, we will refer to this information collection as "FCC Form 730." However, this inquiry and all the questions below refer to the entire information collection, including the form, its instructions, and any rules, procedures, or practices that specify how this information is collected and used.

c. How does the completeness and availability of this information compare to other countries' interconnect equipment approval procedures?

4. *Interconnect specifications:* The information collected by FCC Form 730 is oriented towards interconnect specifications, rather than internal design specifications.

a. Could the FCC Form 730 process move further towards using interconnect specifications rather than design standards without compromising regulatory goals?

b. Should FCC Form 730 collect information oriented more towards design standards, in order to provide better protection to the telephone network and/or to assure operating compatibility between interconnect equipment and the telephone network?

c. How does the balance between interconnect specifications and design standards compare to other countries' interconnect equipment approval procedures?

5. *Test data:*

a. Do domestic or foreign testing laboratories encounter any difficulties in generating test data acceptable to the FCC for the FCC Form 730 process?

b. How does this compare to the difficulty of generating test data acceptable for other countries' interconnect equipment approval procedures?

6. *Delay:* The FCC reports that 95% of applications are granted within 40 to 60 days after FCC Form 730 is accepted for filing.

a. Under what conditions have longer delays occurred?

b. How does this compare to the delay experienced in other countries' interconnect equipment approval procedures?

7. *Deficient applications:* The FCC reports that they have never denied an application on FCC Form 730. Instead, problems have been resolved by discussions between the FCC and the applicant or the applicant's representative.

a. When the FCC has detected problems with applications on FCC Form 730, has it provided a useful explanation of how the application was deficient, and if necessary a review procedure for complaints arising from its findings?

b. How do the FCC's procedures compare in these respects to other countries' interconnect equipment approval procedures?

Responses to this inquiry should be in writing, and should be directed to Information Policy Branch, Room 3235 NEOB, Office of Management and Budget, Wahington, D.C. 20503. Please submit an original and two copies. Responses should be clearly marked "Interconnect Equipment Inquiry". For full consideration in this inquiry, responses should be received before July 18, 1983. However, comments received any time before OMB reaches a determination on whether to renew approval of FCC Form 730 may be considered in reaching that determination.

Issued in Washington, D.C., May 5, 1983.

Christopher DeMuth,

Administrator for Information and Regulatory Affairs.

[FR Doc. 83-13262 Filed 5-17-83; 8:45 am]

BILLING CODE 3110-01-M

PEACE CORPS

Notice of Submission of Public Use Form Extension Review Request

AGENCY: Peace Corps.

ACTION: Notice of submission of public use form extension review request to the Office of Management and Budget.

SUMMARY: Pursuant to the Paperwork Reduction Act of 1981 (44 U.S.C. Chapter 35), the Peace Corps has submitted to the Office of Management and Budget a request to approve the continued use of the Peace Corps Volunteer Application Form through June 30, 1986. This form is completed voluntarily by applicants for the Peace Corps program and it provides basic information concerning background, education, qualifications, language skills, preferences, etc. This information is necessary for Peace Corps staff to perform the initial screening between qualified and unqualified candidates, selection from among the qualified, and the proper placement of the potential volunteers in suitable programs and settings. The request for racial and ethnic data is used solely for the purpose of determining compliance with federal civil rights law.

Information about the form:

Agency Address: Peace Corps, 806 Connecticut Avenue, NW., Washington, D.C. 20526.

Title and Agency Number: Peace Corps Volunteer Application, Form Number PC-1502.

Type of Request: Extension of approval.

Frequency of Collection: On occasion.

General Description of Respondents: Individuals applying for Peace Corps Volunteer service.

Estimated Number of Responses: 15,600 annually.

Estimated Hours for Respondents to Furnish Information: One hour each.

Respondents Obligation to Reply: Voluntary.

Comments: Comments on this form request should be directed to Francine Picoult, Desk Officer, Officer of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503. Comments should be received on or before July 18, 1983.

A copy of the form may be obtained from Robert Jackson, Office of Recruitment, 806 Connecticut Avenue, NW., Washington, D.C. 20526 or from any local Peace Corps Recruiting Office. Mr. Jackson may be called on area code 202-254-8387.

This is not a request to which 44 U.S.C. 3504(h) applies.

This notice is issued in Washington, D.C. on May 12, 1983.

Robert T. Spencer,

Associate Director for Management.

[FR Doc. 83-13312 Filed 5-17-83; 8:45 am]

BILLING CODE 6051-01-M

POSTAL RATE COMMISSION

[Docket No. R83-1; Order No. 498]

[Order No. 498]

E-Com Rate and Classification Changes, 1983, Order Scheduling Prehearing Technical Conference

Issued May 13, 1983.

On April 25, 1983, United States Postal Service filed a request for a recommended decision on proposed changes in rates of postage and certain classification provisions for electronic computer originated mail (ECOM). The Request was docketed, and notice was published in the **Federal Register** on May 4, 1983. (48 FR 20178-20179).

Pursuant to rule 24(a), the Commission hereby schedules a prehearing technical conference for the purpose of obtaining explanations and clarification of the evidence filed by the Postal Service in support of its Request. *See* Rule 24(d)(1). The conference will be held at 9:30 a.m. on Thursday, May 26, 1983, at the Commission hearing room, 2000 L Street, N.W., Washington, D.C. 20268. The Commission is particularly concerned with ways to expedite its proceedings and to assure that its decisions are made within the ten-month statutory deadline established by 39 U.S.C. 3624(c). One way to achieve that goal is to assure, to the extent possible, that the Commission and interested participants fully understand the bases and derivation of the evidence provided by the Postal Service in support of its

Request. We are convinced that the technical conference scheduled by this order, carried out in accordance with the procedures set forth below, will make a substantial contribution toward achieving that goal.

Our rules presently require that evidentiary submissions be accompanied by detailed explanatory workpapers. For example, rule 54(p)(4) provides:

> Workpapers shall be sufficient to enable a reviewer to trace the derivation of numbers in the testimony back to published documents or, if necessary, primary data sources. Citations shall be sufficiently detailed to enable a reviewer to identify and locate the specific data used, e.g., by reference to document, page, line, column, etc.

The testimony submitted by the Postal Service in support of its Request in this docket is not supported by workpapers which meet this standard. It is our expectation that meaningful technical conferences will ameliorate delays resulting from inadequate explanations of methodology or incomplete references to source material in the evidence presented by the Postal Service.[1]

In order for these conferences to be of maximum benefit, we urge all participants to carefully examine the procedures set forth below, and to adhere to them. These procedures have been structured to allow participants to obtain clarification of the Postal Service's testimony, but not allow the type of adversarial questioning associated with cross-examination. Simply put, questions of *"how"* are permissible; questions of *"why"* are not permissible.

It is the present intention of the Commission to schedule prehearing technical conferences to clarify the testimony of other participants in this docket at the appropriate point in this case.

Procedures Applicable to Prehearing Technical Conference on Postal Service Evidence

A prehearing technical conference to clarify the evidence submitted by Postal Service witnesses shall be held on May 26, 1983 in accordance with the following procedures:

(1) Postal Service counsel shall preside.

(2) Postal Service counsel may schedule the order its witnesses shall respond to questions, with consideration to the convenience of its witnesses and participants attending the conference.

(3) This conference will be for the sole purpose of explaining how technical evidence was developed. Questions concerning why a particular step was taken will not be permitted. Similarly questions concerning management policy will not be permitted.

(4) Witnesses shall respond to questions concerning the subject matter of each section of their testimony in turn. Questions may be asked by any participant. Questions need not be posed by attorneys.

(5) Presiding counsel may object to questions beyond the scope of the conference as set forth in item 3 above; however, participants may appeal to the Commission to recall a witness to provide additional answers to questions deemed out of order by presiding counsel.

(6) Commissioners and members of their staff attending these conferences may address questions to the witness, however they shall abide by the rulings of presiding counsel.

(7) The Officer of the Commission or his designee shall attend the conference for the purpose of securing satisfactory explanation of the data sources and methodologies used by each section of testimony. Participants unable to attend the conference may request the Officer of the Commission to seek clarification of specific aspects of a witness' testimony or exhibits.

(8) It shall be proper for witnesses appearing at the conference to be accompanied by assistants; and they are encouraged to have available any reference material they might need. If a witness cannot respond to a reasonable request for clarification of his testimony or exhibits at the conference, an additional conference will be scheduled at the convenience of the questioning participant and the Postal Service.

(9) The conference will be transcribed, however witnesses will not be under oath, and responses will not be part of the evidentiary record. Parties wishing to utilize material from the technical conference shall submit interrogatories or requests for admission as provided for in the rules of practice, or propose an appropriate stipulation.

(10) The pendency of this conference shall not relieve Postal Service witnesses from responding to discovery requests within the time period provided by Commission rules of practice.

It is ordered:

That a prehearing technical conference be held at 9:30 a.m. on May 26, 1983, as described by this order.

Cyril J. Pittack,

Acting Secretary.

[FR Doc. 83-13340 Filed 5-17-83; 8:45 am]

BILLING CODE 7715-01-M

[1] We do not suggest that technical conferences are only useful when proper workpapers are not provided in support of evidentiary submissions. Technical conferences are likely to be beneficial whenever complex technical evidence is offered, and technical conferences have been extremely useful in past omnibus rate cases.

POSTAL SERVICE

Privacy Act of 1974; Systems of Records

AGENCY: Postal Service.

ACTION: Final Notice of Computer Matching Program: U.S. Postal Service/ Philadephia School District, and final notice of a modification to an existing system of records.

SUMMARY: The purpose of this document is to provide information concerning the Postal Service's conduct of a computer matching program, and to add a new temporary routine use to system USPS 050.020, Finance Records-Payroll System.

EFFECTIVE DATE: May 18, 1983.

FOR FURTHER INFORMATION CONTACT: Martha J. Smith, (202)245-5568.

SUPPLEMENTARY INFORMATION: The Postal Service hereby publishes final notice of a new temporary routine use for Privacy Act System of Records USPS 050.020, "Finance Records-Payroll System," in connection with its efforts to identify postal employees who are also employed by the Philadelphia, Pennsylvania School District. The purpose of such identification is to determine the incidence of possible misuse of sick leave or the improper receipt of workers' compensation benefits. Advance notice of the proposed adoption of the temporary routine use was published on January 20, 1983, at 48 FR 2615.

One comment was received, objecting to the proposal, and expressing concern regarding the safeguarding of the released information subsequent to its disclosure. In responding to the comment, the Postal Service specified the nature of the information being disclosed, and the safeguards that will be taken in carrying out the matching program in accordance with the intent of the Privacy Act and the guidelines of the Office of Management and Budget for conducting computer matching programs. These matters are discussed below.

Report of Computer Matching Program

In accordance with its authority, in 39 U.S.C. 404, to investigate postal offenses

and civil matters relating to the Postal Service, the Postal Service will perform a match by computer of employees on the payroll of the Philadelphia, Pennsylvania Post Office against the Philadelphia School District's listing of its employees. The Philadelphia School District (PSD) will provide a computer tape of its employees by name and social security number which the Postal Service will match against its Payroll System files in order to identify Postal Service employees who appear on both lists. Upon completion of the match, the Postal Service will return to PSD its computer tape and will disclose to PSD only that information which is necessary to make a thorough analysis for determining which persons appear to have received PSD benefits improperly. The information will be limited to time and attendance and absence analysis records except in unusual (but currently unforeseen) cases where there may be a need to disclose the Postal Service's records of actual payments to the employees. Once identified, all records on nonsuspect cases, compiled as a result of this matching effort, will be promptly destroyed. In suspect cases, individual investigative case files will be established within the parameters of Privacy Act system USPS 080.010, Inspection Requirements Investigative File System (last published in 48 FR 10975 of March 15, 1983). All information obtained or utilized will remain under the control of the Postal Inspection Service and/or the investigative service for the PSD Internal Controller's Office.

In accordance with the Office of Management and Budget guidelines for conducting computer matching programs, 47 FR 21658, May 19, 1982, the Postal Service has obtained a signed agreement from the PSD specifying that the information released by the Postal Service will be used for purposes of the computer match and for no other purposes, and specifying that the information will be safeguarded against unauthorized disclosure.

System Modification to Add New Routine Use

Accordingly, on a one-time basis, the Postal Service will disclose a limited amount of information from the payroll records of certain postal employees to the Internal Controller's Office of the Philadelphia, Pennsylvania School District (PSD). This information will be used to identify postal employees who may have improperly received compensation or benefits from either the Postal Service or the PSD. The Postal Service believes that one basic reason for maintaining employee payroll records is to protect the legitimate financial interests of the Government; therefore, such a routine use is compatible with the purpose for maintaining these records. Accordingly, system USPS 050.020, Finance Records-Payroll System, is modified as follows:

USPS 050.020, Finance Records-Payroll System

26. [Temp.] Disclosure of information about particular postal employees on the employment rolls of the Philadelphia, Pennsylvania School District (PSD) may be made to the PSD for a one-time comparison with the PSD's time/attendance/payment files.

Note.—This routine use will be in effect for a period of one year from its effective date.

A complete statement of the system as modified appears below:

USPS 050.020

SYSTEM NAME:

Finance Records—Payroll System. 050.020.

SYSTEM LOCATION:

Payroll system records are located and maintained in all Departments, facilities and certain contractor sites of the Postal Service. However, Postal Data Centers are the main locations for payroll information. Also, certain information from these records may be stored at emergency records centers.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former USPS employees and postmaster relief/replacement employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records contain general payroll information including retirement deduction, family compensations, benefit deductions, accounts receivable, union dues, leave data, tax withholding allowances, FICA taxes, salary, name, social security number, payments to financial organizations, dates of appointment or status changes, designation codes, position titles, occupation code, addresses, records of attendance, and other relevant payroll information. Also includes automated Form 50 records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 401, 1003, 5 U.S.C. 8339.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Purpose—

1. Information within the system is for handling all necessary payroll functions and for use by employee supervisors for the performance of their managerial duties.

2. To provide information to USPS Management and executive personnel for use in selection decisions and evaluation of training effectiveness. These records are examined by the Selection committee and Regional Postmasters General.

3. To compile various lists and mailing lists, i.e., Postal Leader, Women's Programs, Newsletter, etc.

4. To support USPS Personnel Programs such as Executive Leadership, Non-Bargaining Positions Evaluations of Probationary Employees, Merit Evaluation, Membership and Identification Listings, Emergency Lacator Listings, Mailing Lists, Women's Programs, and to generate retirement eligibility information and analysis of employees in various salary ranges.

Use—

1. Retirement Deduction—To transmit to the Office of Personnel Management a roster of all USPS employees under Title 5 USC, Section 8334, along with a check.

2. Tax informtion—To disclose to Federal, State and local government agencies having taxing authority, pertinent records, relating to individual employees, including name, home address, social security number, wages and taxes withheld for other jurisdiction.

3. Unemployment Compensation Data—To reply to State Unemployment Offices at the request of separated USPS employees.

4. Employee Address File—For W-2 tax mailings and Postal mailing such as Postal Life, Postal Leaders, etc.

5. Salary payments and allotments to financial organizations—To provide pertinent information to organizations receiving salary payments or allotments as elected by the employee.

6. FICA Deductions—The Social Security Act requires that FICA deductions be made for those employees not eligible to participate in the Civil Service Retirement System (casuals). In addition, the Tax Equity and Fiscal Responsibility Act of 1982 requires that contributions to the Medicare program be deducted from all employees' earnings. (These statutes do not apply to employees in the Trust Territories who are not U. S. citizens.) Accordingly, records of earnings (i.e., W-2 information) mut be disclosed to the Social Security Administration in order that it may account for funds received and determine individual's eligibility for benefits. Information disclosed includes name, address, SSN, wages paid subject to withholding, Federal, state and local

income tax withheld, total FICA wages paid and FICA tax withheld, occupational tax, life insurance premium and other information as reported on an individual's W-2 form.

7. Determine eligibility for coverage and payment of benefits under the Civil Service Retirement System, the Federal Employees' Group Life Insurance Program and the Federal Employees Health Benefits Program and transfer related records as appropriate.

8. Determine the amount of benefit due under the Civil Service Retirement System, the Federal Employees' Group Life Insurance Program and the Federal Employees Health Benefits Program and authorizing payment of that amount and transfer related records as appropriate.

9. Transfer to Office of Workers' Compensation Program, Veterans Administration Pension Benefits Program, Social Security Old Age, Survivor and Disability Insurance and Medicare Programs, military retired pay programs, and Federal Civilan employee retirement systems other than the Civil Service Retirement System, when requested by that program or system or by the individual covered by this system or records, for use in determinig an individual's claim for benefits under such system.

10. Transfer earnings information under the Civil Service Retirement System to the Internal Revenue Service as requested by the Internal Revenue Code of 1954, as amended.

11. Transfer information necessary to support a claim for life insurance benefits under the Federal Employees' Group Life Insurance, 4 East 24th Street, New York, NY 10010.

12. Transfer information necessary to support a claim for health insurance benefits under the Federal Employees' Health Benefits Program to a health insurance carrier or plan participating in the program.

13. To refer, where there is an indication of a violation or potential violation of law, whether civil, criminal or regulatory in nature to the appropriate agency whether Federal, State, or local, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

14. To request or provide information from or to a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement or other pertinent information, such as licenses, if necessary to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefits.

15. As a data source for management information for production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related personnel management functions or manpower studies; may also be utilized to respond to general requests for statistical information (without personal identification of individuals) under the Freedom of Information Act or to locate specific individuals for personnel research or other personnel management functions.

16. May be disclosed to the Office of Management and Budget in connection with the review of private relief legislation as set forth in OMB Circular No. A-19 at any state of the legislative coordination and clearance process as set forth in that Circular.

17. Certain information pertaining to Postal Supervisors may be transferred to the National Association of Postal Supervisors.

18. Disclosure may be made to a congressional office from the record of an individual in response to any inquiry from the congressional office made at the request of that individual.

19. Disclosure may be made from the record of an individual, where pertinent, in any legal proceeding to which the Postal Service is a party before a court or administrative body.

20. Pursuant to the National Labor Relations Act, records from this system may be furnished to a labor organization upon its request when needed by that organization to perform properly its duties as the collective bargaining representative of postal employees in an appropriate bargaining unit.

21. Inactive records may be transferred to a GSA Federal Records Center prior to destruction.

22. To provide to the Office of Personnel Management (OPM) approximately 19 data elements (including SSAN, DOB, service computation date, retirement system, and FEGLI status) or use by OPM's Compensation Group. Data collected are not for the purpose of making determinations about specific individuals but are used only as a means of ensuring the integrity of the active employee/annuitant data systems and for analyzing and statistically projecting Federal retirement and insurance system costs. The same data submission will be used to produce summary statistics for reports of Federal employment.

23. Information contained in this system of records may be disclosed to an authorized investigator appointed by the Equal Employment Opportunity Commission, upon his request, when that investigator is properly engaged in the investigation of a formal complaint of discrimination filed against the U.S. Postal Service under 29 CFR Part 1613, and the contents of the requested record are needed by the investigator in the performance of his duty to investigate a discrimination issue involved in the complaint.

24. Records in this system are subject to review by an independent certified public accountant during an official audit of Postal Service finances.

25. May be disclosed to a Federal or State agency providing parent locator services or to other authorized persons as defined by Pub. L. 93-647.

26. (Temp.) Disclosure of information about postal employees on the employment rolls of the Philadelphia, Pennsylvania, School District (PSD) may be made to the PSD for a one-time comparison with the PSD's time/attendance/payment files.

Note.—This routine use will be in effect for a period of one year from its effective date.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Preprinted forms, magnetic tape, microforms, punched cards, computer reports and card forms.

RETRIEVABILITY:

These records are organized by location, name and social security number.

SAFEGUARDS:

Records are contained in locked filing cabinets; are also protected by computer passwords and tape library physical security.

RETENTION AND DISPOSAL:

Records are retained and updated throughout employment with the Postal Service. Upon separation, records become historical data, this data is retained at the local site for two years then forwarded to the Federal Records Center nearest the pay location.

SYSTEM MANAGER(S) AND ADDRESS:

APMG, Finance Department and APMG, Employee Relations Department at Headquarters.

NOTIFICATION PROCEDURE:

Request for information on this system of records should be made to the head of the facility where employed.

giving full name and social security number. Headquarters employees should submit requests to the System Manager.

RECORD ACCESS PROCEDURES:

See Notification above.

CONTESTING RECORD PROCEDURES:

See Notification above.

RECORD SOURCE CATEGORIES:

Information is furnished by employees, supervisors and the Postal Source Data System.

W. Allen Sanders,

Associate General Counsel, Office of General Law and Administration.

[FR Doc. 83-13355 Filed 5-17-83; 8:45 am]

BILLING CODE 7710-12-M

RAILROAD RETIREMENT BOARD

Privacy Act of 1974; Proposed Changes to Systems of Records

AGENCY: Railroad Retirement Board.

ACTION: Notice of proposed changes to systems of records.

SUMMARY: The purpose of this document is to give notice of two proposed routine uses (one each for two systems of records) and three changes in the retention and disposal category (one each for three systems of records).

DATE: The two systems of records for which new routine uses are proposed shall be amended as proposed without further notice 30 calendar days from the date of this publication (June 17, 1983) unless comments are received before this date which would result in a contrary determination.

ADDRESS: Send comments to James T. Brown, Chief Executive Officer, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: LeRoy Blommaert, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, Telephone 312-751-4548.

SUPPLEMENTARY INFORMATION:

Part I: Proposed Routine Uses

A proposed new routine use in the system of records RRB-21, Railroad Unemployment and Sickness Insurance Benefit System, would allow the agency to release names and addresses of claimants to a Member of Congress, upon request, in order that the Member might communicate with them about legislation which affects the railroad unemployment system. A similarly worded new routine use in system of records RRB-22, Railroad Retirement, Survivor, and Pensioner Benefit System, would allow the same disclosure in order that the Member of Congress might communicate with annuitants about legislation affecting the railroad retirement system.

The Railroad Retirement Board has determined that such communication would be in the best interests of claimants and annuitants and that it would be good public policy to facilitate Congressional communication with such individuals when such communication would be about legislation which affects the benefits these individuals are receiving.

Part II: Changes in Retention and Disposal

Systems of records RRB-1, Social Security Benefit Vouchering System, and RRB-22 Railroad Retirement, and Pensioner Benefit Systems are being amended to reflect retention and disposal of change of address source documents.

System of records RRB-19, Payroll Records System, is being amended to specify the paper and microform payroll records are to be destroyed by shredding and also to change the retention period for paper records from four to three years.

Part III: Previous Federal Register Publications

RRB-1, Social Security Benefit Vouchering System, was last published in its entirety on November 17, 1980, at 45 FR 75824-825; RRB-19, Payroll Record System, was last published in its entirety on March 13, 1980, at 45 FR 16373-374; RRB 21, Railroad Unemployment and Sickness Insurance Benefit System, was last published in its entirety on March 13, 1980, at 45 FR 16375-377; and RRB-22, Railroad Retirement, Survivor, and Pensioner Benefit System, was last published in its entirety of December 4, 1980, at 45 FR 80392-394.

Part IV: New or Altered System Report

The proposed action is not within the purview of the provisions of 5 U.S.C. 552(o) which require the submission of a new or altered system report.

Dated: May 11, 1983.

By authority of the Board.

James T. Brown,

Chief Executive Officer.

RRB-1

SYSTEM NAME:

Social Security Benefit Vouchering System—RRB.

* * * * *

RETENTION AND DISPOSAL:

Paper: Individual claim folders with records of all actions pertaining to the payment of claims are transferred to the Federal Records Center, Chicago, Illinois 5 years after the date of last payment or denial activity if all benefits have been paid, no future eligibility is apparent and no erroneous payments are outstanding. The claim folder is destroyed 25 years after the date it is received in the center. Accounts receivable listings and checkwriting operations daily activity listings are transferred to the Federal Records Center 1 year after date of issue and are destroyed 6 years and 3 months after receipt at the center. Other paper listings are destroyed 1 year after the date of issue. *Changes of address source documents are transferred to the Federal Records Center 6 months after the date of completion and are destroyed 4 years and 6 months after receipt at the center.* Magnetic tape: Tapes are updated at least monthly, writing over obsolete data. Microforms: Originals are kept for 3 months after receipt at the center. One duplicate copy is kept 2 years and destroyed by shredding. All other duplicate copies are kept 1 year and destroyed by shredding.

* * * * *

RRB-19

SYSTEM NAME:

Payroll Record System—RRB

* * * * *

RETENTION AND DISPOSAL:

Consolidated pay tapes, first two master tapes, and last two master tapes for each year: *Destroyed by erasing* three years after close of calendar year in which prepared. Security record-current check issue tape: *Destroyed by erasing* when National Personnel Records Center receives second subsequent document covering same type of payment. Paper: Destroyed *by shredding* after *three* years. Microfilm: Retained until replaced by a new record, usually within one year. *Obsolete microfilm is destroyed by shredding.*

* * * * *

RRB-21

SYSTEM NAME:

Railroad Unemployment and Sickness Insurance Benefit System—RRB.

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Information pertaining to payment or denial of an individual's claim for benefits under the Railroad

Unemployment Insurance Act: name, address, sex, social security number, date of birth, total months of railroad service (including creditable military service), total creditable compensation for base year, last employer and date last worked before applying for benefits, last rate of pay in base year, reason not working, applications and claims filed, benefit information for each claim filed, disqualification periods and reasons for disqualification, entitlement to benefits under other laws, benefit recovery information about personal injury claims and pay for time not worked, medical reports, placement data, correspondence and telephone inquiries to and about the claimant, record of protest or appeal by claimant of adverse determinations made on his claims.

ROUTINE USES FOR RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

x. The name and address of a claimant may be released to a Member of Congress when the Member requests it in order that he or she may communicate with the claimant about legislation which affects the railroad unemployment insurance system.

RRB-22

SYSTEM NAME:

Railroad Retirement, Survivor, and Pensioner Benefit System—RRB

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Information pertaining to the payment or denial of an individual's claim for benefits under the Railroad Retirement Act: name, address, social security number, claim number, proofs of age, marriage, relationship, and military service, creditable earnings and service months (including military service), entitlement to benefits under the Social Security Act, Veterans Administration or other benefits systems, rates, effective dates, medical reports, correspondence and telephone inquiries to and about the beneficiary, record of determination and appeal by beneficiary, suspension and determination dates, health insurance effective date, option, premium rate and deduction, direct deposit data and employer pension information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 7(b)(6) of the Railroad Retirement Act of 1974 (U.S.C. 231f(b)(6)).

ROUTINE USES FOR RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

ff. The name and address of an annuitant may be released to a Member of Congress when the Member requests it in order that he or she may communicate with the annuitant about legislation which affects the railroad retirement system.

* * * * *

RETENTION AND DISPOSAL:

Paper: Individual claim folders with records of all actions pertaining to the payment of claims are transferred to the Federal Records Center, Chicago, Illinois 5 years after the date of last payment or denial activity if all benefits have been paid, no future eligibility is apparent and no erroneous payments are outstanding. The claim folder is destroyed 25 years after the date it is received in the center. Accounts receivable listings and checkwriting operations daily activity listings are transferred to the Federal Records Center 1 year after the date of issue and are destroyed 6 years and 3 months after receipt at the center. Other paper listings are destroyed 1 year after date of issue. *Change of address source documents are transferred to the Federal Records Center 6 months after date of completion and are destroyed 4 years and 6 months after receipt at the center.* Microforms: Originals are kept for 3 years, transferred to the Federal Records Center, and destroyed 3 years and 3 months after receipt at the center. One duplicate copy is kept 2 years and destroyed by shredding. All other duplicate copies are kept 1 year and destroyed by shredding. Magnetic tape: Magnetic tape records are used to daily update the disk file, are retained for 90 days and then written over. Magnetic disk: Continually updated and permanently retained.

* * * * *

[FR Doc. 13358 Filed 5-17-83; 8:45 am]

BILLING CODE 7905-01-M

SECURITIES AND EXCHANGE COMMISSION

Cincinnati Stock Exchange; Applications for Unlisted Trading Privileges and of Opportunity for Hearing

May 11, 1983.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to Section 12(f) (1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stocks:

Cyprus Corporation (The)
Common Stock, $.030 Par Value (File No. 7-6628)

Instrument Systems Corp.
Common Stock, $.25 Par Value (File No. 7-6629)

Key Parmaceuticals Inc.
Common Stock, $0.074 Par Value (File No. 7-6630)

Mitchell Energy Development Corp.
Common Stock, $.10 Par Value (File No. 7-6631)

National Patent Development Corp.
Common Stock, $.01 Par Value (File No. 7-6632)

Ozark Air Lines Inc.
Common Stock, $.50 Par Value (File No. 7-6633)

Mary Kay Cosmetics Inc.
Common Stock, $.10 Par Value (File No. 7-6634)

Paradyne Corp.
Common Stock, $.10 Par Value (File No. 7-6635)

Pogo Producing Company
Common Stock, $1 Par Value (File No. 7-6636)

Sundstrand Corp.
Common Stock, $1 Par Value (File No. 7-6637)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before June 2, 1983 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-13308 Filed 5-17-83; 8:45 am]

BILLING CODE 8010-01-M

Forms Under Review by Office of Management and Budget

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for clearance a proposed amendment to Rule 206(3)–2 (17 CFR 275.206(3)–2) under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 et seq.) which would eliminate the requirement that an investment adviser obtain at least annually from a client written renewal of the client's consent to agency cross transactions. The potential affected persons are approximately 60 registered investment advisers.

Agency Clearance Officer: Kenneth A. Fogash, (202) 272–2142

Upon Written Request Copy Available From: Securities and Exchange Commission, Office of Consumer Affairs, Washington, D.C. 20549.

Amendment
Rule 206(3)–2
No. 270–216

Submit comments to OMB Desk Officer: Mr. Robert Veeder, (202) 395–4814, Office of Information and Regulatory Affairs, Room 3235 NEOB, Washington, D.C. 20503.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83–13310 Filed 5–17–83; 8:45 am]

BILLING CODE 8010–01–M

[File No. 1–5694]

Kidde, Inc.; Application to Withdraw from Listing and Registration

May 11, 1983

The above named issuer has filed an application with the Securities and Exchange Commission pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the specified security from listing and registration on the Boston Stock Exchange, Inc. ("BSE").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

1. The common stock of Kidde, Inc. ("Company") (Common Stock, $2.50 Par Value) is listed and registered on the BSE, the New York Stock Exchange, Inc. ("NYSE") and the Pacific Stock Exchange, Inc. ("PSE"). The Company has determined that because of the small amount of trading activity on the BSE, the direct and indirect costs and expenses do not justify maintaining the listing of the common stock on the BSE, NYSE, and PSE.

2. This application relates solely to withdrawal of the common stock from listing and registration on the BSE and shall have no effect upon the continued listing of such stock on the NYSE or the PSE. The BSE has posed no objection to this matter.

Any interested person may, on or before June 2, 1983, submit by letter to the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83–13309 Filed 5–17–83; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 13234; (812–4707); Administrative Proceeding File No. 3–6244]

Union-Investment-Gesellschaft m.b.H.; Order for Hearing on Application for an Order

May 11, 1983

On December 1, 1982, the Commission issued a notice (Investment Company Act Release No. 12863) of an application filed by Union-Investment-Gesellschaft m.b.H. ("Applicant") (c/o Franz M. Oppenheimer, Esq., Leva, Hawes, Symington, Martin and Oppenheimer, 815 Connecticut Avenue, N.W., Washington, D.C. 20006), a West German management company, on behalf of Unifonds, a West German mutual fund, for an order of the Commission pursuant to Section 7(d) of the Investment Company Act of 1940 ("Act") permitting registration of Applicant under the Act so that it may sell Unifonds shares in the United States, and pursuant to Section 6(c) of the Act granting exemptions from the following provisions of the Act and various rules adopted thereunder: Sections 10 (a), (b), (f) and (g); 12 (b) and (d)(3); 13; 15; 16; 17 (a), (e), (f), (g) and (j); 18(i); 22 (c), (d), and (e); 30 (a), (c), and (d); 31 (a) and (b); 32; and 34. The notice, which is imcorporated herein by reference, gave any interested person until December 27, 1982, to file a request in writing for a hearing on the application accompanied by a statement as to the nature of his interest, the reason for such request, and the issues of fact or law proposed to be controverted.

On December 27, 1982, a request for a hearing was filed with the Commission by the Investment Company Institute ("ICI"), which was supplemented by a letter dated March 4, 1983. Counsel to Applicant on January 31, 1983, filed a letter with the Commission responding to the contentions made by the ICI in its hearing request. The ICI states in its hearing request that it is the national trade association of the American mutual fund industry and it asserts, among other things, that granting the requested approvals and exemptions could be detrimental to both the American investing public and the American mutual fund industry. Specifically, the ICI contends that Applicant has failed to meet the standard of enforceability that must be met to permit its registration under Section 7(d) of the Act. The ICI argues, with respect to Section 7(d) of the Act, that Applicant and Unifonds would fail to comply with what it asserts are among the most important provisions of Rule 7d–1, promulgated under that section, and that such failure would seriously undermine the ability of the Commission or a shareholder of Unifonds to enforce the provisions of the Act against those companies. In addition, the ICI questions the propriety of granting Applicant's specific exemptive requests which have been made pursuant to Section 6(c) of the Act, arguing that such requests do not meet the standards for exemptive relief set forth in Section 6(c).

It appears to the Commission that it is appropriate in the public interest and in the interest of investors that a hearing be held with respect to said application. Accordingly,

It is ordered, pursuant to Section 40(a) of the Act, that a hearing on said application under the applicable provisions of the Act and Rules of the Commission thereunder be held at a time and place to be fixed by further order as provided by Rule 6 of the Commission's Rules of Practice (17 CFR 201.6). Any person, other than Applicant, desiring to be heard or otherwise wishing to participate in this proceeding is directed to file with the Secretary of the Commission, on or before June 6, 1983, his application as provided by rule 9(c) of the Commission's Rules of Practice (17 CFR 201.9(c)), setting forth the nature and extent of his interest in the proceeding and any issues of fact or law which he

desires to controvert, or any additional issues which he deems raised by this Notice and Order or by said application. A copy of such request shall be served personally or by mail upon applicant at the address noted above, and proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. Persons filing an application to participate or to be heard will receive notice of the date and place of the hearing, and any adjournments thereof, as well as other actions of the Commission involving the subject matter of this proceeding.

It is further order that any officer or officers of the Commission designated by it for that purpose shall preside at said hearing. The officer so designated is hereby authorized to exercise all the powers granted to the Commission under Sections 41 and 42(b) of the Act and to an administrative Law Judge under the Commission's Rules of Practice.

The Division of Investment Management has advised the Commission that it has made an examination of the application, the request for hearing, and the response to such request by counsel to Applicant and that, upon the basis thereof, the following matters and questions are presented for consideration without prejudice to its specifying additional matters and questions upon further examination:

(1) Whether, given the failure and/or inability of Applicant to agree to comply with all of the provisions of Rule 7d–1 under the Act in its offering of Unifonds shares in the United States, the conditions and representations which Applicant has agreed will govern the offering of such shares will make it both legally and practically feasible to enforce the provisions of the Act against Applicant;

(2) Whether allowing Applicant to offer shares of Unifonds in the United States in the manner proposed in its application, with the resultant reliance on provisions of West German law to provide protections to investors in this country, which are allegedly substantially equivalent to those contained in those provisions of the Act from which Applicant has requested exemption, is consistent with the public interest and the protection of investors;

(3) Whether it is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act to grant Applicant the exemptions it seeks from the various provisions of the Act, and relevant rules and regulations thereunder; and

(4) Whether the formation of a United States corporation is a reasonable alternative to Applicant's proposed operations and if so, what, if any, advantages or disadvantages would result from that approach.

It is further ordered that at the aforesaid hearing attention should be given to the foregoing matters.

It is further order that the Division of Investment Management shall be a party to the proceeding.

It is further ordered that the Secretary of the Commission shall give notice of the aforesaid hearing by mailing a copy of this Notice and Order by certified mail to Applicant at the address noted above and the Investment Company Institute; that notice to all other persons be given by publication of this Notice and Order in the **Federal Register**; that a copy of this Notice and Order shall be published in the "SEC Docket;" and that an announcement of the aforesaid hearing shall be included in the "SEC News Digest."

By the Commission.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83–13307 Filed 5–17–83; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–19762]

Advisory Committee on Tender Offers; Meeting

AGENCY: Securities and Exchange Commission.

ACTION: Notice of meeting of the Securities and Exchange Commission Advisory Committee on Tender Offers.

SUMMARY: This is to give notice that the Securities and Exchange Commission Advisory Committee on Tender Offers will conduct a meeting on June 2, 1983 in the Kensington Room of the Westbury Hotel, 15 E. 69th Street, New York, New York, beginnng at 9:00 a.m. The meeting will be open to the public.

FOR FURTHER INFORMATION CONTACT: David Martin, Division of Corporation Finance, Securities and Exchange Commission, Washington, D.C. 20549, (202) 272–2573.

SUPPLEMENTARY INFORMATION: In accordance with section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. App. 1, 10(a), the Securities and Exchange Commission Advisory Committee on Tender Offers[1] gives notice that it will conduct a meeting on June 2, 1983 in the Kensington Room of the Westbury Hotel, 15 E. 69th Street, New York, New York, beginning at 9:00 a.m. The Advisory Committee invited comments from members of the public in Release No. 34–19635 (March 29, 1983) (48 FR 13537). On the basis of the comments received, the Committee has determined that it will be useful to receive oral presentations from certain commentators and has scheduled the June 2 meeting for such purpose. The meeting, which will be open to the public, will be the fourth meeting of the Advisory Committee.

George A. Fitzsimmons,

Advisory Committee Management Officer.

May 13, 1983

[FR Doc. 83–13342 Filed 5–17–83; 8:45 am]

BILLING CODE 8010–01–M

[1] The Advisory Committee was established on February 25, 1983. *See* Release No. 34–19528 (48 FR 9111).

[Release No. 34–19754; File No. SR–Amex–83–12]

Self-Regulatory Organizations; Proposed Rule Change by the American Stock Exchange, Inc.; Relating to Options on Stock Indices

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C 78s(b)(1), notice is hereby given that on April 29, 1983, the American Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The American Stock Exchange, Inc. (the "Amex" or "Exchange") is propposing to trade options on a stock index which is directly proportional to the Dow Jones Industrial Average. This index will be known as the "Major Market-30 Index" or "Major Market-30." In the event the Commission approves this filing, the Amex will not commence trading in options on the Major Market-30 unless it believes it can do so based on the resolution of the litigation between Dow Jones & Company and the Chicago Board of Trade.

The Major Market-30 Index initially would be based on the Following stocks: Allied Corporation; Aluminum Co. of America; American Brands, Inc.; American Can Company; American Express Company; American Telephone and Telegraph Company; Bethlehem

Steel Corporation; du Pont (E.I.) de Nemours & Co.; Eastman Kodak Company; Exxon Corporation; General Electric Company; General Foods Corporation; General Motors Corporation; Goodyear Tire & Rubber Company (The); INCO, Limited; International Business Machines Corporation; International Harvester Company; International Paper Company; Merck & Co., Inc.; Minnesota Mining & Manufacturing Company; Owens-Illinois, Inc.; Procter & Gamble Co.; Sears, Roebuck & Co.; Standard Oil Co. of California; Texaco Inc.; Union Carbide Corporation; United States Steel Corporation; United Technologies Corporation; Westinghouse Electric Corp.; Woolworth (F.W.) Co.

Transactions in Major Market-30 options will be governed by the rules of the Exchange which apply to stock index options generally (Part V, Section 11 of the Exchange's rules, captioned "Stock Index Options") In addition, the Exchange hereby proposes to further amend Rules 904C and 918C as set forth below in order to cover Major Market 30 options appropriately. *Italics* indicates words to be added and brackets [ ] indicate words to be deleted.

Rule 904C. Position Limits

(a) Position limits relating to stock index options shall be governed by the provisions of Rule 904 except that the position limit applicable to each account with respect to options on each underlying stock index group shall be the contract limit extablished by the Exchange pursuant to this Rule 904C.

(b) With respect to options on each stock index group, the Exchange shall establish (and may change from time to time) a position limit which shall be expressed in terms of a number of option contracts; provided, however, that the Exchange may not establish position limits in excess of the following dollar value equivalents:

Amex Market Value Index Options—$300 million
Major Market Index Options—$200 million
Major Market-30 Index Options—$250 million

For the purpose of establishing position limits, the dollar value of a position shall be deemed to be the product of the current index group value and the index multiplier, times the number of contracts on the same side of the market.

(c) In determining compliance with position limits applicable to stock index options, option contracts on a stock index group shall not be aggregated with option contracts on an underlying stock or stocks included in such group, and option contracts on one stock index group shall not be aggregated with option contacts on any other stock index group.

* * * * *

Rule 918C. Trading Rotations, Halts and Suspensions

(a) Opening trading rotations for a class of stock index options shall not be commenced until at least a specified number or percentage (established by the Exchange in regard to each stock index group) of the stocks comprising the underlying stock index group have opened for trading in the primary markets(s) for such stocks. One and one half hours after the opening rotation, trading in such class of stock index options shall become subject to the provisions of paragraph (b) of this Rule, unless the Exchange determines it is in the public interest to halt trading at an earlier time.

(b) Trading on the Exchange in options on a stock index group shall be halted or suspended whenever: (i) In the case of an underlying stock index group comprised of 50 stocks or more, trading has been halted or suspended in the primary market(s) for any combination of underlying stocks accounting for 20% or more of the current index group value, or (ii) in the case of an underlying stock index group comprised of less than 50 stocks, trading has been halted or suspended in the primary market(s) for any combination of underlying stocks accounting for such minimum percentage of the current index group value as the Exchange may establish from time to time pursuant to this Rule, or (iii) whenever the Exchange otherwise deems such action appropriate in the interests of a fair and orderly market to protect investors. Among the factors that the Exchange may consider in exercising its discretion to halt or suspend trading in options on a stock index group are that:

(1) The current calculation of the numerical index value derived from the current market prices of the underlying stocks in such stock index group is not available;

(2) trading in one or more of the underlying stocks comprising such stock index group has been halted in the primary market(s) under circumstances which indicate that such stock or stocks will likely re-open at a price or prices significantly different than the price or prices at which such stock or stocks last traded prior to the trading halt; or

(3) other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

Trading in any class or series of stock index options that has been the subject of a halt or suspension by the Exchange may be resumed upon a determination by the Exchange that the conditions which led to the halt or suspension are no longer present and that the interests of a fair and orderly market are best served by a resumption of trading.

Commentary

.01 For the purposes of this Rule, trading in an underlying stock which is not subject to real-time last sales reporting shall be deemed to be halted when the dissemination of quotations for such stock on an inter-dealer communications system has been halted.

.02 For purposes of this Rule, an underlying stock shall be deemed to have opened in the primary market where it is traded on any trading day if such primary market has: (i) Reported a transaction in such stock or (ii) reported a bid and asked price for such stock and not given any indication of a delayed opening.

.03 In the case of options of the Major Market Index, an opening trading rotation may not be commenced until more than 50% of the stocks comprising the Major Market Index have opened for trading in the primary market(s) for such stocks, and, subject to the provisions of paragraph (a) of this Rule, trading in such options will be halted if trading has been halted or suspended in the primary market(s) for any combination of underlying stocks accounting for 20% or more of the current index group value.

.04 In the case of options on the Major Market–30 Index, an opening trading rotation may not be commenced until more than 50% of the stocks comprising the Major Market 30 Index have opened for trading in the primary market(s) for such stocks, and, subject to the provisions of paragraph (a) of this Rule, trading in such options will be halted if trading has been halted or suspended in the primary market(s) for any combination of underlying stocks accounting for 20% or more of the current index group value.

In addition to proposing the above rule changes, the Exchange is proposing to establish the following contract specifications for Major Market–30 options:

The numerical index value (defined in Exchange Rule 900C) would be the actual index value. For example, if the Major Market–30 were at 120, the numerical index value would be 120 and the exercise price of an at-the-money option would also be 120.

Exercise prices would be established at five point intervals. Exercise prices would bracket the current numerical index value, and new exercise prices would be introduced as the numerical index value changed. The procedure for introducing new exercise prices would be the same as the procedure now used with respect to individual stock options.

The index multiplier for each Major Market option contract would be 100.

Major Market-30 options would be traded on a January-April-July-October expiration cycle, with three expiration dates available for trading at any given time (i.e., the options would be introduced with three, six and nine months to expiration).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

The Exchange has determined to create and trade options on the Major Market-30 Index in order to make available for options trading, should the resolution of Dow Jones & Company's proprietary rights make it legal to do so, a fractional replica of the Dow Jones Industrial Average, viewed by many as the most popular broad stock market indicator. The Major Market-30 should be useful as a tool for capitalizing on or hedging against broad market price changes. A thorough description of the uses of options on broad market indices is contained in File No. SR–Amex–82–8, which was previously approved by the Commission.

The Major Market-30 is a price-weighted index, meaning that the index is based on equal numbers of shares of the component stocks and that changes in the index number would represent changes in the sum of its prices per share of those stocks.

The Major Market-30 Index will be calculated by summing the respective prices per share of each of the stocks included in the index and dividing by a constant. The constant divisor as of April 25, 1983 is 12.92. Ordinarily it will be revised in the event of a stock dividend, stock distribution, stock split or reverse split, rights offering, distribution, reorganization, recapitalization or similar event in respect of any component stock, or in the event a stock is added to or deleted from the index, or one stock is substituted for another. The purpose of adjusting the index divisor in the contex of such events is to maintain continuity of index values; the index divisor will not be revised for any other purpose.

As stated above, transactions in Major Market-30 options will be governed by all of the rules which apply to stock index options generally. Certain additional amendments to Rules 904C and 918C set forth herein would also apply to Major Market-30 index options.

The purpose of proposed amendment to Rule 904C is intended to specify a dollar value equivalent to function as an outer parameter for position limits for Major Market-30 options. In this submission, the Exchange is proposing $250 million in equivalent value as the ceiling for contract limits applicable to options on the Major Market-30 Index.

Rule 905C provides that the exercise limit for options on each stock index group will be the same as the position limit applicable to such options. Thus, that rule in conjunction with approval of the rule change proposed herein would automatically establish an exercise limit for options on the Major Market-30 Index at the same level as the respective position limit fixed by the Exchange for that option contract. The Exchange policies and procedures regarding the establishment of contract limits on stock index options is set forth in SR-Amex-82-22 Amendment No. 2 and will apply to Major Market-30 Index options.

In this submission, the Exchange is also proposing an amendment to Rule 918C to define the procedures which must be followed in opening trading in the Major Market-30 Index options and in halting and reopening trading when certain events occur. Under Paragraph (a) of Rule 918C, the Exchange is authorized to establish a minimum percentage or fixed number of stocks which must have opened in relation to each underlying stock index group as to which it trades options. The Exchange believes that this minimum percentage or fixed mumber of stocks which must have opened before trading in the option is permitted to commence should be sufficient to assure that the Index itself is providing investors with a realistic indication of the market trend at the time of such opening. Therefore, in proposed Commentary .04 to the Rule, the Exchange has provided that with respect to the Major Market-30 Index, trading in the option may not commence until more than 50% of the underlying stocks in the index have opened, either by an opening trade or quote.

Paragraph (b) of Rule 918C provides that, in the case of options on an underlying stock index group comprised of less than 50 stocks, the Exchange will establish standards, specifically applicable to those options, indicating when a mandatory option trading halt is to be imposed based on trading halts affecting stocks included in the underlying stock index group. In the case of the Major Market-30 Index, Commentary .04 would provide that a trading halt will be imposed if trading has been halted or suspended in the primary market for any combination of underlying stocks accounting for 20% or more of the current group value. The Exchange believes the 20% standard is appropriate.

The implementation of trading in options on the Major Market 30-Index under the Exchange's stock index option rules would be consistent with the requirements of the Securities Exchange Act of 1934 (the "Act") and the rules and regulations thereunder applicable to the Exchange, and, in particular, Section 6(b)(5) of the Act. Such options would provide members of the public with useful new hedging and trading opportunities under a scheme of regulation designed to facilitate the maintenance of a fair and orderly market, prevent fraudulent and manipulative acts and practices, and promote just and equitable principles of trade.

B. *Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange believes that the introduction of options on the Major Market-30 Index under the Exchange's existing and proposed rules will not impose any burden on competition, but, rather, will foster competition among exchanges trading derivative contracts involving stock indices.

C. *Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

The Exchange neither solicited nor received written comments on the proposed rule change set forth herein.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal**

Register or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reason for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, Judiciary Plaza, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 5th Street, N.W. Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted within 21 days after the date of this publication.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 10, 1983.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-13311 Filed 5-17-83; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2084]

California; Declaration of Disaster Loan Area

As result of the President's major disaster declaration, I find that the City of Coalinga in the County of Fresno, California, constitutes a disaster area because of damage resulting from an earthquake occurring on May 2, 1983. Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business of July 5, 1983, and for economic injury until the close of business on February 6, 1984, at the address listed below: U.S. Small Business Administration, 2202 Monterey Street, Fresno, California 93721 or other locally announced locations.

Interest rates for this disaster declaration are as follows:

	Percent
Home owners with credit available elsewhere	11.125
Home owners without credit available elsewhere	5.625
Businesses with credit available elsewhere	10.500
Businesses without credit available elsewhere	8.00
Businesses (EIDL) without credit available elsewhere	8.000
Other (non-profit organization including charitable and religious organizations)	11.375

It sholuld be noted that assistance for agriculture enterprises is the primary responsibility of the Farmers Home Administration as specified in Public Law 96-302.

(Cagalog of Federal Domestic Assistance Programs Nos. 59002 and 59008)

Dated: May 6, 1983.

James C. Sanders,

Administrator.

[FR Doc. 83-13289 Filed 5-17-83; 8:45 am]

BILLING CODE 8025-01-M

Region VI—Advisory Council; Public Meeting

The Small Business Administration Region VI Advisory Council, located in the geographical area of San Antonio, will hold a public meeting at 8:30 A.M., Tuesday, June 7, 1983, at the Federal Building, 727 East Durango, Room A-206 (2nd floor) San Antonio, Texas, 78206, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Julio G. Perez, District Director, U.S. Small Business Administration, Federal Building, Room A-513, 727 E. Durango, San Antonio, Texas 78206, (512) 229-6150.

Jean M. Nowak,

Acting Director, Office of Advisory Councils.

May 10, 1983.

[FR Doc. 83-13288 Filed 5-17-83; 8:45 am]

BILLING CODE 8025-01-M

Evergreen Capital Co., Inc.; Application for a License To Operate as a Small Business Investment Company

[License No. 06/06-5264]

Notice is hereby given that an application has been filed with the Small Business Administration (SBA) pursuant to Section 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1983)), under the name of Evergreen Capital Company, Inc., for a license to operate as a Section 301(d) small business investment company under the provisions of Section 301(d) of the Small Business Investment Act of 1958, as amended (Act), (15 U.S.C. 661 *et seq.*), and the SBA Rules and Regulations promulgated thereunder.

The officers, directors and stockholders of the Applicant are as follows:

Shen-Lim Lin, 3307 Ashfield Drive, Houston, Texas 77082—Chairman of the Board and President—65 percent

Myung Won Chun, 1125 N. 11th Street, Beaumont, Texas 77702—President and Director—30 percent

Hsien-Wei Feng, 1723 Crosscoach, Houston, Texas 77049—Director

Li-Mei Lin, 3307 Ashfield Drive, Houston, Texas 77082—Secretary and Treasurer—5 percent

Jin Sung Chung, 12803 Villawood, Houston, Texas 77049—Director.

The Applicant, a Texas corporation, with its principal place of business at 8520 Tybor Drive, Suite 201, Houston, Texas 77074 will begin operations with $700,000 paid-in capital and paid-in surplus.

The Applicant will conduct its activities principally in the Houston, Texas area.

As a small business investment company under Section 301(d) of the Act, the Applicant has been organized and chartered solely for the purpose of performing the functions and conducting the activities contemplated under the Small Business Investment Act of 1958, as amended, from time to time, and will provide assistance solely to small business concerns which will contribute to a well-balanced national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered because of social or economic disadvantages.

Matters involved in SBA's consideration of the application include the general business reputation and character of proposed managers, and the probability of successful operation of the applicant under their management, including adequate profitability and financial soundness, in accordance with the Small Business Investment Act and the SBA Rules and Regulations.

Notice is hereby given that any person may, not later than 15 days from the date of publication of this Notice, submit written comments to the Deputy Associate Administrator for Investment.

Small Business Administration, 1441 "L" Street NW., Washington, D.C. 20416.

A copy of this notice will be published in a newspaper of general circulation in Houston, Texas.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: May 12, 1983.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 83-13351 Filed 5-17-83; 8:45 am]

BILLING CODE 8025-01-M

[License No. 04/04-0145]

Mountain Ventures, Inc., Filing of an Application for Approval of a Conflict of Interest Transaction

Notice is hereby given that Mountain Ventures, Inc. (MVI), 911 Main Street, London, Kentucky 40701, a Federal Licensee under the Small Business Investment Act of 1958, as amended (the Act), has filed an application pursuant to § 107.1004 of the Regulations governing small business investment companies (13 CFR 107.1004 (1983)) for an exemption from the provisions of the conflict of interest regulation.

This exemption, if granted, will permit MVI and its parent, Kentucky Highlands Investment Corporation (KHIC), to provide equal Financing totalling up to $300,000, in the form of convertible debentures with common stock purchase warrants to Mount Vernon Plastics Corporation (MVPC), Highway 150, Mt. Vernon, Kentucky.

MVPC is considered to be an Associate of MVI because KHIC owns in excess of 10 percent of MVPC's common stock. As such, the transaction will require an exemption from the provisions of § 107.1004(b)(1) of the Regulations.

Notice is hereby given that any person may, no later than 15 days from the date of publication of this Notice, submit to the Small Business Administration, in writing, relevant comments on the proposed transaction. Any such communications should be addressed to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, NW., Washington, D.C. 20416.

A copy of this Notice shall be published in a newspaper of general circulation in London, Kentucky.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies).

Dated: May 12, 1983.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 83-13336 Filed 5-17-83; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[Public Notice 862]

Agency Forms Submitted for OMB Review

AGENCY: Department of State.

ACTION: In accordance with the provisions of the Paperwork Reduction Act of 1980, the Department has submitted a proposed collection of information to the Office of Management and Budget for review.

Purpose: The Bureau for Refugee Programs of the Department of State plans to conduct phase III of the study of the effects of pre-entry training in the resettlement of Indochinese refugees. (See 47 CFR 49912, Public Notice 830 and 48 CFR 8620, Public Notice 849.) The final results will be used in the planning and development of future U.S. policy about the provision of training to refugees with little prior exposure to Western culture or the English language.

(1) Type of request—new.

(2) Title of information collection—Effects of Pre-Entry Training on Resettlement of Indochinese Refugees, phase III. Interviews with domestic agencies who provide services to incoming refugees.

(3) Originating Office—Bureau for Refugee Programs.

(4) Frequency—Nonrecurring.

(5) Respondents—Voluntary agencies, ESL service providers, and employment service providers.

(6) Estimated number of responses—94.

(7) Estimated total number of hours needed to respond—68.62. Section 3504(h) of Pub. L. 96-511 does not apply.

Additional Information or Comments: Copies of the proposed study and supporting documents may be obtained from Gail J. Cook, Departmental Clearance Officer (202) 632-3602. Comments and questions should be directed to (OMB) Francine Picoult (202) 395-7231.

Dated: May 2, 1983.

Thomas M. Tracy,

Assistant Secretary for Administration.

[FR Doc. 83-13370 Filed 5-17-83; 8:45 am]

BILLING CODE 4710-24-M

DEPARTMENT OF TREASURY

Internal Revenue Service

Form 990 Advisory Committee; Notice of Establishment

AGENCY: Internal Revenue Service, Treasury

ACTION: Notice of Establishment of Form 990 Advisory Committee

SUMMARY: A Form 990 Advisory Committee is being established to evaluate proposed changes to Form 990, Return of Organization Exempt from Income Tax, and to provide its own recommendations to the Internal Revenue Service for changes to that form.

FOR FURTHER INFORMATION CONTACT: Robert W. Gardiner, Exempt Organizations Division, Internal Revenue Service, Room 2218, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, telephone 202-566-3137 (not a toll free call).

SUPPLEMENTARY INFORMATION: In accordance with section 9(a) of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that the Secretary of the Treasury, with the concurrence of the Office of Management and Budget, has approved the establishment of the Form 990 Advisory Committee. Establishment of the Committee has been determined to be in the public interest in connection with the performance of duties imposed by law on the Internal Revenue Service. These duties include the administration of the provisions of the Internal Revenue Code of 1954 relating to tax-exempt organizations and nonexempt charitable trusts that are required to file an annual information return on Form 990. Formation of the Committee will also help the Service meet its obligation under the Paperwork Reduction Act of 1980 (Pub. L. 96-511) to minimize the recordkeeping and reporting burden borne by the public.

The Committee will evaluate substantive revisions to Form 990 and the instructions to that form that have been proposed by the Service or suggested by others and will make its own recommendations for form and instruction changes to the Service's Tax Forms Coordinating Committee. A secondary purpose of the Committee will be to perform those same functions in connection with Form 990-PF, Return of Private Foundation. The Committee will function solely as an advisory body in compliance with the Federal Advisory Committee Act, Treasury Directive 10-06.E and OMB Circular A-63, Revised.

Committee membership shall be fairly balanced among representatives of the parties having a significant interest in Form 990: Internal Revenue Service and state charity officials as well as Form 990 filers, preparers and other users. Committee meetings will be held not more than three times each year and all meetings will be open to the public.

Thirty-one of the thirty-five states and the District of Columbia that have reporting requirements for charities and other public benefit organizations under their jurisdiction have adopted Form 990 (and Form 990–PF in some cases) as the medium for reporting to the states. Some of the adopting states require information in addition to that which Form 990 provides. The Service recognizes that having a standard report form that does not require unneeded or excessive information is in the best interests of the states, the organizations that must report to them (particularly those that must submit financial reports to a number of states) and, ultimately, the public that is served by those organizations.

The states agreed to adopt Form 990 based, in part, on representations that the Service would not arbitrarily change the form or instructions and thereby alter or eliminate the reporting of information needed by the states. Being represented on the Committee will enable the states to be kept informed of proposed form and instruction changes, to express their views on those proposed changes so the Service can take them into account in reaching its final decision, and to advise the Service of any changes in the information needs of the states that might involve Form 990.

Establishment of the committee will be effective from the date of filing of the Committee's charter with the standing committees of Congress having legislative jurisdiction over the Service. The Committee will terminate two years from its establishment date unless its charter is renewed.

This document does not meet the criteria for significant regulations set forth in paragraph 8 of the Treasury Directive appearing in the **Federal Register** for Wednesday, November 8, 1978.

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 83-13305 Filed 5-17-83; 8:45 am]

BILLING CODE 4830-01-M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and the Delegation of Authority from the Director, USIA (47 FR 57600, December 27, 1982), I hereby determine that the objects in the exhibit, "Arp: The Dada Reliefs" (included in the list [1] filed as a part of this determination) imported from abroad for the temporary exhibition without profit within the United States are of cultural significance. These objects are imported pursuant to a loan agreement between the National Gallery of Art and foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at the National Gallery of Art, beginning on or about July 3, 1983, to on or about October 30, 1983, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register.**

Dated: May 13, 1983.

Jonathan W. Sloat,

General Counsel and Congressional Liaison. United States Information Agency.

[FR Doc. 83-13360 Filed 5-17-83; 8:45 am]

BILLING CODE 8230-01-M

[1] An itemized list of objects included in the exhibit is filed as part of the original document

Sunshine Act Meetings

Federal Register
Vol. 48, No. 97
Wednesday, May 18, 1983

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

	Items
Civil Aeronautics Board	1
Federal Deposit Insurance Corporation	2-4
National Commission on Libraries and Information Science	5
National Council on Educational Research	6-7

1

CIVIL AERONAUTICS BOARD

TIME AND DATE: 9:30 a.m., May 19, 1983

PLACE: Room 1027 (Open), 1825 Connecticut Avenue, NW., Washington, D.C. 20428

SUBJECT:

1. Ratification of Items Adopted by Notation.

2. Docket 41378, *Air Line Employees Association, International:* v. *Republic Airlines, Inc.*, petition to compel arbitration of LPP dispute. (OGC)

3. Docket 41311, *John C. Iovinelli, Robert J. Bartell, and Roger E. Salisbury:*v. *Republic Airlines, Inc.*, petition to compel arbitration of LPP dispute. (Memo 1837, OGC)

4. Docket 41180, *Anthony A. Rubino* v. *Pan American World Airways, Inc.*, petition to compel arbitration of LPP dispute. (Memo 1832, OGC)

5. Docket 33283, *Pan American-Acquisition of Control of and Merger with National.* Labor Protective Provision Claims of Robert A. Wallace, Jr. (Memo 385-G, OGC)

6. Docket 41081, *American International Airways, Inc., Exemption Application:* Petition for reconsideration. (OGC)

7. Docket 40253, *Northeast Sunrise Airlines, Inc. Fitness Investigation.* Opinion and Order on Review. (Memo 1082-A, OGC)

8. Justification for fares and rates outside the zones of flexibility. (OGC, BIA)

9. Delegation of authority to the Bureau of Domestic Aviation to adjust interim subsidy levels. (OGC, BDA)

10. Proposed rule to bar automatic continuation of a foreign air carrier permit or exemption if the underlying bilateral expires. (OGC, BIA, BDA)

11. Proposed rule to bar automatic continuation of a foreign air carrier permit or exemption if the underlying bilateral expires. (OGC, BIA, BDA)

12. Docket 41142, Ceskoslovenske Aerolinie's petition for review of staff action in Order 83-3-10 to dismiss its permit-renewal application as being moot. (BIA, OGC, BALJ)

13. H.R. 2—the Sunset Act of 1981. (OGC)

14. Notice of proposed rulemaking for exemption from section 404(b) (non-discrimination) and clarification of the exemption from section 408(a) (acquisition and control) for domestic cargo transportation. (OGC)

15. Docket 29044, Reexamination of the Board's smoking rule in light of the Court of Appeals decision in *Ash* v. *Cab.* (OGC, OCCCA)

16. Docket 29044, Motion by Action on Smoking and Health requesting stay and reconsideration of Board decision to rescind three anti-smoking rules. (OGC)

17. Docket EAS-759, Eligibility of Bowling Green, Kentucky for Essential Air Service. (Memo 639-C, BDA, OCCCA, OGC)

18. Docket EAS-487, Petition for Montana Aeronautics Board for reconsideration of Order 82-11-79. (Memo 735-F, BDA, OCCCA)

19. Docket EAS-768, Whitefield, New Hampshire's appeal of BDA's determination not to designate the community as an eligible point under section 419(b). (BDA, OCCCA, OGC)

20. Docket 40304, Application of Cochise Airlines, Inc., for compensation for losses under section 419(a)(7)(B) of the Act, and Docket 34808, Petition of Chochise for establishment of subsidy mail rates pursuant to section 406 of the Act. (Memo 1591-A, BDA, OGC, BCAA, OCCCA, OC)

21. Docket 40992, 30-day notice of Eagle Commuter Airlines, Inc. to suspend service at Brownwood, Texas. (BDA, OCCCA)

22. Annual Review of Delegations of Authority. (Memo 1841, BDA)

23. Docket 40943, Application of Panaircraft Services, Inc. for a section 418 all-cargo air service certificate. (Memo 1847, BDA)

24. Dockets 41349 and 41350, Buffalo Airways' applications for section 401 certificates to engage in interstate, overseas and foreign charter transportation of persons and property. (Memo 1835, BDA)

25. Commuter carrier fitness determination of Aviation Associates, Inc. d/b/a Sunaire. (Memo 1845, BDA)

26. Docket 40386, Agreements Among Members of the Air Traffic Conference of America relating to a Default Protection Plan (Agreements CAB 20710-A11, A13, and A14); Docket 41186, Agreements Among Members of the Air Traffic Conference of America relating to ticket refunds of a default carrier (Agreements CAB 28217-A19). (BDA, OGC, OCCCA)

27. Docket 38623, Agreement CAB 28995, IATA agreement extending application of areawide resolutions for an additional six months period through September 1983 in certain Western Hemisphere markets. (Memo 1838, BIA)

28. Docket 40960, Agreement CAB 28989, Intercarrier agreement adding fares for Miami to the existing U.S.-Switzerland fare structure. (Memo 1511-I, BIA)

29. Dockets 37025 and 37026, In the matter of the permit and exemption authority held by Surinam Airways, Ltd. (BIA, OGC)

30. Docket 41060, Application of Air Tungaru and Hawaiian Airlines, Inc. for a standby emergency cabotage exemption. (Memo 1840, BIA)

31. Dockets 41332, 41394, 41418, Applications of The Flying Tiger Line, Inc., Northwest Airlines, Inc., Capitol Air, Inc., for certificates of public convenience and necessity pursuant to section 401 of the Federal Aviation Act of 1958, as amended. (Memo 1846, BIA, OGC, BALJ)

32. Docket 41125, Application of Action Air Cargo Corporation for a certificate of public convenience and necessity. (BIA, OGC, BALJ)

33. Docket 41186, Application of Orion Lift Service, Inc., d/b/a Orion Air, for a certificate authorizing the carrier to engage in charter air transportation of property and mail worldwide. (Memo 1839, BIA, OGC, BALJ)

STATUS: 1-33 Open.

PERSON TO CONTACT: Phyllis T. Kaylor, the Secretary, (202) 673-5068.

[S-700-83 Filed 5-13-83; 4:04 pm]

BILLING CODE 6320-01-M

2

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting.

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 11:10 a.m. on Friday, May 13, 1983, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider an application for assistance under section 13(c) of the Federal Deposit Insurance Act (name and location of bank authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii)).

At that same meeting, the Board also considered a personnel matter.

In calling the meeting, the Board determined, on motion of Chairman William M. Isaac, seconded by Director Ivine H. Sprague (Appointive), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant

to subsections (c)(2), (c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii)).

The meeting was held in the Chairman's Office, Room 6023 of the FDIC Building located at 550 17th Street, NW., Washington, D.C.

Dated: May 13, 1983.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[S. 706-83 Filed 5-16-83; 1:50 pm]

BILLING CODE 6714-1-M

3

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting.

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Monday, May 23, 1983, to consider the following matters:

Summary Agenda

No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previsous meetings.

Application for consent to merge and establish five branches:

Northern Central Bank, Williamsport, Pennsylvania, an insured State nonmember bank, for consent to merge, under its charter and title, with The State Bank of Avis, Avis, Pennsylvania, and The Farmers National Bank of Rome, Rome, Pennsylvania, and to establish the four offices of The State Bank of Avis and the sole office of The Farmers National Bank of Rome as branches of the resultant bank.

Application for consent to merge and establish six branches and one seasonal facility:

First-Citizens Bank & Trust Company, Raleigh, North Carolina, an insured State nonmember bank, for consent to merge, under its charter and title, with Peoples Bank of North Carolina, Madison, North Carolina, and to establish the six offices and one seasonal facility of Peoples Bank of North Carolina as six branches and one seasonal facility of the resultant bank.

Application for consent to purchase assets and assumne liabilities and establish two branches:

Northridge Bank, Los Angeles (Northridge), California, an insured State nonmember bank, for consent to purchase the assets of and assume the liability to pay deposits made in the Thousand Oaks Branch and the Warner Center Branch of Indpendence Bank, Los Angeles (Encino), California, and to establish those two offices as branches of Northridge Bank.

Application for consent to relocate a branch:

California Commerce Bank, Los Angeles, California, for consent to relocate its San Diego Office from 230 West "A" Street to 401 West "A" Street, San Diego, California.

Request for consent to retire common stock:

The Citizens Bank of Ashburn, Ashburn, Georgia.

Recommendations regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Memorandum and Resolution re: Midtown National Bank, Pueblo, Colorado.

Memorandum and Resolution re: Carroll County Bank, Huntingdon, Tennessee.

Memorandum and Resolution re: The Metro Bank of Huntington, Inc., Huntington, West Virginia.

Memorandum and Resolution re: Final amendment to Part 307 of the Corporation's rules and regulations, entitled "Termination of Insured Status," which would conform those rules and regulations with the Federal Deposit Insurance Act, as amended by the Garn-St Germain Depository Institutions Act of 1982, by removing provisions requiring that an assuming or resulting bank or institution that has assumed the liabilities of an insured bank give notice of the assumption to the depositors of the bank whose liabilities have been assumed.

Memorandum and Resolution re: Final amendment to Part 309 of the Corporation's rules and regulations, entitled "Disclosure of Information," which would conform those rules and regulations with the Right to Financial Privacy Act of 1978, as amended by the Garn-St Germain Depository Institutions Act of 1982, by removing restrictions on the disclosure of financial records and information to Federal financial institutions supervisory agencies.

Reports of committees and officers:

Minutes of actions approved by the standing committees of the Corporation pursuant to authority delegated by the Board of Directors.

Reports of the Division of Bank Supervision with respect to applications or requests approved by the Director or Associate Director of the Division and the various Regional Directors pursuant to authority delegated by the Board of Directors.

Reports of the Director, Office of Corporate Audits and Internal Investigations:

Audit Report re: Audit of Merger Assistance Agreements—Mutual Savings Banks (dated April 19, 1983).

Memorandum re: Quarterly Certification of Division of Liquidation Approvals Under Delegated Authority.

Report of the Director, Division of Accounting and Corporate Services:

Memorandum re: Investment Management Report—March 31, 1983.

Discussion Agenda

Memorandum and Resoultion re: Final amendments to Part 303 of the Corporaton's rules and regulations, entitled "Applications, Requests, Submittals, Delegations of Authority, and Notices of Acquisition of Control," which would delegate to the Director of the Division of Bank Supervision and, where confirmed in writing by the Director, to the various Regional Directors, the authority to approve (but not to deny) routine merger transactions, if certain criteria are met.

Memorandum and Resolution re: Final amendments to Parts 303, 304, and 347 of the Corporation's rules and regulations, entitled "Applications, Requests, Submittals, Delegations of Authority, and Notices of Acquisition of Control," Forms, Instructions, and Reports," and "Foreign Activities of Insured State Nonmember Banks," respectively, which would revise the procedures relating to the processing of applications for consent to establish foreign and domestic branches (including remote service facilities) and to relocate offices.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, N.W., Washington, D.C.

Request for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Exective Secretary of the Corporation, at (202) 389-4425.

Dated: May 16, 1983.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

S-703-83 Filed 5-16-83; 1:51 pm]

BILLING CODE 6714-01-M

4

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting.

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Monday, May 23, 1983, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b(c)(2), (c)(6), (c)(8), and (c)(9)(A)(ii) of Title 5, United States Code, to consider the following matters:

Summary Agenda

No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and desist proceedings, termination-of-insurance proceedings, suspension or removal preceedings, or assessment of civil money penalties) against certain insured banks or officer, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

Note.—Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Discussion Agenda

Application for consent to purchase assests and assume liabilities and establish fourteen branches:

Commonwealth Bank, Bay Springs, Mississippi, an insured State nonmember bank, for consent to purchase the assests of and assume the liability to pay deposits made in First United Bank of Mississippi, Meridian, Mississippi, and Central Bank of Mississippi, Brandon, Mississippi, and to establish the ten offices of First United Bank of Mississippi and the four offices of Central Bank of Mississippi as branches of the resultant bank which would be known as "First United Bank."

Request for relief from adjustment for violations of Regulation Z:

Name and location of bank authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(8) and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8) and (c)(9)(A)(ii)).

Recommendations regarding the Corporation's assistance agreements with insured banks pursuant to section 13 of the Federal Deposit Insurance Act.

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2) and (c)(6)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389–4425.

Dated: May 16, 1983.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[S-704-83 Filed 5-16-83; 1:51 pm]

BILLING CODE 6714-01-M

5

NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

TIME: *June 9, 1983,* 9:00 a.m. to 5:00 p.m., 9:00 a.m. to 9:30 a.m., (Closed), Executive Session (closed meeting—Section 1703.202(2) and (6) of the Code of Federal Regulations, 45 CFR, Part 1703); *June 10, 1983,* 9:00 a.m. to 4:00 p.m.

DATE: June 9 and 10, 1983, respectively.

PLACE: International Hotel, 300 Canal Street, New Orleans, Louisiana 70140.

STATUS: Open/Closed.

MATTERS TO BE DISCUSSED: Chairman's Report; Approval of Agenda; Approval of Minutes; Election of Vice-Chairman; Executive Director's Report; Special Libraries Association Task Force Report Discussion; Guy Sylvestre, National Librarian of Canada; Review of LSCA Legislation; 1984 and 1985 Budget and Programs; Old Business.

CONTACT PERSON FOR MORE INFORMATION: Toni Carbo Bearman, Executive Director.

Toni Carbo Bearman,

National Commisison of Libraries and Information Science, Executive Director.

May 13, 1983.

[S-705-83 Filed 5-16-83; 1:53 pm]

BILLING CODE 7527-01-M

6

DEPARTMENT OF EDUCATION; NATIONAL INSTITUTE OF EDUCATION

Correction

National Council on Educational Research.

May 12, 1983.

TIME AND DATE: 7:30–9:00 a.m. 2000 L Street, Washington, D.C. 20036; 9:00 a.m. to 5 p.m. 1200 19th St., N.W., Washington, D.C. 20208, May 19, 1983.

STATUS: 7:30–9:00 a.m. Closed; 9:00–10:00 a.m. Closed; 10:00–5:00 p.m. Open.

Matters to be discussed in closed session: 1. Personnel Actions (5 USC Section 552(b)(c)(2).

Matters to be discussed in open session: 1. Budget; 2. Report from Program Committee, Reports Committee; 3. Report from Chairman and Executive Director.

CONTACT PERSON FOR MORE INFORMATION: Patricia Hines, 202 254–7490; NCER.

Dated: May 12, 1983.

Richard LaPointe,

Executive Director, National Council on Educational Research.

[S-701-83 Filed 5-16-83; 10:25 am]

BILLING CODE 4000-01-M

7

DEPARTMENT OF EDUCATION; NATIONAL INSTITUTE OF EDUCATION

National Council on Educational Research.

Correction

May 12, 1983.

TIME AND DATE: 9:00 a.m. to 12:00 noon, 1200 19th St., N.W., Washington, D.C., May 20, 1983.

STATUS: 9:00 A.M. TO 12:00 P.M., OPEN.

Matters to be discussed in Open Session: 1. Report from NIE staff; 2. Lab and Centers Resolution.

Dated: May 12, 1983.

Richard T. Lapointe,

Executive Director, National Council on Educational Research.

[S-702-83 Filed 5-16-83; 10:25 am]

BILLING CODE 4000-01-M

federal register

Wednesday
May 18, 1983

Part II

Federal Communications Commission

Publication of Sample FM Pre-Printed Hearing Designation Order and Sample Hearing Notice

FEDERAL COMMUNICATIONS COMMISSION

Publication of Sample FM Pre-Printed Hearing Designation Order and Sample Hearing Notice

AGENCY: Federal Communications Commission.

ACTION: Publication of Sample FM Standardized, Pre-Printed Hearing Designation Order and Sample Hearing Notice.

SUMMARY: The Commission required by Section 309(e) of the Communications Act of 1934, as amended, to publish in the **Federal Register** all issues which it has designated for hearing involving mutually exclusive applications for FM stations. The issues are initially specified at the Commission in a document known as a Hearing Designation Order (HDO). In the interest of administrative efficiency and resource economy, the Commission has decided to utilize the following standardized, pre-printed FM HDO (See Appendix A) to alleviate its current FM applications backlog, which has resulted, in part, from shortages of personnel to process these applications. In addition, effort to eliminate the cost of publishing the full text of all FM HDOs, the Commission, by its Mass Media Bureau, will publish instead a Notice summarizing the specific applicants and issues in each HDO (See Appendix B). Instead of printing the text of the standardized issues for each HDO, future Notices published concerning FM cases which have utilized the standardized, pre-printed HDO will refer the reader to the wording ot the standardized issues contained in the following sample HDO (See Appendix A).

FOR FURTHER INFORMATION CONTACT: W. Jan Gay, Mass Media Bureau (202) 632-6485.

Federal Communication Commission.

William J. Tricarico,

Secretary.

BILLING CODE 6712-01-M

APPENDIX A — Sample of Standard Hearing Designation Order to be Available from the Commission

Before the
Federal Communications Commission
Washington, D. C. 20554

In re Applications of)
)
)
)
_____)
_____) MM Docket No. _____
(hereafter _____)) File No. BPH-_____
_____)
_____)
Req: _____ MHz, Channel _____)
)
_____ kW (H&V), _____ feet)
)
)
_____)
_____) MM Docket No. _____
(hereafter _____)) File No. BPH-_____
_____)
_____)
Req: _____ MHz, Channel _____)
)
_____ kW (H&V), _____ feet)
)
)
_____)
_____) MM Docket No. _____
(hereafter _____)) File No. BPH-_____
_____)
_____)
Req: _____ MHz, Channel _____)
)
_____ kW (H&V), _____ feet)
)
)
_____)
_____) MM Docket No. _____
(hereafter _____)) File No. BPH-_____
_____)
_____)
Req: _____ MHz, Channel _____)
)
_____ kW (H&V), _____ feet)
)
)
_____)
_____) MM Docket No. _____
(hereafter _____)) File No. BPH-_____
_____)
_____)
Req: _____ MHz, Channel _____)
)
_____ kW (H&V), _____ feet)
)

For Construction Permit
for a New FM Station

HEARING DESIGNATION ORDER

Adopted: Released:

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station.

2. In the interest of administrative efficiency and resource economy, portions of this Order have been standardized. Consequently, opinion paragraphs, issues and ordering clauses will only apply where an "X" appears in an appropriate box. If the paragraph is directed to some, but not all, of the captioned applicants, those affected will be specified. In addition, non-standardized text in this Order, if any, will be set forth in an Appendix.

OPINION PARAGRAPHS

Local Notice

Appli- cable [ ] Inappl- icable [ ]

3. Applicants for new broadcast stations are required by Section 73.3580 of the Commission's Rules to give local notice of the filing of their applications. We have no indication that the applicant(s) below published the required notice. To remedy this deficiency, the applicant(s) must publish local notice of the application, if it has not already done so, and so inform the presiding Administrative Law Judge within 30 days of the release of this Order, or an appropriate issue will be specified by the Judge.
APPLICANT(S):

Appli- cable [ ] Inappl- icable [ ]

4. Applicants for new broadcast stations are required by Section 73.3580 of the Commission's Rules to give local notice of the filing of their applications. The applicant(s) below has published the required notice, but the notice is deficient. To remedy this deficiency, the applicant(s) must republish an amended local notice of the application, if it has not already done so, and so inform the presiding Administrative Law Judge within 30 days of the release of this Order, or an appropriate issue will be specified by the Judge.
APPLICANT(S) DEFICIENCY

Main Studio Justification

Appli- cable [ ] Inappl- icable [ ]

5. Section 73.1125 of the Commission's Rules requires that the main studio of an FM station be located within the city of license, but that on a showing of good cause may be located outside that community. The applicant(s) below proposes to locate its main studio outside the community and gives the following justification(s):

APPLICANT(S)	LOCATION(S)	JUSTIFICATION(S)

(a) good cause has been shown by the following applicants(s) for the proposed studio location:

(b) good cause has not been shown by the following applicant(s) and, accordingly, an issue will be specified:

Appli- cable [ ] Inappl- icable [ ]

6. Section 73.1125 of the Commission's Rules requires that the main studio of an FM station be located within the city of license, but that on a showing of good cause may be located outside that community. The applicant(s) below states in its response to Item 12, Section V-B, Form 301, that its main studio will be at a location to be determined, with no indication that the determination would be limited to sites within the city of license. Under these circumstances, the applicant(s) will be required to file with the presiding Administrative Law Judge, within 30 days of the release of this Order, either an amended response to the above-referenced item and/or, if applicable, a showing of good cause should it propose to locate its main studio outside the city of license, or an appropriate issue will be specified by the Judge.

APPLICANT(S):

City Coverage Waiver

Applicable [ ] Inapplicable [ ]

7. The engineering data submitted by the applicant(s) below does not clearly demonstrate that it provides a 3.16 mV/m signal to the entire proposed city of license, as required by Section 73.315(a) of the Commission's Rules:

APPLICANT(S) WAIVER JUSTIFICATION(S)

(a) The following applicant(s) has submitted facts and circumstances which persuade us that grant of a waiver of Section 73.315(a) would be in the public interest:

(b) The following applicant(s) has not shown circumstances which warrant a waiver of 73.315(a) and, accordingly, an issue will be specified:

(c) The following applicant(s) has not requested a waiver of 73.315(a) and, accordingly, an issue will be specified:

Financial Qualifications

Applicable [ ]. Inapplicable [ ]

8. The material submitted by the applicant(s) below does not demonstrate its financial qualifications. Although the financial standards are unchanged, the Commission has changed the application form to require only certification as to financial qualifications. Accordingly, the applicant(s) will be given 30 days from the release of this Order to review the financial proposal in light of Commission requirements, to make any changes that may be necessary and, if appropriate, to submit a certification to the presiding Administrative Law Judge in the manner called for in revised

Section III, Form 301. If the applicant(s) cannot make the required certification, it shall so notify the Judge who shall then specify an appropriate issue.

APPLICANTS(S) DEFICIENCY

Appli- Inappl-
cable icable
[ ] [ ]

9. The applicant(s) below has certified as to its financial qualifications. The certification, however, does not substantially meet the certification set out in revised Section III, Form 301. Accordingly, the applicant(s) will be given 30 days from the release of this Order to submit to the presiding Administrative Law Judge the certification required by the form or to advise the Judge that it cannot make the required certification. In the latter event, the Judge shall specify an appropriate issue.

APPLICANT(S):

Programming
Statement

Appli- Inappl-
cable icable
[ ] [ ]

10. The applicant(s) below has not submitted a description in narrative form of proposed programming relating to the issues of public concern facing its service area, pursuant to Paragraph 1, Section IV, Form 301. Accordingly, the applicant(s) will be required to file within 30 days of the release of this Order a narrative programming statement with the presiding Administrative Law Judge, or an appropriate issue will be specified by the Judge.

APPLICANT(S):

E.E.O.

Appli- Inappl-
cable icable
[ ] [ ]

11. The material submitted by the applicant(s) below fails to indicate that it will have less than 5 full time employees. The Commission requires that if there will be five or more full-time station employees, the applicant must complete and file Section VI of Form 301, and supply a statement detailing hiring and promotion policies even though there may be only a few members of minorities residing within the proposed service area. Accordingly, the applicant(s) will be required to file this Section VI information within 30 days of the release of this Order with the presiding

Administrative Law Judge, or an appropriate issue will be specified by the Judge.
APPLICANT(S):

Late Filed Amendments
Appli- cable [ ] Inappl- icable [ ]

12. The applicant(s) below has petitioned for leave to amend its application on the date(s) shown. The accompanying amendment(s) was filed after the "B" cut-off date, the last day for filing minor amendments as of right. Under Section 1.65 of the Commission's Rules, the amendment(s) is accepted for filing. However, an applicant may not improve its comparative position after the time for amendments as of right has passed. Therefore, any comparative advantage resulting from the amendment(s) will be disallowed.

APPLICANT(S)	DATE AMENDMENT(S) FILED

Areas & Populations
Appli- cable [ ] Inappl- icable [ ]

13. 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 other primary aural services in such areas, will be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accrue to any of the applicants.

Contingent Comparative
Appli- cable [ ] Inappl- icable [ ]

14. The respective proposals, although for different communities, would serve substantial areas in common. Consequently, in addition to determining, pursuant to Section 307(b) of the Communications Act of 1934, as amended, which of the proposals would best provide a fair, efficient and equitable distribution of radio service, a contingent comparative issue will also be specified.

Different Communities 307(b)
Appli- cable [ ] Inappl- icable [ ]

15. The respective proposals are for different communities. Consequently, it will be necessary to determine pursuant to Section 307(b) of the Communications Act of 1934, as amended, which of the proposals would best provide a fair, efficient and equitable distribution of radio services.

Air Hazard

Applicable [ ] Inapplicable [ ]

16. Since no determination has been received from the Federal Aviation Administration as to whether the antenna proposed by the applicant(s) below would constitute a hazard to air navigation, an issue with respect thereto will be included and the F.A.A. made a party to the proceeding.

APPLICANT(S):

17. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

18. 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:

ISSUES

Main Studio

Applicable [ ] Inapplicable [ ]

.To determine, pursuant to Section 73.1125, whether good cause exists for the proposed location of its main studio outside the community of license by the following applicant(s):

City Coverage

Applicable [ ] Inapplicable [ ]

.To determine whether the proposal of the following applicant(s) would provide coverage of the city sought to be served, as required by Section 73.315(a) of the Commission's Rules, and, if not, whether circumstances exist which warrant waiver of that Section:

307(b)

Applicable [ ] Inapplicable [ ]

.To determine: (a) the areas and populations which would receive primary aural service (1 mV/m or greater in the case of FM) from the proposals and the availability of other primary service to such areas and populations, and (b) in light thereof and pursuant to Section 307(b) of the Communications Act of 1934, as amended, which of the proposals would best provide a fair, efficient and equitable distribution of radio service.

Contingent Comparative
Appli- Inappl-
cable icable
[ ] [ ]

.To determine, in the event it is concluded that a choice between the applications should not be based solely on considerations relating to Section 307(b), which of the proposals would, on a comparative basis, best serve the public interest.

Comparative
Appli- Inappl-
cable icable
[ ] [ ]

.To determine which of the proposals would, on a comparative basis best serve the public interest.

Air Hazard
Appli- Inappl-
cable icable
[ ] [ ]

.To determine whether there is a reasonable possibility that the tower height and location proposed by the following applicant(s) would constitute a hazard to air navigation:

Ultimate
Appli- Inappl-
cable icable
[ ] [ ]

.To determine, in the light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted, if any.

ORDERING CLAUSES

Local Notice
Appli- Inappl-
cable icable
[ ] [ ]

19. IT IS FURTHER ORDERED, That within 30 days of the release of this ORDER, the following applicant(s) shall inform the presiding Administrative Law Judge as to whether local notice of filing of the application has been published:

Appli- Inappl-
cable icable
[ ] [ ]

20. IT IS FURTHER ORDERED, That within 30 days of the release of this Order, the following applicants shall inform the presiding Administrative Law Judge as to whether a corrected local notice of the filing of the application has been republished:

Main Studio Justification

Appli- cable [ ] Inappl- icable [ ]

21. IT IS FURTHER ORDERED, That the following applicant(s) shall file with the presiding Administrative Law Judge, within 30 days of the release of this Order, an amended response to Item 12, Section V-B, Form 301, and, if appropriate, a showing of good cause if its respective main studio will be located outside the city of license:

City Coverage Waiver

Appli- cable [ ] Inappl- icable [ ]

22. IT IS FURTHER ORDERED, That, as to the following applicant(s), the provisions of Section 73.315(a) ARE WAIVED to permit a signal level of less than 3.16 mV/m over the entire city of license:

Financial Qualifications

Appli- cable [ ] Inappl- icable [ ]

23. IT IS FURTHER ORDERED, That within 30 days of the release of this Order, the following applicant(s) shall submit the financial certification required by Section III, Form 301, or advise the Administrative Law Judge that the required certification cannot be made:

Programming Statement

Appli- cable [ ] Inappl- icable [ ]

24. IT IS FURTHER ORDERED, That within 30 days of the release of this Order, the following applicant(s) shall file an amendment with the presiding Administrative Law Judge describing its planned programming service relating to the issues of public concern facing its proposed service area:

E.E.O.

Appli- cable [ ] Inappl- icable [ ]

25. IT IS FURTHER ORDERED, That within 30 days of the release of this Order, the following applicant(s) shall submit Section VI information in accordance with the requirement of Section 73.2080(c) of the Commission's Rules to the presiding Administrative Law Judge:

BILLING CODE 6712-01-C

Late Filed Amendments

Appli- Inappl-
cable icable
[ ] [ ]

26. IT IS FURTHER ORDERED, That the petition for leave to amend filed by the following applicant(s) IS GRANTED, and the corresponding amendment(s) IS ACCEPTED to the extent indicated herein:

Air Hazard

Appli- Inappl-
cable icable
[ ] [ ]

27. IT IS FURTHER ORDERED, That the Federal Aviation Adminstration IS MADE A PARTY to this proceeding with respect to the air hazard issue only.

28. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 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 hearing and to present evidence on the issues specified in this Order.

29. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing 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 Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

Larry D. Eads, Chief
Audio Services Division
Mass Media Bureau

APPENDIX(ES)
[ ] IS [ ] IS NOT
ATTACHED

Appendix B—Sample Hearing Notice To Be Published in the Federal Register

Applications for Consolidated Hearing

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant	City/State	File No.	MM Docket No.
A.			
B.			
C.			

2. Pursuant to Section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety in a sample standardized Hearing Designation Order (HDO) which can be found at 48 FR——, May——, 1983. The issue headings shown below correspond to issue headings contained in the referenced sample HDO. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue headings	Applicants

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding may be obtained, by written or telephone request, from the Mass Media Bureau's Contact Representative, Room 242, 1919 M Street, NW., Washington, D.C. 20554. Telephone (202) 632-6334.

Larry D. Eads,

Chief, Audio Services Division, Moss Media Bureau.

[FR Doc. 83-13123 Filed 5-17-83; 8:45 am]
BILLING CODE 6712-01-M

federal register

Wednesday
May 18, 1983

Part III

Department of Energy

Federal Energy Regulatory Commission

Determinations by Jurisdictional Agencies Under the Natural Gas Act of 1978

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Volume 895]

Determinations by Jurisdictional Agencies Under the Natural Gas Policy Act of 1978

Issued: May 13, 1983.

The following notices of determination were received from the indicated jurisdictional agencies by the Federal Energy Regulatory Commission pursuant to the Natural Gas Policy Act of 1978 and 18 CFR 274.104. Negative determinations are indicated by a "D" before the section code. Estimated annual production (PROD) is in million cubic feet (MMCF).

The applications for determination are available for inspection except to the extent such material is confidential under 18 CFR 275.206, at the Commission's Division of Public Information, Room 1000, 825 North Capitol St., Washington, D.C. Persons objecting to any of these determinations may, in acordance with 18 CFR 275.03 and 275.204, file a protest with the Commission within fifteen days after publication of notice in the **Federal Register.**

Source data from the Form 121 for this and all previous notices is available on magnetic tape from the National Technical Information Service (NTIS). For information, contact Stuart Weisman (NTIS), at (703) 487-4808, 5285 Port Royal Rd., Springfield, Va. 22161.

Categories within each NGPA section are indicated by the following codes:

Section 102-1: New OCS lease
102-2: New well (2.5 Mile rule)
102-3: New well (1000 Ft rule)
102-4: New onshore reservoir
102-5: New reservoir on old OCS lease
Section 107-DP: 15,000 feet or deeper
107-GB: Geopressured brine
107-CS: Coal Seams
107-DV: Devonian Shale
107-PE: Production enhancement
107-TF: New tight formation
107-RT: Recompletion tight formation
Section 108: Stripper well
108-SA: Seasonally affected
108-ER: Enhanced recovery
108-PB: Pressure buildup

Kenneth F. Plumb,
Secretary.

NOTICE OF DETERMINATIONS — VOLUME 895
ISSUED MAY 13, 1983

JD NO	JA DKT	API NO	D SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
CALIFORNIA DEPARTMENT OF CONSERVATION								
-CONOCO INC			RECEIVED: 04/25/83		JA: CA			
8333925	83-2-0003	0411121097	103		GRUBB #327	SAN MIGUELITO	8.4	PACIFIC LIGHTING
8333918	83-2-0008	0411121062	103		GRUBB #328	SAN MIGUELITO	7.8	PACIFIC LIGHTING
8333917	83-2-0009	0411121063	103		GRUBB #340	SAN MIGUELITO	1.2	PACIFIC LIGHTING
8333916	83-2-0010	0411121037	103		GRUBB #341	SAN MIGUELITO	0.1	PACIFIC LIGHTING
8333922	83-2-0004	0411121120	103		GRUBB #375	SAN MIGUELITO	14.0	PACIFIC LIGHTING
8333921	83-2-0005	0411121171	103		GRUBB #376	SAN MIGUELITO	35.6	PACIFIC LIGHTING
8333920	83-2-0006	0411121121	103		GRUBB #377	SAN MIGUELITO	31.8	PACIFIC LIGHTING
8333919	83-2-0007	0411121150	103		GRUBB #389	SAN MIGUELITO	29.5	PACIFIC LIGHTING
8333924	83-2-0002	0411121155	103		GRUBB NO 204	SAN MIGUELITO	3.7	PACIFIC LIGHTING
-NATURAL GAS CORPORATION OF CALIF			RECEIVED: 04/25/83		JA: CA			
8333929	83-6-0012	0411320691	102-4		NISHIKAWA #2	TODHUNTERS LAKE FIELD	180.0	PACIFIC GAS & ELE
8333928	83-6-0011	0411320659	102-4		NISHIKAWA EL MACERO #1	TODHUNTERS LAKE	262.0	PACIFIC GAS & ELE
-SANTA FE ENERGY PRODUCTS CO			RECEIVED: 04/25/83		JA: CA			
8333908	83-2-0011	0411121186	103		ARCO 23	OJAI-SILVERTHREAD	0.0	ARCO OIL & GAS CO
8333909	83-2-0012	0411121207	103		ARCO 29	OJAI-SILVERTHREAD	130.0	ARCO OIL & GAS CO
8333926	83-6-0016	0411320729	103		CHAD-WFL #17	CONWAY RANCH GAS FIEL	0.0	PACIFIC GAS & ELE
8333910	83-2-0013	0411120878	103		TAR CREEK (UNION)44-28	SESPE	1.0	SHELL OIL CO
8333911	83-2-0014	0411121095	103		TAR CREEK 42B-28	SESPE	13.0	SHELL OIL CO
8333913	83-2-0019	0411121115	103		TAR CREEK 52-B-28	SESPE	5.0	SHELL OIL CO
8333914	83-2-0016	0411120978	103		TAR CREEK 53-28	SESPE	10.0	SHELL OIL CO
8333912	83-2-0015	0411120851	103		THORNBURY-GEIS 52-29	SESPE	4.0	SHELL OIL CO
-TENNECO OIL COMPANY			RECEIVED: 04/25/83		JA: CA			
8333925	83-4-0218	0402987215	103		YOWLUMNE UNIT "B" 78X-33	YOWLUMNE	73.0	ARCO OIL & GAS CO
-TXO PRODUCTION CORP			RECEIVED: 04/25/83		JA: CA			
8333930	83-6-0013	0402120244	102-4		"TORRES" 12-4	BOUNDE CREEK GAS	150.0	PACIFIC GAS & ELE
8333927	83-6-0015	0407720357	103		KAESLIN 4-1	HARTE GAS	200.0	PACIFIC GAS & ELE
8333931	83-6-0010	0401120231	102-4		MARTINEZ 4-1	ARBUCKLE GAS FIELD	180.0	PACIFIC GAS & ELE
-WESTMONT OIL INC			RECEIVED: 04/25/83		JA: CA			
8333915	83-2-0001	0411121011	102-4		WESTMONT BAILARD-KRAEMER #1 REDRILL	MONTALVOWEST	19.0	PACIFIC LIGHTING
MISSISSIPPI OIL & GAS BOARD								
-BIGLANE OPERATING CO			RECEIVED: 04/25/83		JA: MS			
8333999	12-83-533	2311320144	102-4		MASON-SOJOURNER #1	OLIVE	0.0	
-MARATHON OIL COMPANY			RECEIVED: 04/25/83		JA: MS			
8333998	8-83-53	2303500000	108		UNIT 5E-31 #1-E	MAXIE	2.0	UNITED GAS PIPE L
-THOMSON-MONTEITH			RECEIVED: 04/25/83		JA: MS			
8333996	5-83-351	2308720071	103		COLUMBUS AFB PARCEL 4 #1	CORINNE	540.0	FLORIDA GAS TRANS
8333997	7-83-351	2308720071	102-4		COLUMBUS AIR FORCE BASE PARCEL 4 #1	CORINNE	540.0	FLORIDA GAS TRANS
MONTANA BOARD OF OIL & GAS CONSERVATION								
-AMINOIL USA INC			RECEIVED: 04/25/83		JA: MT			
8334013	4-82-111	2508321478	103		WHITNEY #2	RIDGELAWN	8.0	MONTANA DAKOTA UT
8334005	4-82-110	2508321478	102-2		WHITNEY #2	RIDGELAWN	8.0	MONTANA DAKOTA UT

BILLING CODE 6717-01-M

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8334010	4-82-109	2508321481		103		WHITNEY #3	RIDGELAIN	11.0	MONTANA DAKOTA UT
8334003	4-82-108	2508321481		102-2		WHITNEY #3	RIDGELAIN	11.0	MONTANA DAKOTA UT
-BRANCH OIL & GAS		RECEIVED: 04/25/83 JA: MT							
8334015	4-82-114	2510122178		102-4		JOHNSON 12-22 SECTION 22-34N-3W	KEVIN-SUNBURST	180.0	ALOE VENTURES GAT
8334014	4-82-116	2510122072		102-4		POSTLEWAIT #8-21 SECTION 21-34N-3W	KEVIN-SUNBURST	2079.5	ALOE VENTURES GAT
8333932	4-82-115	2510122064		102-4		POSTLEWAIT 4-22 SECTION 22-34N-3W	KEVIN-SUNBURST	80.0	ALOE VENTURES GAT
8334011	4-82-118	2510121882		102-4		RAYMOND #6-26 SECTION 26-34N-3W	SOUTHWEST KEVIN GAS F	505.6	ALOE VENTURES GAT
8334017	4-82-120	2510121767		108		REIDT NO 8-11 SECTION 11-34N-3W	KEVIN SUNBURST GAS FI	669.7	ALOE VENTURES GAT
8334018	4-82-117	2510121944		102-4		REIDT 6-15 SECTION 15 34N R3W	KEVIN-SUNBURST GAS FI	6185.5	ALOE VENTURES GAT
-DIAMOND SHAMROCK CORPORATION		RECEIVED: 04/25/83 JA: MT							
8334001	4-82-100	2507321347		102-2		GRAYROCK STATE 11-12	WILDCAT	21.0	
8334002	4-82-101	2507321339		102-2		GRAYROCK STATE 14-1	WILDCAT	25.0	
8334020	4-82-103	2507321340		102-2		J O L FARMS FEE 23-2	MARIAS RIVER	29.0	
8334019	4-82-104	2510121828		102-2		ROBERTSON FEE 34-21	WILDCAT	7.0	
8334009	4-82-102	2510121826		102-2		UNDERDAHL FEE 13-27	MARIAS RIVER	19.0	
8334007	4-82-105	2510121837		102-2		UNDERDAHL FEE 13-35	WILDCAT	14.0	
8334008	4-82-106	2510121829		102-2		UNDERDAHL FEE 32-28	WILDCAT	7.0	
-FALCON-COLORADO EXPLORATION INC		RECEIVED: 04/22/83 JA: MT							
8333896	4-82-88	2507121718		102-2		STATE 1-22	SWANSON CREEK GAS FIE	10.0	MONTANA-DAKOTA UT
-FARMERS UNION CENTRAL EXCHANGE INC		RECEIVED: 04/22/83 JA: MT							
8333894	4-82-93	2509121357		102-2		NELSON 16-30	RESERVE	11.5	PHILLIPS PETROLEU
-MERLAND OIL & GAS INC		RECEIVED: 04/22/83 JA: MT							
8333897	4-82-89	2508521335		103		PICARD #2-14	NORTH BAINVILLE	8.9	DOME PETROLEUM CO
-MIDLANDS GAS CORPORATION		RECEIVED: 04/22/83 JA: MT							
8333895	4-82-92ER	2507121513		108-ER		SCHLEUSNER 1 1461	WILDCAT	8.0	KN ENERGY INC
-MIDLANDS GAS CORPORATION		RECEIVED: 04/25/83 JA: MT							
8334012	4-82-113	2507121618		108		HELLIE 1 8560	BOWDOIN	22.0	KN ENERGY INC
8334004	10-82-239	2507121417		108		1341-1	WILDCAT	21.0	KN ENERGY INC
8334006	10-82-264	2507121424		108		3152-1		22.0	KN ENERGY INC
-RANCK OIL CO		RECEIVED: 04/25/83 JA: MT							
8334016	4-82-119	2510105205		108		RICE #1	NORTH EIHRIDGE	13.1	ALOE VENTURES GAT
-SOUTHLAND ROYALTY CO		RECEIVED: 04/25/83 JA: MT							
8334009	4-82-107	2508321546		102-4		NEVINS #2-19	THREE BUTTES	11.0	MGPC INC
-WEST GAS INC		RECEIVED: 04/22/83 JA: MT							
8333898	4-82-94	2509521157		108		NORDAHL 5-13	LAKE BASIN	1.8	MONTANA DAKOTA UT

NEW MEXICO DEPARTMENT OF ENERGY & MINERALS

-BEACH EXPLORATION INC		RECEIVED: 04/25/83 JA: NM							
8333907		3001522696		103		NEW MEXICO 36 #1	E RED LAKE	255.5	PHILLIPS PETROLEU
-DUGAN PRODUCTION CORP		RECEIVED: 04/25/83 JA: NM							
8333899		3004525353		107-TF		SLY SLAV #2	BASIN DAKOTA	35.0	NORTHWEST PIPELIN
-ESTORIL PRODUCING CORP		RECEIVED: 04/25/83 JA: NM							
8333906		3002526848		103		CURRY STATE #1	ANTELOPE RIDGE	1095.0	GAS CO OF NEW MEX
-FRED POOL OPERATING CO		RECEIVED: 04/25/83 JA: NM							
8333908		3000560992		102-2		EASTLAND STATE #1	FOOR RANCH PRE PERMAI	0.0	TRANSWESTERN PIPE
-KERN CO		RECEIVED: 04/25/83 JA: NM							
8333903		3002500000		103		EUNICE COOPER #2	LANGLIE MATTIX	48.0	
-TAMARACK PETROLEUM CO INC		RECEIVED: 04/25/83 JA: NM							
8333902		3002500000		103		TENNECO HARRIS (1-1-2-13S-38E)	BRONCO (WOLFCAMP)	14.0	WARREN PETROLEUM
-YATES PETROLEUM CORPORATION		RECEIVED: 04/25/83 JA: NM							
8333905		3000561900		102-3	107-TF	BITTER LAKE "PX" ST #2	UND PECOS SLOPE ABO	0.0	TRANSWESTERN PIPE
8333901		3000561785		103		LITTLE CUEVO UNIT #1	WILDCAT	0.0	TRANSWESTERN PIPE
8333904		3003720029		103		T-4 CATTLE CO #1	WILDCAT	0.0	

NEW YORK DEPARTMENT OF ENVIRONMENTAL CONSERVATION

-ABARTA OIL & GAS INC		RECEIVED: 04/25/83 JA: NY							
8333948	3939	3102916954		107-TF		ABARTA B81-009 OFFHAUS	LAKESHORE	0.0	NATIONAL FUEL GAS
8333947	3940	3102916978		107-TF		ABARTA E 81-010 (SCOUT TOAD HOLLOW)	HAMBURG	0.0	NATIONAL FUEL GAS
-ARAPAHO VENTURES OF NEW YORK INC		RECEIVED: 04/25/83 JA: NY							
8333949	5061	3112113890		107-RT		KEITH PAGE #1	WILDCAT	11.9	COLUMBIA GAS TRAN
-CONSOLIDATED GAS SUPPLY CORPORATION		RECEIVED: 04/25/83 JA: NY							
8333955	5046	3102910959		108		CLARENCE HEARY N-1342	WILDCAT	21.0	GENERAL SYSTEM PU
-EMPIRE ENERGIES		RECEIVED: 04/25/83 JA: NY							
8333940	3926	3102917791		107-TF		MAMMOSER #1	LAKE SHORE	12.0	NATIONAL FUEL GAS
-GYPSUM ENERGY MANAGEMENT CO		RECEIVED: 04/25/83 JA: NY							
8333973	4131	3103715333		107-TF		ABRAMS #1	HURON CREEK	8.2	U S GYPSUM CO
8333983	5026	3112117188		103		ALMETER #1	WILDCAT	4.0	U S GYPSUM CO
8333982	5027	3112117188		107-TF		ALMETER #1	WILDCAT	4.0	U S GYPSUM CO
8333989	5025	3112117603		107-TF		BEAGLE #1	WILDCAT	14.0	U S GYPSUM CO
8333988	5024	3112117603		103		BEAGLE #1	WILDCAT	14.0	U S GYPSUM CO
8333966	4071	3103713917		107-TF		BURKHARDT #1	HURON CREEK	2.3	U S GYPSUM CO
8333991	5035	3112117620		107-TF		BYRNCLIFF #1	WILDCAT	3.0	U S GYPSUM CO
8333990	5034	3112117620		103		BYRNCLIFF #1	WILDCAT	3.0	U S GYPSUM CO
8333974	4129	3103715881		107-TF		CLARKE #1	HURON CREEK	3.5	U S GYPSUM CO
8333985	5032	3112117601		103		CONRAD #1	WILDCAT	13.5	U S GYPSUM CO
8333984	5036	3112117601		107-TF		CONRAD #1	WILDCAT	13.5	U S GYPSUM CO
8333986	5038	3112117282		107-TF		DAHLER #1	WILDCAT	11.0	U S GYPSUM CO
8333987	5039	3112117282		103		DAHLER #1	WILDCAT	11.0	U S GYPSUM CO
8333975	4127	3103713921		107-TF		DARKER #1	HURON CREEK	0.4	U S GYPSUM CO
8333934	4125	3103716801		107-TF		FENTON #1	HURON CREEK	1.3	U S GYPSUM CO
8333979	5030	3112117602		103		GADD #1	WILDCAT	13.0	U S GYPSUM CO
8333978	5031	3112117602		107-TF		GADD #1	WILDCAT	13.0	U S GYPSUM CO
8333962	4123	3103715882		107-TF		GILDNER #1	HURON CREEK	2.0	U S GYPSUM CO
8333969	4121	3103715920		107-TF		HAGEN #1	HURON CREEK	8.2	U S GYPSUM CO
8333977	5032	3112117678		103		HUZELLA UNIT D-17 #1	WILDCAT	14.3	U S GYPSUM CO
8333976	5033	3112117678		107-TF		HUZELLA UNIT D-17 #1	WILDCAT	14.3	U S GYPSUM CO
8333961	4091	3103715169		107-TF		JERICHO LAKE #1	HURON CREEK	5.0	U S GYPSUM CO
8333968	4119	3103715898		107-TF		KONFEDERATH #1	HURON CREEK	3.9	U S GYPSUM CO
8333937	4089	3103715165		107-TF		LAMB #2	HURON CREEK	12.0	U S GYPSUM CO
8333967	4117	3103715899		107-TF		MANNE #1	HURON CREEK	2.4	U S GYPSUM CO
8333959	4135	3103715897		107-TF		MURRAY #1	HURON CREEK	2.5	U S GYPSUM CO
8333980	5029	3112117623		107-TF		P MARTIN #1	WILDCAT	3.0	U S GYPSUM CO
8333981	5028	3112117623		103		P MARTIN #1	WILDCAT	3.0	U S GYPSUM CO
8333965	4115	3103715879		107-TF		PERRY #1	HURON CREEK	2.5	U S GYPSUM CO
8333964	4113	3103715884		107-TF		PHELPS #2	INDIAN FALLS	2.2	U S GYPSUM CO
8333938	4087	3103715167		107-TF		POKORNY #1	HURON CREEK	9.5	U S GYPSUM CO
8333963	4111	3103715880		107-TF		READ #1	HURON CREEK	1.0	U S GYPSUM CO
8333971	4100	3103715163		107-TF		SCHUNK #1	HURON CREEK	1.5	U S GYPSUM CO
8333935	4109	3103715328		107-TF		SCHUNK #2A	HURON CREEK	0.8	U S GYPSUM CO
8333936	4108	3103715162		107-TF		SCHUNK #3	HURON CREEK	1.0	U S GYPSUM CO
8333972	4102	3103715170		107-TF		SEAMANS #1	HURON CREEK	1.2	U S GYPSUM CO
8333960	4133	3103716172		107-TF		STALICA #1	HURON CREEK	2.5	U S GYPSUM CO

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8333933	4105	3103715252		107-TF		U S G #1	INDIAN FULLER	1.2	U S GYPSUM CO
8333970	4103	3103715168		107-TF		WINKSTERN #1	HURON CREEK	24.3	U S GYNSUM CO
-JAVA OIL & GAS CO INC				RECEIVED:	04/25/83	JA: NY			
8333953	4991	3102913688		108		CAYUGA HEIGHTS #203	ALDEN-LANCASTER	0.0	NATIONAL FUEL GAS
-LENAPE RESOURCES CORP				RECEIVED:	04/25/83	JA: NY			
8333954	5041	3105117380		107-TF		F E ANDERSON UNIT #1 LRC #170	CALEDONIA	20.0	NEW JERSEY NATURA
8333941	3997	3112113999		107-TF		SIEBERT #1 LRC #20	LEICESTER	2.0	ELIZABETHTOWN GAS
8333942	3998	3112117233		107-TF		TAYLOR FARM #1 LRC #121	LEICESTER	20.0	NEW JERSEY NATURA
8333943	3896	3112113963		107-TF		WILLIAM GRAHAM #1 LRC #19	LEICESTER	20.0	ELIZABETHTOWN GAS
-MAYNARD OIL COMPANY				RECEIVED:	04/25/83	JA: NY			
8333944	3905	3102917183		107-TF		CASH C #1 #02322	ORCHARD PARK	0.0	NATIONAL FUEL GAS
8333945	3906	3102917246		107-TF		GERHOLD C #1 #02401	ORCHARD PARK	0.0	NATIONAL FUEL GAS
8333946	3907	3102917169		107-TF		MULHOLLAN E #1 02309	ORCHARD PARK	0.0	NATIONAL FUEL GAS
-NORTH COLLINS DRILLING PROGRAM				RECEIVED:	04/25/83	JA: NY			
8333957	3608	3102914797		107-TF		C & M EDER #1 #1486	NORTH COLLINS	8.5	NATIONAL FUEL GAS
8333958	3607	3102914798		107-TF		N L & V L SCHMITZ #1 #1487	NORTH COLLINS	8.5	NATIONAL FUEL GAS
8333956	3606	3102914799		107-TF		N L & V L SCHMITZ #2 #1488	NORTH COLLINS	8.5	NATIONAL FUEL GAS
-P & S DRILLING INC				RECEIVED:	04/25/83	JA: NY			
8333951	5048	3102947974		107-TF		PIOTROWSKI #1	ELMA	1.0	NATIONAL FUEL GAS
8333952	5049	3102917974		103		PIOTROWSKI ET AL #1	ELMA	1.0	NATIONAL FUEL GAS
-SHAWNEE EXPLORATION INC				RECEIVED:	04/25/83	JA: NY			
8333950	5051	3102918004		107-TF		ANDZEL #1	BRANT	15.0	SCG GAS QUEST INC
-TRAHAN PETROLEUM INC				RECEIVED:	04/25/83	JA: NY			
8333939	3977	3100917293		107-TF		CONGDON NY #100 31-009-17293	CONEWANGO	36.0	COLUMBIA GAS TRAN
**********									
VIRGINIA DEPARTMENT OF LABOR & INDUSTRY									
**********									
-COLUMBIA GAS TRANSMISSION CORP				RECEIVED:	04/25/83	JA: VA			
8333995		4502700477		103	107-TF	BIG SANDY COAL CORP 821020	VIRGINIA FIELD AREA H	93.1	COLUMBIA GAS TRAN
-PEAKE OPERATING CO				RECEIVED:	04/25/83	JA: VA			
8333992		4502720540		103	107-TF	BREEDING #1-B	ROCK LICK DISTRICT	5.0	
-PHILADELPHIA OIL COMPANY				RECEIVED:	04/25/83	JA: VA			
8333993		4505120467		103	107-TF	ALBERT C ADKINS ET AL - NO P-135	NORA	55.9	KENTUCKY WEST VIR
8333994		4505119806		107-TF		G W SMITH - BP-145	NORA	39.0	KENTUCKY WEST VIR
**********									
WEST VIRGINIA DEPARTMENT OF MINES									
**********									
-CONSOLIDATED GAS SUPPLY CORPORATION				RECEIVED:	04/25/83	JA: WV			
8334063		4704101861		108		A P WHITE WN-11465	FREEMANS CREEK	18.0	GENERAL SYSTEM PU
8334060		4700500905		108		ALBERT H COLE WN-10213	SHERMAN	1.0	GENERAL SYSTEM PU
8334058		4704500618		108		AMHERST LAND COMPANY WN-10078	TRIADELPHIA	13.0	GENERAL SYSTEM PU
8334055		4705900444		108		BRUCE MCDONALD HOLDING CO WN-9911	STAFFORD	22.0	GENERAL SYSTEM PU
8334023		4709700998		108		BURTON C MORELAND WN-10856	UNION	20.0	GENERAL SYSTEM PU
8334035		4703300525		108		CAROLINE DUBOIS WN-11188	ELK	3.0	GENERAL SYSTEM PU
8334022		4709300027		108		CHARLES SHAHAN WN-10162	LICKING	11.0	GENERAL SYSTEM PU
8334024		4706501249		108		CHARLESTON NATL BANK 12349	CROOK	6.0	GENERAL SYSTEM PU
8334033		4704700852		108		CONSOLIDATED COAL 12658	ELKHORN	15.0	GENERAL SYSTEM PU
8334043		4704700735		108		CONSOLIDATION COAL CO 12415	ELKHORN	18.0	GENERAL SYSTEM PU
8334044		4706100327		108		DECKERS CREEK SAND CO WN-11414	MORGAN	16.0	GENERAL SYSTEM PU
8334021		4707700195		108		EDWIN WOLFE 12579	LYON	17.0	GENERAL SYSTEM PU
8334032		4700100395		108		EGBERT S HARVEY WN-10996	UNION	22.0	GENERAL SYSTEM PU
8334045		4707700075		108		FLORENCE M AUVIL WN-10096	RENO	13.0	GENERAL SYSTEM PU
8334042		4709100890		108		HARLEY MCCARTNEY WN-11265	KNOTTSVILLE	19.0	GENERAL SYSTEM PU
8334062		4704101858		108		IRA P SIMMONS WN-11444	FREEMANS CREEK	1.0	GENERAL SYSTEM PU
8334054		4703391606		108		J H SOMMERVILLE WN-8177	UNION	2.0	GENERAL SYSTEM PU
8334061		4703300273		108		JACKSON ARNOLD 10443	ELK	5.0	GENERAL SYSTEM PU
8334041		4703300110		108		JULIUS HADDIX WN-10258	DRY FORK	12.0	GENERAL SYSTEM PU
8334052		4704500374		108		LAWSON HRS INC WN-9850	LOGAN	13.0	GENERAL SYSTEM PU
8334040		4706100322		108		LEISTA ROBY WN-11197	CLINTON	19.0	GENERAL SYSTEM PU
8334046		4703301915		108		LILLIE GIFFORD 12530	GRANT	11.0	GENERAL SYSTEM PU
8334037		4704101575		108		M C BURNSIDE WN-10953	FREEMANS CREEK	8.0	GENERAL SYSTEM PU
8334038		4704101726		108		M C BURNSIDE WN-11332	FREEMANS CREEK	18.0	GENERAL SYSTEM PU
8334047		4704102532		108		MADGE FULTINEAR 12525	FREEMANS CREEK	10.0	GENERAL SYSTEM PU
8334031		4704700477		108		MCDOWELL-POCAHONTAS WN-11250	SANDY RIVER	22.0	GENERAL SYSTEM PU
8334048		4703300863		108		Q BOGGESS 11858	SARDIS	9.0	GENERAL SYSTEM PU
8334050		4703301524		108		R S REYNOLDS WN-7953	BUFFALO	1.0	GENERAL SYSTEM PU
8334034		4703300496		108		ROSCOE F DYER WN-11020	ELK	7.0	GENERAL SYSTEM PU
8334057		4704900359		108		S A TOWNE WN-1822	MANNINGTON	19.0	GENERAL SYSTEM PU
8334039		4706100314		108		SELLARO "A" WN-10977	CLINTON	14.0	GENERAL SYSTEM PU
8334053		4704101655		108		SOPHIA BUTCHER WN-8354	FREEMANS CREEK	19.0	GENERAL SYSTEM PU
8334056		4709300022		108		THADDEUS PRITT WN-10009	LICKING	14.0	GENERAL SYSTEM PU
8334051		4703300077		108		TILMAN BOGGESS WN-3224	EAGLE	1.0	GENERAL SYSTEM PU
8334059		4700100576		108		W R SHAW WN-11460	PHILIPPI	18.0	GENERAL SYSTEM PU
8334036		4703300540		108		WILLIAM BURNSIDE WN-11263	UNION	14.0	GENERAL SYSTEM PU
8334049		4700101010		108		WILLIE B & HOFFMAN TRIMBLE WN-7185	UNION	3.0	GENERAL SYSTEM PU
-UNION DRILLING INC				RECEIVED:	04/25/83	JA: WV			
8334027		4709701950		108		BRENT SCOTT #1 1487	MEADE DISTRICT	25.0	COLUMBIA GAS TRAN
8334026		4709702005		108		FLODA DINSER #1 1473	MEADE DISTRICT	22.0	COLUMBIA GAS TRAN
8334025		4709702006		108		FLODA DINSER #2 1480	MEADE DISTRICT	25.0	COLUMBIA GAS TRAN
8334029		4709702055		108		G H ERVIN #1 1559	MEADE DISTRICT	24.0	COLUMBIA GAS TRAN
8334030		4709702068		108		OLEN CARPENTER #2 1571	MEADE DISTRICT	23.0	COLUMBIA GAS TRAN
8334028		4709702052		108		WOODY LUMBER CO #1 1558	MEADE DISTRICT	16.0	COLUMBIA GAS TRAN
**********									
** DEPARTMENT OF THE INTERIOR, MINERALS MANAGEMENT SERVICE, METAIRIE,LA									
**********									
-AMINOIL USA INC				RECEIVED:	04/25/83	JA: LA 3			
8334097	G2-3022	1770340211		102-5		OCS-G-0958 WELL NO A-9	EAST CAMERON AREA	1500.0	SEA ROBIN PIPELIN
8334071	G3-3499	1770240278		108		WEST CAMERON BLOCK 595 #A-1	WEST CAMERON	0.0	COLUMBIA GAS TRAN
8334123	G3-3497	1770240287		108		WEST CAMERON BLOCK 595 #A-2	WEST CAMERON	0.0	COLUMBIA GAS TRAN
-CHEVRON U S A INC				RECEIVED:	04/25/83	JA: LA 3			
8334115	G2-2928	1771540291		102-5		OCS-G-1241 NO 17	SOUTH TIMBALIER	118.0	TRUNKLINE GAS CO
-EXXON CORPORATION				RECEIVED:	04/25/83	JA: LA 3			
8334069	G3-3509	1770840587		102-1		OCS-G 4109 NO A-11	SOUTH MARSH ISLAND	100.0	COLUMBIA GAS TRAN
-GETTY OIL COMPANY				RECEIVED:	04/25/83	JA: LA 3			
8334093	G2-2998	1770140022		102-5		WEST CAMERON 436 A-38	WEST CAMERON	1200.0	TRANSCONTINENTAL
-GULF OIL CORPORATION				RECEIVED:	04/25/83	JA: LA 3			
8334104	G3-3555	1770440551		102-1		E CAMERON BLOCK 330 OCS-G 3540 #B-1	EAST CAMERON	115.0	TEXAS EASTERN TRA
8334103	G3-3556	1770440556		102-1		E CAMERON BLOCK 330 OCS-G 3540 #B-3	EAST CAMERON	91.0	TEXAS EASTERN TRA
8334064	G2-3274	1772040091		102-5		OCS-G 1101 WELL G-13 WD BLK 117	WEST DELTA	158.0	TEXAS EASTERN TRA
8334081	G2-3174	1772040095		102-5		OCS-G 1101 WELL G-17 WD BLK 117	WEST DELTA	912.0	TEXAS EASTERN TRA
8334066	G2-3175	1772040095		102-5		OCS-G 1101 WELL G-17-D WD BLK 117	WEST DELTA	767.0	TEXAS EASTERN TRA
8334082	G2-3173	1772040056		102-5		OCS-G 1101 WELL G-3-D WD BLK 117	WEST DELTA	113.0	TEXAS EASTERN TRA
8334068	G3-3513	1772440239		102-1		OCS-G 4127 WELL A-3	MAIN PASS AREA	62.0	SOUTHERN NATURAL
8334073	G3-3514	1772440239		102-1		OCS-G 4127 WELL A-3-D	MAIN PASS AREA	125.0	SOUTHERN NATURAL

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8334106	G3-3553	1772440241		102-1		OCS-G 4127 WELL A-4	MAIN PASS AREA	35.0	SOUTHERN NATURAL
-MARATHON OIL COMPANY				RECEIVED:	04/25/83	JA: LA 3			
8334067	G2-3396	1772240032		102-5		SOUTH PASS BLOCK 89 WELL A-5	SOUTH PASS SOUTHEAST	146.0	TEXAS EASTERN TRA
8334080	G2-3031	1772240053		102-5		SOUTH PASS BLOCK 89 WELL B-1	SOUTH PASS SOUTHEAST	742.3	TEXAS EASTERN TRA
8334065	G2-3328	1772240068		102-5		SOUTH PASS BLOCK 89 WELL B-4	SOUTH PASS SOUTHEAST	438.0	TEXAS EASTERN TRA
-ODECO OIL & GAS CO				RECEIVED:	04/25/83	JA: LA 3			
8334084	G2-3075	1771540467		102-5		OCS-0605 NO B-13A	SOUTH TIMBALIER	450.0	TRUNKLINE GAS CO
-SHELL OFFSHORE INC				RECEIVED:	04/25/83	JA: LA 3			
8334079	G2-3039	1771500729		102-5		S T 176 FLD OCS-G 1249 NO A-11-A	SOUTH TIMBALIER	1165.0	TRUNKLINE GAS CO
8334096	G2-3021	1772140136		102-5		SP 27 FLD OCS 0694 NO 188-A	SOUTH PASS	275.0	TENNESSEE GAS PIP
8334083	G2-3074	1772100502		102-5		SP 27 FLD OCS 0694 NO 203	SOUTH PASS	10.0	TENNESSEE GAS PIP
8334072	G3-3523	1771640016		102-1		ST 300 OCS-G 4240 NO A-4	SOUTH TIMBALIER	0.0	
-SONAT EXPLORATION COMPANY				RECEIVED:	04/25/83	JA: LA 3			
8334085	G2-3078	1770340193		102-5		C-55TA	EAST CAMERON	2175.0	SOUTHERN NATURAL
8334111	G2-2940	1770340195		102-5		EAST CAMERON 45/46 D-1	EAST CAMERON	1971.0	SOUTHERN NATURAL
-SUPERIOR OIL CO				RECEIVED:	04/25/83	JA: LA 3			
8334100	G2-2908	1770940364		102-5		OCS-0797 NO F-2	EUGENE ISLAND	300.0	TRANSCONTINENTAL
-TENNECO OIL COMPANY				RECEIVED:	04/25/83	JA: LA 3			
8334105	G3-3554	1773140827		102-1		SABINE PASS 13 #B-1	SABINE PASS	1825.0	TENNESSEE GAS PIP
8334121	G2-3395	1773140005		102-1		SABINE PASS 13 #C-1	SABINE PASS	1750.0	
-TEXACO INC				RECEIVED:	04/25/83	JA: LA 3			
8334087	G2-3108	1770740397		102-5		OCS-G-0310 S MARSH ISLAND 211 #48	SOUTH MARSH ISLAND	3650.0	TEXAS GAS TRANSMI
8334109	G2-2953	1771940208		102-5		OCS-G-2937 W D 109 #A-3	WEST DELTA	602.0	NATURAL GAS PIPEL
8334116	G2-3315	1771940267		102-5		OCS-G-2937 WEST DELTA 109 #A-9	WEST DELTA	2190.0	NATURAL GAS PIPEL
-UNION OIL COMPANY OF CALIF				RECEIVED:	04/25/83	JA: LA 3			
8334078	G2-3042	1770540535		102-5		OCS-G 3327 NO 3	VERMILION	2000.0	
-ZAPATA EXPLORATION CO				RECEIVED:	04/25/83	JA: LA 3			
8334120	G2-2892	1770240609		102-5		W CAMERON BLOCK 538 WELL NO A-3	WEST CAMERON S ADD	912.5	UNITED GAS PIPELI
8334119	G2-2893	1770240609		102-5		W CAMERON BLOCK 538 WELL NO A-3D	WEST CAMERON S ADD	183.0	UNITED GAS PIPELI
8334118	G2-2894	1770240666		102-5		W CAMERON BLOCK 538 WELL NO A-4	WEST CAMERON S ADD	250.0	UNITED GAS PIPELI
8334117	G2-2895	1770240666		102-5		W CAMERON BLOCK 538 WELL NO A-4D	WEST CAMERON S ADD	250.0	UNITED GAS PIPELI
8334088	G2-2896	1770240667		102-5		WEST CAMERON BLOCK 538 WELL NO A-5	WEST CAMERON S ADD	1022.0	UNITED GAS PIPELI
8334089	G2-2897	1770240667		102-5		W CAMERON BLOCK 538 WELL NO A-5D	WEST CAMERON S ADD	500.0	UNITED GAS PIPELI
8334090	G2-2898	1770240668		102-5		WEST CAMERON BLOCK 538 WELL NO A-6	WEST CAMERON S ADD	840.0	UNITED GAS PIPELI
8334091	G2-2899	1770240668		102-5		W CAMERON BLOCK 538 WELL NO A-6D	WEST CAMERON S ADD	730.0	UNITED GAS PIPELI
8334092	G2-2900	1770240682		102-5		WEST CAMERON BLOCK 538 WELL NO A-7	WEST CAMERON S ADD	1095.0	UNITED GAS PIPELI
8334074	G2-2901	1770240682		102-5		WEST CAMERON BLOCK 538 WELL NO A-7D	WEST CAMERON S ADD	912.5	UNITED GAS PIPELI
-AMINOIL USA INC				RECEIVED:	04/25/83	JA: TX 3			
8334107	G2-2955	4271140192		102-5		OCS-G-2735 WELL #A-4A	HIGH ISLAND	250.0	NATURAL GAS PIPEL
-AMOCO PRODUCTION CO				RECEIVED:	04/25/83	JA: TX 3			
8334122	G2-3020	4270240054		102-5		OCS-G-3018 WELL NO A-3	MUSTANG ISLAND	2329.0	SOUTHERN NATURAL
8334095	G2-3018	4270240059		102-5		OCS-G-3018 WELL NO A-5	MUSTANG ISLAND	1507.0	SOUTHERN NATURAL
8334094	G2-3019	4270240063		102-5		OCS-G-3018 WELL NO A-6	MUSTANG ISLAND	2329.0	SOUTHERN NATURAL
-ARCO OIL AND GAS COMPANY				RECEIVED:	04/25/83	JA: TX 3			
8334102	G2-2869	4270240065		102-5		OCS G-3022 MUSTANG ISL BLK 763 #A-3	MUSTANG ISLAND BLOCK	1758.0	TRANSCONTINENTAL
-CHEVRON U S A INC				RECEIVED:	04/25/83	JA: TX 3			
8334077	G2-3071	4270840098		102-5		OCS-G-0518 NO 8	HIGH ISLAND	1300.0	
8334086	G2-3101	4270240060		102-5		OCS-G-3020 NO 6D	MUSTANG ISLAND	1703.0	NATURAL GAS PIPEL
-MCMORAN OFFSHORE EXPLORATION CO				RECEIVED:	04/25/83	JA: TX 3			
8334110	G2-2951	4270940686		102-5		OCS-G 2360 #B-10	HIGH ISLAND	68.0	TRANSCONTINENTAL
8334108	G2-2952	4270940689		102-5		OCS-G 2360 #B-11	HIGH ISLAND	70.0	TRANSCONTINENTAL
8334075	G2-2903	4270940644		102-5		OCS-G 2360 #B-2	HIGH ISLAND	2190.0	TRANSCONTINENTAL
8334076	G2-2904	4270940656		102-5		OCS-G 2360 #B-3	HIGH ISLAND	63.0	TRANSCONTINENTAL
8334099	G2-2910	4270940657		102-5		OCS-G 2360 #B-4	HIGH ISLAND	2000.0	TRANSCONTINENTAL
8334098	G2-2911	4270940664		102-5		OCS-G 2360 #B-5	HIGH ISLAND	2000.0	TRANSCONTINENTAL
8334113	G2-2931	4270940667		102-5		OCS-G 2360 #B-7(ST-1)	HIGH ISLAND	70.0	TRANSCONTINENTAL
8334114	G2-2930	4270940671		102-5		OCS-G 2360 #B-8	OCS-G 2360 HIGH ISLAN	2920.0	TRANSCONTINENTAL
8334112	G2-2936	4270940672		102-5		OCS-G 2360 #B-9	HIGH ISLAND	2000.0	TRANSCONTINENTAL
-TENNECO OIL COMPANY				RECEIVED:	04/25/83	JA: TX 3			
8334078	G3-3498	4271540014		102-1		SABINE PASS 18 #A-5	SABINE PASS	1325.0	TENNESSEE GAS PIP
-TEXAS GAS EXPLORATION CORP				RECEIVED:	04/25/83	JA: TX 3			
8334101	G2-2854	4271140256		102-5		UNION OIL COMPANY OF CALIFORNIA #A4	HIGH ISLAND	0.0	TEXAS GAS TRANSMI

[FR Doc. 83-13328 Filed 5-17-83; 8:45 am]

BILLING CODE 6717-01-C

federal register

Wednesday
May 18, 1983

Part IV

Department of the Interior

Fish and Wildlife Service

Department of Commerce

National Oceanic and Atmospheric Administration

Transfer of Marine Mammal Management Authority to States

Reprinted From the Federal Register of May 6, 1983

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 18, 216, and 403

Transfer of Marine Mammal Management Authority to States

[NOTE: This document originally appeared in the issue of May 6, 1983 at 48 FR 20614. It is reprinted at the request of the Department of the Interior because pages 20615–20628 of that document were omitted in the production process from some copies of the May 6 issue.]

AGENCIES: Fish and Wildlife Service, Interior; National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce.

ACTION: Final rule

SUMMARY: The Fish and Wildlife Service (FWS) and the National Marine Fisheries Services (NMFS) are adopting a final rule to implement amendments to Section 109 of the Marine Mammal Protection Act (hereinafter referred to as "MMPA," or "the Act"). These regulations establish procedures for the transfer of marine mammal management authority to the states, the form and minimum requirements of a state application for the transfer of management authority, the relationship between Federal and state wildlife agencies both prior and subsequent to the transfer of management authority, and the revocation and return to the FWS or NMFS of management authority once transferred to the states.

EFFECTIVE DATE: June 6, 1983.

ADDRESSES: Chief, Division of Wildlife Management, Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240; or Assistant Administrator for Fisheries, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce, Washington, D.C. 20235

FOR FURTHER INFORMATION CONTACT: Mr. William Reffalt, Chief, Division of Wildlife Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240 (202) 632–2202; or Richard B. Roe, Acting Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service, Department of Commerce, Washington, D.C. 20235 (202) 634–7461.

SUPPLEMENTARY INFORMATION: On October 9, 1981, the President approved Pub. L. 97–58 amending various provisions of the Marine Mammal Protection Act (MMPA), 16 U.S.C. 1361 *et seq.* One aspect of these amendments altered the mechanism for the transfer of marine mammal management authority to the states under section 109 of the Act, 16 U.S.C. 1379. Under the pre-existing statutory procedures, states were required to request the Fish and Wildlife Service (FWS) or the National Marine Fisheries Service (NMFS) to return management of the species. If a state sought authority to allow taking of the marine mammals under its management program, the state was required to request the FWS or NMFS to waive the moratorium on the taking of the species. This request required a formal Federal hearing before an Administrative Law Judge concerning the status of the requested species, and the permissible number of animals to be taken, as well as consideration of the state's proposed laws and regulations that would govern the taking of the species. The proposed waiver of the moratorium to allow taking of the species also required compliance with the provisions of the National Environmental Policy Act. In reviewing these procedures, Congress found that the lengthy process had resulted in a situation in which the goal of the Act—effective management to maintain healthy populations of marine mammals—was being impaired.

To remedy this problem, Congress established a simplified procedure under which a state could resume management of marine mammal species. This procedure entails a three-step process. First, the state must submit a request to the FWS or NMFS for transfer of management authority for a given species or a number of species of marine mammals. This request and its supporting documentation is reviewed by the appropriate Service to determine if the state has developed and will implement a program for the conservation and management of the species which meets certain requirements set forth in the Act. Second, if the FWS or NMFS publishes a proposed finding that the state program meets these requirements, the state must make a determination, under procedures set by the Act, of the optimum sustainable population ("OSP") of the species and the maximum allowable take of the species that is consistent with maintaining the species at OSP. Third, the state's determinations must be implemented through state laws and/or regulations and, if the range of the species extends beyond the territorial water of the state, the state and Federal governments must agree on a process for allocating the take of the species in areas under respective state and Federal jurisdictions. Once this "cooperative allocation agreement", if required, has been implemented and the OSP and maximum allowable take determinations are final and implemented under state law, the Service will publish a final finding and rule transferring exclusive authority to manage marine mammals to the state for the area within its jurisdiction, including its territorial waters. The only exception to this assumption of exclusive jurisdiction would be for takings by non-state personnel for scientific research and public display purposes and takings by Federal officials and agents for health and welfare purposes, activities which remain under the control of the Federal government pursuant to section 109 of the Act.

On May 12, 1982 the FWS published proposed regulations to implement the statutory procedures for transfer of marine mammal management authority to the states (47 FR 20508). The NMFS also published corresponding regulations for species under its jurisdiction (47 FR 20496). After consideration of 26 letters of public comment the proposed regulations have been amended slightly to clarify further certain provisions, especially those involving the timing of state and Federal actions, and subsistence use provisions relating to the State of Alaska.

The Marine Mammal Commission recommended that FWS's final regulations implementing statutory procedures to transfer marine mammal management authority to states, and any supplementary information explaining them in the notice of final rulemaking, be identical to those published by the NMFS. This is to avoid any potential confusion resulting from different explanations by the two agencies of the already complex transfer process. The Services decided that this recommendation has merit and that these regulations should be published jointly as a final rule and later codified at 50 CFR Part 403. Former regulations governing transfer of management authority in 50 CFR Parts 18 and 216 have been deleted and replaced with references to the joint regulations now found in 50 CFR Part 403.

Although three commentators registered opposition to the idea of a transfer of management authority to states, no party questioned any major interpretations of the Act as set forth in these regulations. The Marine Mammal Commission, for example, recommended that the proposed regulations be adopted subject to minor changes. The State of Alaska and the International Association of Fish and Wildlife Agencies supported the proposed regulations as a faithful interpretation of the transfer provisions of Pub. L. 97–58.

The Department of Game, State of Washington, commented on the complexity and difficulty of the statutory requirements for a transfer of management authority, but thought that the proposed regulations were fair and comprehensive. Similar views were expressed by private individuals and organizations.

The final rule adopted herein is essentially unchanged from the proposed rules. These regulations apply to the species of marine mammals currently managed by the FWS, under the authority of the MMPA, such as the polar bear, sea otter, walrus, dugong, manatee and marine otter, and to other species of marine mammals, including seals, sea lions, porpoises and whales which are managed by the NMFS.

Public Comments

Comments on the proposed regulations were solicited from all interested parties within a 60-day comment period, May 12–July 12, 1982. Since the FWS and the NMFS published identical proposed regulations, comments received by both agencies were jointly considered. The following parties submitted written comments:

Numan Kitlutsisti
Alaska Federation of Natives
Jean McCollom
Shell Oil Company
Washington Department of Fish and Game
Umpqua Commercial Fishermen's Wives Association
Defenders of Wildlife
Friends of the Sea Otter
Alaska Department of Fish and Game
Marine Mammal Commission
Friends of Wildlife
Texas Parks and Wildlife Department
Minerals Management Service, Department of the Interior
Environmental Defense Fund with Friends of the Earth, the Humane Society of the United States, and the Society for Animal Protective Legislation
Seal Rescue Fund
Alaska Oil and Gas Association
Conoco Oil Company
Kauernak, Inc.
Harlan L. Bay, Taxidermist
Mac's Taxidermy
Animal Welfare Society, Inc. with Maine Chapter, Defenders of Wildlife, and Marine Federation of Humane Societies
John E. Rowe
H. K. Grade, Taxidermist
Denna McLeod
Save Our Salmon
International Association of Fish and Wildlife Agencies

After the comment period closed, the Assistant Administrator for Fisheries, NMFS, also received comments from an employee concerning the State of Alaska's position on the 1981 MMPA Amendments.

Copies of all comments are available for inspection at the offices of the information contact listed above.

General Comments

Many of the letters we received reflect public views on the advisability or inadvisability of transferring marine mammal management authority to states, and do not specifically address our procedural regulations. In this regard, two commentators opposed any transfer of marine mammal management authority to states because of concern for the continued conservation of these species. One commentator opposed management transfer because of possible impacts on offshore oil development activities. Several groups and individuals, primarily commercial fishing and taxidermy interests, registered approval of an early transfer of authority to states.

The MMPA of 1972, as well as the 1981 amendments, anticipated the eventual transfer of management authority from the Federal Government to the states, and provided specific procedures to accomplish this transfer. The Act provides a mechanism for the transfer, from the Federal Government to the states, of marine mammal management authority based on Federal review and approval of state management plans. State marine mammal management programs must generally be consistent with the goals and policies of the MMPA and, specifically, the maintenance of marine mammal populations at optimum sustainable population (OSP) levels. The regulations adopted today implement current statutory procedures and contain only limited discretionary provisions to this end. Neither the Act, as amended, nor these regulations allow for any relaxation of the strict OSP management standard. The Services strongly encourage states to apply for marine mammal management authority and obtain jurisdiction over their resident marine mammal populations. As recognized by Congress, marine mammal management activities will be more efficient and less costly at the state agency level.

Oil and gas development interests are concerned that a transfer of management authority to states may impede offshore development because regulations governing the taking of small numbers of marine mammals under section 101(a)(5) of the Act may vary among states and between states and the Federal Government. One commentator requested that we provide a specific mechanism for interstate coordination of marine mammal permits. In addition, these reviewers were confused as to the possible impact of these regulations and the MMPA amendments on future Endangered Species Act (ESA) consultations.

Once management authority is transferred for a given species, the state has exclusive jurisdiction to manage marine mammals pursuant to the MMPA within the state and its territorial waters, except for takings by non-state personnel for scientific research and public display purposes or by Federal personnel for health and welfare purposes. Exceptions under MMPA section 101(a)(5) for the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in specified activities (other than commercial fisheries) within a specified geographical region within the state or its territorial waters, must be sought from the appropriate state agency, once management authority for the species has been transferred.

Once management authority has been transferred, the Federal Government will only regulate incidental takings, including those specified in sections 101(a)(2), 101(a)(4) and 101(a)(5), that occur outside state territorial waters and within the 200 mile zone described in section 3(14)(B) of the Act (Fishery Conservation Zone, of FCZ). It is possible, therefore, that because an activity takes place over a large geographical area, an individual or organization may need to apply to one or more states and the Federal Government for permission to take certain marine mammals under section 101(a)(5).

Current policies and procedures for the ESA consultations among agencies will not be affected by these regulations. Section 17 of the ESA provides that, in case of conflicts between the ESA and the MMPA, the more restrictive provision applies. Concurrent jurisdiction, rather than exclusive state authority, is provided for under the ESA. Since the consultation responsibilities of Federal agencies (under section 7) and the prohibitions (under section 9) specified in the Endangered Species Act will continue to apply for those marine mammals that are also listed as endangered or threatened under the ESA, the transfer of management authority to a given state would not affect Federal agency consultation responsibilities under the ESA. Furthermore, section 6(c) provides for state and Federal agreements for the conservation and management of endangered and threatened species. Nothing in the Act or in our regulations should be construed as affecting in any manner any cooperative agreement

entered into between a state and the Federal Government under section 6(c) of the ESA.

Several Alaska Native representatives requested a clarification of the subsistence use provisions which only apply to the State of Alaska. Some reordering of paragraphs and refinement of terms has been added to these provisions and is discussed in detail under § 403.03 below.

Many commentators questioned the submission of proposed statutes and regulations in the state management plan and suggested the word "proposed" be deleted, or that the approval of a state management plan, if based in part on proposed language, remain conditional until any proposed statutes and regulations are implemented. Specific aspects of this issue are discussed under § 403.03 below.

Section 403.01

This section describes the purpose and scope of these regulations. In response to comments the first sentence of this section has been revised to include the phrase "upon a finding by the Secretary of compliance with certain requirements," and an error in the last word of paragraph (a) has been corrected.

We have not accepted the recommendation to add a new paragraph (b)(3) which would exclude "reasonable and prudent development of resources in the state and national interest" (such as oil and gas), from activities affected by these regulations, since this is not within our authority under the MMPA. Paragraph (b) excludes the taking of marine mammals by Federal, state and local government officials in the course of their official duties. This activity is governed by 50 CFR 18.22 and 216.22, and the notification requirements of those sections remain in effect. Sections 18.22 and 216.22 relate to the taking of stranded and beached marine mammals and the taking of marine mammals for the protection of public health and welfare. The Services are in the process of revising §§ 18.22 and 216.22 to reflect the new statutory language contained in section 109(h) as requested by one commentator. These revisions will be proposed in separate **Federal Register** publications.

Section 403.02

This section defines certain terms used in this subpart. A new paragraph (a) has been added to read as follows. "The term 'species' includes any population stock." This provision is derived from the first sentence of section 109(a) of the Act which allows states the option of managing their marine mammals on the basis of population stocks. For example, states may choose where appropriate to determine optimum sustainable population (OSP) and allowable take levels for individual population stocks. This was the intent of the proposed regulation as evidenced by the definition of OSP, found at § 403.02(b) (formerly (a)), which provides that OSP is a population size for a "given species or stock." Section 3(10) of the MMPA defines the terms "population stock" or "stock" to mean "a group of marine mammals of the same species or smaller taxa in a common spatial arrangement, that interbreed when mature."

We have therefore adopted the recommendation to clarify the term "species" to reflect the provisions of sections 109(a) and 3(10) of the Act. Conversely, we are unable to adopt the recommendation of another commentator that marine mammal species should not be subdivided into population stocks for purposes of these regulations, since the Act requires that this management option be available.

Two commentators recommended changes or requested clarification of our OSP definition in paragraph (b) (formerly (a)). Congress has specifically reaffirmed that this definition accurately reflects the meaning of the term and the intent of Congress in passing the original Act. H.R. Rep. No. 97-228, 97th Cong., 1st Sess., p. 16 (1981). It is important to note that OSP is any population level within a range of population levels. The upper bound of the range is the largest supportable population level within a given ecosystem (carrying capacity). The lower bound of the range is the population level for a given species or stock that results in maximum net productivity.

This section also defines "state management program." The state management program consists of the legal framework under which the state will manage marine mammals. Components of this framework which are specifically required to be submitted in the state's request for transfer of management authority are set forth in paragraphs (b) and (c) of § 403.03 of the proposed regulations. Paragraph (d) of § 403.03 lists additional components required only in the State of Alaska's management program.

Several commentators objected to including proposed laws, regulations and policies within the definition of "state management program." The response to this comment is found below under the discussion of § 403.03. One commentator recommended that the term "statute" be substituted for the term "law," except in those cases where the term "law" is specifically meant to include both "statutes" and "regulations." We agree with this recommendation and have made this substitution in the definition of state management program, and throughout the final rule, where appropriate.

Section 403.03

This section delineates the form and minimum requirements of a state request for transfer of management authority. Any state requesting management authority from both the FWS and NMFS may combine the request in a single document and send copies to both agencies. The request must contain two elements: (1) Certain aspects of the proposed state management program and (2) supplemental information pertaining to the state management program. The request must include the text of relevant statutes, regulations, policies and other authorities of state law, and a narrative discussion of how these authorities blend to form a framework that meets the new requirements of the Act. This narrative discussion may be in the form of a memorandum prepared by the state Attorney General, as suggested by one commentator. However, a memorandum from the Attorney General is not added as a requirement because the state should be in the best position to determine the most appropriate agency to develop the narrative discussion.

As discussed in the preamble to the proposed regulations, although the state management program is defined broadly by section 403.02, the request for transfer of management authority need not include all aspects of the state management program. The state need not provide specific laws pertaining to the manner, times or amount of take, unless specifically required by § 403.03. Thus, the state need not submit as part of its request regulations pertaining to such aspects of take as bag limits, seasons, or the minimum rifle caliber that can be used in taking the species, since they are not specifically required by the Act. However, the request must include, for example, a law that requires taking to be humane (see § 403.03(b)(2)(i)), even though this is a restriction on the manner of taking, since it is specifically required by the Act.

A. *Submission of Proposed Statutes and Regulations.*

Numerous commentators objected to provisions allowing the Service to approve a state management program containing proposed laws. Many of these comments were based on the

requirements of sections 109(b)(1) and 109(f)(1)(A) of the Act. Section 109(b)(1) requires the Secretary to find that the state "has developed and will implement" a program for the conservation and management of the species before transferring management authority to the state. This language parallels the requirement of section 109(f)(1)(A), applicable only in the case of Alaska, that the Secretary find that the state "has adopted and will implement" certain statutes and regulations governing subsistence uses of marine mammals before transferring management authority to the State of Alaska. Commentators expressed concern that approval of state management programs containing proposed laws would violate these provisions and that such approvals could preclude public comment on the management programs the states actually adopt. Furthermore, commentators stated that revocation, the Service's recourse in the event a proposed statute or regulation is not adopted as submitted in the request, is too time-consuming to assure effective conservation and management of marine mammal species as the Act requires.

The Services appreciate the concerns of all parties on this issue. The transfer of management authority is a lengthy process. Allowing states to submit proposed laws for approval purposes would help streamline the process. But the affected public should have an opportunity to comment on all aspects of the state management program and should be assured that the program the state implements is the same as the program the public reviews and the Service approves.

To accommodate these concerns, the Services retained the provisions allowing states to submit management programs based on proposed laws or policies and amended the approval and transfer provisions in § 403.03. The new provisions incorporate informal rulemaking procedures for reviewing state management programs and transferring management authority to the states. New § 403.03(f) requires the Service, promptly after receiving a state's request, to make an initial determination on whether the state has developed and will implement a marine mammal management program that meets the requirements of the Act and the regulations. The Service must publish a general notice of its initial determination in the **Federal Register** together with, in the case of a positive determination, a proposed rule to transfer management authority to the State. The general notice will provide the public with an opportunity to comment (60 days) and to request an informal public hearing on both the Service's initial determination and on the state management program.

After considering comments and all other relevant information, the Service will publish in the **Federal Register** its final determination on whether the state's program meets the requirements of the Act and regulations. Along with a positive determination, the Service will publish a final regulation transferring management authority for the species to the state after the following requirements are satisfied:

(a) The state's determinations under §403.04 are implemented under state law;

(b) Any cooperative allocation agreement required under §403.05(a) is implemented; and

(c) The state has adopted laws and policies that are substantially the same as those submitted in proposed form in the state's management program.

This process will allow the Services to decide initially to transfer management authority to a state based on a management program containing proposed laws and policies but requires those laws and policies to be adopted before management authority ultimately is transferred to the state. The Service's initial determination to transfer management will give the state reasonable assurance that its management program, including the laws and policies it intends to enact, meets the requirements of the Act and these regulations. The state can then adopt the laws and policies submitted in proposed form, conduct its hearings and make its determinations under §403.04, and develop and implement any cooperative allocation agreement required under §403.05(a).

This process also assures the public that the management program the state ultimately adopts will be substantially the same as the program on which the public had an opportunity to comment. If, after issuing proposed rules to transfer management authority to the state, the Service finds that the state has failed to adopt laws and policies substantially the same as those submitted in proposed form in the state's management program (*e.g.*, the laws and policies adopted fail to accord the same approximate level of protection to the species, or otherwise merit resubmission of the state management program for public review and comment under §403.03), the Service will not issue final regulations transferring management authority to the state. In that case, the state's recourse is to adopt laws and policies substantially the same as those submitted in proposed form in its management program. Alternatively, the state could submit a new or revised management program which the Service would consider pursuant to §403.03(f)

B. *Other Provisions.*

Paragraph (b) of § 403.03 lists those components of the state management program which must be submitted in the request for a transfer of management authority. In the case of Alaska, paragraph (d) lists additional mandatory components relating to subsistence uses of marine mammals. These requirements are the minimum necessary to enable the appropriate Service to make the determinations required by section 109(b)(1) of the Act.

Section 403.03(b)(1) requires the state to list the scientific and common names and estimated range of the species of marine mammals for which it seeks managment authority. A state may request the transfer of management for more than one species. If this is the case, those components of the state managment program that apply to more than one species do not need to be repeated for each species. Rather, the state should list the species and the components of the state management program that apply to some or all of the species. Those components of the state management program that apply to individual species should be so designated. The state should discuss which components apply generally to all species and which apply specifically to individual species in the narrative discussion required by § 403.03(a)(2).

Several commentators objected to the use of the word "provisions" to describe what aspects of the state management program must be submitted in the request for management authority. *See, e.g.*, § 403.03(b)(2). By use of the word "provisions" it was intended that some form of state law such as statutes or regulations provide for the applicable requirements. The regulations are amended by use of the phrase "provisions of state law" where appropriate to clarify this intention.

The basic premise of section 109 of the Act and these regulations is that a state to which management authority has been transferred for a given species is to regulate the taking of that species so as to prevent its population from declining below its OSP. However, the Act provides that in the case of Alaska, subsistence taking may be allowed even if the species is below its OSP, as long as the amount of subsistence take will nevertheless permit the species to

increase toward its OSP. Paragraph (b)(2)(iii) of this section reflects this distinction.

The State of Alaska requested confirmation of its interpretation of paragraph (b)(2)(ii)(A) concerning the transfer of management authority for a species that is below OSP. Alaska believes that section 109(b)(1) (C) and (D) of the Act contemplates transfer of management authority in this case as long as taking is not permitted, or in the case of subsistence take in Alaska, as long as the subsistence take determination does not preclude a species from "eventually attaining OSP." However, Alaska's interpretation is not entirely consistent with the MMPA. In fact, section 109(b)(1)(D) of the Act states that Alaska may not permit subsistence taking of a number of animals that "would be inconsistent with the maintenance of the species at its OSP." As indicated above, we interpret this language to mean that taking is permitted as long as the amount of subsistence take will nevertheless permit the species to *increase* toward its OSP. Taking of a species below its OSP for subsistence purposes may not be permitted at a level that will prevent the species from increasing in numbers. *See* H.R. Rep. No. 97-288, 97th Cong., 1st Sess., p. 23 (1981).

One commentator was confused over the regulation of take of marine mammals for scientific research or public display purposes. Section 403.03(b)(2)(iv) of the regulations as proposed and adopted requires the state not to permit take for scientific research and public display purposes with two exceptions: (1) Take for scientific research or public display purposes by or on behalf of the state; (2) take for scientific research or public display purposes pursuant to a Federal permit (see 50 CFR 18.31 and 216.31).

This scheme is explicitly required by the Act. Section 109(b)(1)(E) of the Act provides that the state may only *permit* take for scientific research and public display purposes when done by or on behalf of the State. Management of all other take for scientific research and public display purposes is retained by the Services even after transfer of marine mammal management authority to the state. *See* H.R. Rep. No. 97-228, *supra* at 23. The Services regulate this take pursuant to permits granted under 50 CFR 18.31 and 216.31. The state may not *prohibit* takings for scientific research or public display conducted pursuant to Federal permits. (Review of Federal permits to assure consistency with state management is provided by § 403.05(c)). (See H.R. Rep. No. 97-228, *supra*.) Thus, § 403.03(b)(2)(iv) requires that the state not permit all but these two types of scientific research and public display take; it does not authorize the state to *permit* any scientific research and public display take other than that by or on behalf of the state.

One commentator requested a provision to ensure state review of scientific research and public display permits issued by the Federal government for species that have not been transferred to the state, so that the state may review such permits for possible interference with management plans for other species that are within its jurisdiction. The MMPA does not authorize a state to review and disapprove scientific research and public display permits regarding species for which management authority has not been transferred to that state. If management authority is transferred to a state for a given species, then the Act authorizes that state to review and approve or disapprove an application for a permit to take a live specimen of that species within the state or its territorial waters for scientific research or public display purposes. Section 104(d) of the MMPA provides public review procedures for scientific research and public display permits. The Services publish notices of receipt of an application for the take of any marine mammals for scientific research and public display purposes in the **Federal Register**. Written comments are invited from all interested parties, including the states. A hearing may also be requested on such permits. Notice of the issuance or denial of any such permits is also given in the **Federal Register** and copies of these permits are available for review at the appropriate regional Service office.

One commentator believes that paragraph (b)(2) of § 403.03 contains no requirement that the state recognize the need to establish procedures for "incidental but not intentional taking." On the contrary, paragraph (b)(2)(v) requires that the state's marine mammal management program contains provisions of state law which "regulate the incidental taking of the species in a manner consistent with section 101(a) (2), (4) and (5)." Sections 101(a) (4) and (5) provide exceptions to the MMPA moratorium for incidential but not intentional taking of small numbers of marine mammals under certain circumstances.

The commentator further requested that there be a requirement that the state recognize "the potential for unexpected takes" and also stated that "[T]he difference between unexpected/incidental taking and capturing or killing is large, and we feel some recognition of this difference is warranted." The Act requires all "incidental taking", which includes "take(s)" as defined at 50 CFR 18.3 and 216.3 pursuant to MMPA section 101(a), to be regulated within a state either by the Federal government, or by the state if management authority for that species has been transferred. Congress made no distinction between unexpected incidental takings and capturing or killing except with respect to cooperative allocation agreements under Section 109(d). *See* H.R. Rep. No. 97-228, *supra* at 26.

One commentator suggested that we restrict the application of (b)(2)(v) of § 403.03 to species "within state waters" and eliminate reference to Federal regulations. This commentator believes that it is sufficient that state incidental take regulations are consistent with the Act and that any further Federal regulation would impose undue burdens on the state. The Services agree with this comment and delete the reference to Federal regulations in paragraph (b)(2)(v).

The Minerals Management Service (MMS) of the Department of the Interior commented that the effect of paragraph (b)(2)(v) could be that an oil, gas, geophysical survey or Outer Continental Shelf (OCS) development company may need to obtain permission to take marine mammals from one or more states for animals and individual activities in waters under state jurisdiction, as well as from the Federal agencies for animals and activities in areas seaward of state territorial waters. MMS believes that this situation could cause time delays and greatly escalate costs to both industry and the Federal government. MMS stated that these potential delays are inconsistent with the OCS Lands Act, as amended, and Administration policy regarding our nation's energy resources. MMS recommended, therefore, that reference to section 101(a)(5) be eliminated from § 403.03(b)(2)(v) and that authority to authorize incidental taking under section 101(a)(5) of the Act be retained by the Federal agencies.

Section 109(b)(3)(B) of the Act provides that following transfer of management authority for a given species, the Services retain authority to regulate only that incidental taking, provided for under section 101(a) (2), (4) and (5), which occurs within the 200-mile Fishery Conservation Zone (FCZ) described in section 3(14)(B) of the Act. Congress found that where management authority had been transferred to the state, and when the required

determinations and agreements have been made, the state will have exclusive authority to manage marine mammals within the state, including its territorial waters, except for the scientific research, public display, and health and welfare takings described earlier. Section 109(b)(3)(B) is intended to make this explicit. *See* H.R. Rep. No. 97–228, *supra* at 24. The Act, therefore, precludes adoption of the MMS suggestion in these regulations.

Paragraph (b)(3) of this section requires that the state program contain procedures for acquiring and evaluating data relating to OSP and the maximum allowable take of the species. The procedure for acquiring and reviewing such information need not comply with section 403.04 procedures pertaining to determining OSP and the maximum allowable take of species. However, if the review, which should be done at least annually, discloses that OSP and maximum allowable take determinations may need to be adjusted, the state must use the procedures required by § 403.04 in making these adjustments. Two commentors recommended that the word "annually," as provided in the preamble to the proposed regulations, be inserted in paragraph (b)(3), and we have adopted this recommendation.

Paragraph (b)(6) of this section lists certain aspects of the state management program which must be considered by the appropriate Service in making a determination as to whether the state's program is consistent with the Act. The description of the organization of state offices involved in the administration and enforcement of the state management program need describe only the various responsibilities of these offices as they relate to marine mammal management and how these offices relate to one another. In the latter regard, an organizational chart would be helpful. Paragraph (b)(6)(ii) relates to permits involving marine mammals. The state should describe what types of permits apply to actions involving marine mammals, the laws under which such permits are granted, and what factors guide discretion on permit applications. The state should discuss, pursuant to paragraph (b)(6)(iii), certain aspects of judicial review such as the courts which have jurisdiction to review administrative decisions, who may challenge administrative decisions, the scope of judicial review, and the range of available remedies. The state should discuss, pursuant to paragraph (b)(6)(iv), such aspects of administrative rulemaking as notice procedures, public comment requirements, *ex parte* rules and hearing requirements.

Although paragraphs (b)(6)(ii) through (b)(6)(iv) pertain to state laws on specific aspects of marine mammal management, copies of these laws do not need to be included with those provided pursuant to § 403.03(a)(1). A general description of the provisions, limitations and exceptions of these laws will be sufficient.

Paragraph 403.03(c) requires the state to submit in its request for the transfer of management authority certain supplementary information pertaining to the state management program. This information need only be submitted in summary form. It is believed that compiling the information in this form will not unduly burden the state, yet will provide the appropriate Service with a baseline from which to evaluate the proposed administration of marine mammal management by the state.

Two commentators requested greater specificity in the requirements of paragraphs (b)(6) and (c) of this section to provide Federal agencies and the public with more detailed information. We have carefully reviewed the text of the proposed and adopted paragraphs (b)(6) and (c) and have determined that these provisions require sufficient information to ensure that the public can have adequate notice of and information on the state management program and to support a finding of consistency with the goals and policies of the Act. Thus, we have adopted paragraphs (b)(6) and (c) as proposed.

Paragraph (d) of § 403.03 pertains to regulation of subsistence use of marine mammals in Alaska as provided by section 109(f) of the Act. Several commentators remarked that § 403.03(d) was confusing as written and much in need of clarification and reorganization. In addition, commentators remarked that section 109(f)(1) of the Act specifies the form in which Alaska's subsistence program must be submitted. That is, statute *and* regulations must be adopted governing certain aspects of the subsistence program; statutes *or* regulations must be adopted governing others. Accordingly § 403.03(d) is reorganized both to clarify the requirements of a submission by Alaska concerning subsistence use and to reflect the form of legal authorities required by the Act.

Other minor changes are made in § 403.03(d) in response to comments. For example, paragraph (d)(1)(ii) of the proposed regulations (now (d)(2)(ii)) is amended to include examples from the legislation of some types of economic opportunities, at the request of several commentators. In addition, the proposed regulations provided, in conformance with section 109(f)(1)(B) of the Act, that nonsubsistence use can be authorized only if certain findings are made on the basis of the administrative record before the state agency. Section 403.03(d)(2)(iii) of the final regulations is added to ensure that written findings are made in suppport of the state agency's determinations. A new § 403.03(d)(3) is added to parallel the general requirement of § 403.03(a)(2) that the state request include a narrative discussion explaining its program in terms of the requirements of the Act. Section 403.03(d)(3) requires that the State of Alaska provide a discussion specific to the regulation of nonsubsistence consumptive uses of marine mammals and their effect on subsistence users.

Several commentators suggested the need for specific information on this issue and requested amendment of paragraph (d) to require that the State of Alaska provide this information in its request for marine mammal management authority. We disagree with the recommendation to add additional requirements to these regulations when the Act does not specifically require them. However the following are examples of the types of information the state should provide in the narrative discussion required by paragraph (d)(3): A description of: (1) The types of nonsubsistence consumptive uses which may be authorized for each species; (2) how nonsubsistence consumptive uses of a marine mammal species will be regulated to provide economic opportunities to residents of rural coastal villages of Alaska who engage in subsistence uses of the species; (3) any permit or licensing system relating to the taking of a marine mammal species for nonsubsistence uses, the licensing of marine mammal hunting guides, the designation of marine mammal guiding areas, and the assignment of such areas to marine mammal hunting guides; (4) any laws which authorize and establish the standards for granting or withholding such permits and licenses; and (5) the procedures used in granting or withholding such permits or licenses. In any event, the narrative discussion required by paragraph (d)(3) must provide the Services with a clear explanation of how the state's program satisfies the requirements of section 109(f) of the Act.

Additionally, it should be noted that § 403.03(d)(1)(iv) requires that the state submit a statute and regulations ensuring that takings for subsistence

uses are accomplished in a non-wasteful manner. For an example of the FWS's position on what constitutes takings in a "wasteful manner," see the definition of "wasteful manner" in 50 CFR 18.3.

One commentator suggested that provisions for subsistence take in Alaska apply only to Alaskan natives and their families, not all rural Alaska residents. This is contrary to the requirements of the MMPA. Section 109(f)(2) of the MMPA clearly defines the term "subsistence use" to be the "customary and traditional uses by rural Alaska residents". Although the legislative history of the Act, as cited by the Defenders of Wildlife in their comments, does speak of "Alaskan Natives," *see* H.R. Rep. No. 97–228, *supra* at 28, this does not limit the definition for several reasons.

First, Congress recognized that the subsistence use provisions of section 109 of the MMPA are similar to those of Title 8 of the Alaska National Interest Lands Conservation Act (ANILCA), Pub. L. 96–487. H.R. Rep. No. 97–228, *supra* at 28. The only difference between the two subsistence provisions is that "customary trade is not included within the purview of section 109 [of the MMPA]". Congress further stated that:

> The section 109(f)(2) definition of subsistence uses is identical to the definition of the same term in section 803 of ANILCA in that it defines subsistence uses as the customary and traditional uses by rural Alaska residents for the personal and family consumption purposes set forth in section 803.

Id. Since the ANILCA subsistence provisions apply to both native and non-native rural Alaska residents, *see* S. Rep. No. 96–413, 96th Cong., 1st Sess., p. 233 (1979), so do the subsistence provisions of section 109 of the MMPA.

Second, marine mammal management authority could not be transferred to Alaska, the only state to which the subsistence provisions of section 109(f) of the MMPA apply, if subsistence provisions of section 109(f) were limited to Natives. Congress noted that Alaska interprets its Constitution as prohibiting any discrimination between its citizens on the basis of race, thereby precluding transfer of management authority to Alaska unless the subsistence provisions were racially neutral. *See* H.R. Rep. 97–228, *supra* at 12.

Thus, the subsistence provisions of section 109 of the MMPA apply to rural Alaska residents independent of race. It should be noted, however, that under section 101(b) of the MMPA, the subsistence priority when the Federal Government is exercising management authority is limited to Alaskan Natives.

Paragraph (e) of § 403.03 provides procedures for the appropriate Service's informal review of a request for transfer of management authority. The preliminary review procedures of paragraph (e) are not designed as a mechanism for piecemeal review of the state's management program. This subsection can be used either to gain guidance on an entire program before formal submission, or as a means of evaluating proposed aspects of the state management program before final enactment and submission.

As explained above, the Services incorporated informal rulemaking procedures for approving state management programs and transferring management authority to states in § 403.03 (f) through (h). One commentator suggested that a public comment period of at least 90 days be established. The Services believe that 90 days is excessive, but agree to the need for a minimum comment period to assist states and Federal agencies in planning and to assure adequate time for public involvement especially in rural areas. Accordingly, we have revised paragraph (f) to include a comment period of 60 days.

Section 403.04

This section describes procedures which the state must provide for in its management program and employ in determining the OSP of a given species and the maximum allowable number of animals that can be taken without reducing the population below OSP. These procedures are required by section 109(c) of the Act.

In response to public comments, we have made the following minor revisions to this section. The first sentence of paragraph (c) has been amended to read "The state agency with responsibility for managing the species in the event management authority is transferred to the state * * *," since at this point in the process management authority has not yet been transferred. A typographical error ("uses" should be "issues") has been corrected in paragraph (f)(5) and in paragraph (g)(1) the term "may" has been replaced by the word "shall" which does not change the intent of this paragraph. Finally, paragraph (g)(3) has been revised by the addition of the phrase "and the hearing record" at the end of this paragraph to clarify that both the hearing record and the decision document must be available for public inspection.

Several editorial changes were suggested by a number of commentators concerning the timing and specific content of documents. These suggestions have not been adopted. In our view the requirements of section 109(c) of the Act are already rigorous and specific and need no further elaboration.

One commentator requested an addition to paragraph (b) that would require states to consider the impacts on state residents and on operations in state and national interest (i.e., oil and gas development) when making any changes in regulations establishing bag limits, quotas, seasons, areas, manner of take, etc. Neither the Act, nor the House Report accompanying the 1981 amendments, contains any reference to a priority allocation of marine mammals for oil and gas development purposes. This commentator also requested some provision for public comment on proposed changes in these state regulations. Public notice provisions of state rulemaking procedures will provide the opportunity for public review of proposed changes in state regulations.

Paragraph (c) requires that a state make an initial determination regarding OSP and maximum allowable take. One commentator recommended that this paragraph also require the state to determine the current population size of the species or stock, its OSP and then whether or not it is within that range. Section 403.04 and the OSP definition at § 403.02 reflect Congressional intent concerning the findings the state must make in the OSP hearing, *see* section 109(b)(1)(C) of the Act, and therefore provide sufficient guidance to states on their responsibilities under this section.

One commentator noted that biological data may be lacking concerning certain marine mammal species, and that the appropriate Service should participate in the OSP determination rather than simply review the results of a state determination. The Services intend to make available all information on marine mammal species and any expertise needed by state agencies or the public throughout the state's OSP proceedings. The Services may also choose to submit evidence at an OSP hearing just as any other interested party. It should be emphasized however that the OSP and maximum allowable take determinations are solely the responsibility of the state and are a prerequisite to transfer of management authority for a species.

Paragraph (f) describes procedures which must be employed in the hearing itself. The hearing must be transcribed verbatim. In accordance with the Act, final determinations must be based on the best available scientific information. This information must be of sufficient quantity and quality to ensure that any

taking will be consistent with the maintenance of OSP. *See Committee for Humane Legislation* v. *Richardson*, 414 F. Supp. 297 (D.D.C. 1976), *aff'd*, 540 F. 2d 1141 (D.C. Cir. 1976).

Interested persons must be afforded the opportunity to participate in the hearing to the extent specified in paragraph (f)(3). Other aspects of hearing procedures are left to the discretion of the presiding officer(s) in accordance with state law.

One commentator questioned the intent of Congress concerning the standing of written testimony that is not orally presented at a hearing conducted pursuant to § 403.04. Congress specifically found that a state may not rely on evidence, oral or written, which is not presented at the hearing. All written documents, therefore, must be entered into the record by a person able, by virtue of training and experience, to respond fully to cross-examination regarding the facts and conclusions contained in the written material. *See* H.R. Rep. No. 97-228, *supra* at 25. Sections 403.04(f)(3) and 403.04(g)(1) are intended to make this explicit.

One commentator suggested that a specific time period be established for the review and final determination process described in paragraph (g). We believe that the states, because they are most familiar with resources available to them, are in the best position to determine appropriate time periods for review of the hearing record and decisions on the issues relevant in the OSP hearing.

Section 403.05

This section describes Federal and state responsibilities after transfer of management authority. Several minor changes have been made to this section including substituting the word "transferred" for the word "returned" in paragraphs (c) and (d), when referring to the process for transferring authority for marine mammal management to states. The word "returned" is reserved for that process whereby management authority is returned to the Federal Government pursuant to § 403.07. Paragraph (c) has also been revised in response to a comment by the addition of the phrase "together with the basis for such finding" in the first sentence of paragraph (c)(1). This is to clarify that the Service is to receive specific information on the reasons for a state's finding that the issuance of a permit would not be consistent with the state management program for a given species.

Several commentators asked that the Services explain the requirements for cooperative allocation agreements in § 403.05. The State of Alaska suggested language explaining this provision in terms of Congressional intent and providing a description of the cooperative allocation agreement and the process by which it will be developed:

> Paragraph (a) describes the cooperative allocation agreement. In the case of a species whose range extends beyond the territorial water of the state, this agreement is a prerequisite to the transfer of management authority. . . . This instrument was designed by Congress to ensure that the state does not preempt all available take so as to preclude federal incidental take determinations in the FCZ, and to ensure that the Secretary does not make unjustifiable claims respecting numbers of animals purported to be needed to carry out his responsibilities under section 101 of the Act. Thus, it is anticipated that after the State has made its determination as to maximum allowable take, the [Service] will provide its judgment as to the number of animals that will be taken in the FCZ pursuant to federal incidental take determinations. The State will compare this number to its determination of maximum take and also, in the case of Alaska, to that necessary for subsistence use. Priority of allocation is given first to taking for subsistence purposes, in the case of Alaska, and secondly to incidental taking within the FCZ under the authority of section 101(a). The cooperative allocation agreement [including the procedures required by section 109(b)(1)(G) of the Act and 403.03(b)(4) of these regulations], therefore, is designed to provide [that] . . . (1) the state [does not] assert the need for a number of animals for subsistence uses which is not supported by historical experience or fact and which would preclude the occurrence within the FCZ of commercial fishing or other activities involving the incidental taking of marine mammals, or (2) the Secretary [does not] make unjustifiable claims regarding the number of marine mammals necessary for the Secretary to carry out his responsibilities pursuant to section 101(a). It is not intended that the cooperative allocation agreement be a vehicle by which the Secretary can assert that the State has provided inadequate numbers of marine mammals for subsistence uses.

The State of Washington believes that the allocation of maximum allowable take, provided for in the cooperative allocation agreement in paragraph (a), would entail a joint effort in determining OSP both in and out of state waters. It recommends that these regulations include further information on the Federal methodology and procedures to be utilized in such a joint determination.

As indicated above in the discussion of § 403.04, the scientific and technical expertise of the Services is available to states requesting assistance in developing their initial OSP determination pursuant to that section. However, it is the state, and only the state, which has the authority and responsibility to determine OSP and maximum allowable take for species pursuant to section 109 of the Act. There are no joint Federal/state OSP determinations for species whose range extends beyond territorial waters of the state. The state's OSP and maximum allowable take determinations will apply within the FCZ pursuant to section 109(b)(3) and shall be treated within this zone as a Secretarial determination made in accordance with section 103 and as an applicable waiver of the moratorium under section 101(a). *See* H.R. Rep. No. 97-228, *supra* at 25.

The State of Washington, and other commentators, identified a problem which may arise concerning the management of species that migrate through the jurisdictions of two or more states. The cooperative allocation agreement described in paragraph (a) and further explained above, applies only between a state and the Federal Government. This does not preclude however the development of cooperative agreements between states on joint OSP research for the purpose of developing a data base to be used in the OSP determinations of one or more adjacent states for that species. We encourage the development of such cooperative agreements among states which may share management for a species.

One commentator requested a definition of the term "incidental take" as used in paragraph (a). Because cooperative allocation agreements concern that taking provided for under section 101(a) of the Act, the Services believe no additional definition of "incidental take" is necessary for § 403.05(a). *See* H.R. Rep. No. 97-228, *supra* at 26. Another commentator requested that some priority consideration in allocation be provided for non-commerical fishing incidental take under section 101(a)(5); however, no such priority was established in the 1981 Amendments for this type of take.

Paragraph (d) of section 403.05 encourages the state and the appropriate Service to cooperate, to the maximum extent practicable, in conserving the species of marine mammals. Three commentators requested clarification of this paragraph. The State and Federal cooperation in marine mammal conservation activities may include joint efforts involving marine mammals (e.g., research and enforcement) and does not preclude the state agency from entering into other agreements with its citizens or other parties for conservation purposes. The Federal role in monitoring and reviewing the implementation of state programs is explained under § 403.06 below.

Section 403.06

This section provides procedures for the monitoring and review of the state management program. Under section 109(e) of the Act, the Services have responsibility, after management authority has been transferred to the state, to monitor the state's implementation of its program. To facilitate this review process, paragraph (b) requires the state to submit an annual report on its management of the species, and paragraph (c) requires a report whenever either of the two events listed in that subsection occur.

Several minor changes have been made in this section. Paragraph (a) has been revised to include the phrase "implementation of" to emphasize that the Services must monitor and review the implementation of the state's program. In paragraphs (b) and (d) the words "transfer" or "transferred" have been substituted for the words "return" or "returned," and in paragraphs (b)(1) and (c)(1) the term "law(s)" has been substituted for the phrase "laws or regulations" as discussed earlier. In paragraph (b)(9), pertaining to "other information" that may be requested from the state, the phrase "consistent with the Act as amended" has been added to clarify that "other information" must pertain to the Act and to its requirements. Finally, in paragraph (d) we have added the phrase "and at the appropriate regional office of either Service" in response to several requests. To provide greater public access to reports submitted pursuant to this section, reports will be available for inspection at the appropriate regional offices of the Services as well as in the Washington, D.C. offices of the FWS and the NMFS.

Paragraph (b) defines the components of the annual report. Any changes in the state laws provided in the original request pursuant to § 403.03(b) and, in the case of Alaska, § 403.03(d), must be described in the annual report. The report should include a discussion of how such changes affect implementation of the management program. However, the extent of each discussion should be proportional to the importance of that change. For example, a change in rulemaking procedures (§ 403.03(b)(6)(iv)) may require less attention than a change in laws concerning the take of the species (§ 403.03(b)(2)).

Paragraph (b)(3) of § 403.06 requires the state to provide a summary of all available information relating to takings under the state management program. Two commentators suggested this provision as it relates to the State of Alaska and takings for subsistence uses be explained. For the State of Alaska, the summary must include takings which have been authorized for subsistence purposes, takings which have been authorized for nonsubsistence consumptive uses, and a discussion of how the regulation of nonsubsistence consumptive uses has, to the maximum extent practicable, provided economic opportunities for the residents of rural coastal villages of Alaska who engage in subsistence uses of marine mammal species.

One commentator requested that paragraphs (b) and (c) require states to report all available information on the causes of marine mammal mortality. Information on marine mammal mortality must be supplied under paragraphs (b) (2), (3), (5), and (7), and under (c)(2) if the extent of mortality may warrant reconsideration of the OSP and maximum allowable take determinations.

Paragraph (c) of this section requires the state to report the occurrence of either of two specified events: a change in relevant state law that may impair the implementation of the state's program, or a significant occurrence or new information that may warrant reconsideration of the determinations made under § 403.04. These events concern either the very foundation of the state management program or the status of the species involved and, therefore, require immediate review by the appropriate Service.

The report should describe the event and how it affects marine mammal management. The extent of discussion should correspond to the magnitude of the problem for either the state management program or the species. For example, a change in regulatory procedures for acquiring and evaluating data relating to OSP (§ 403.03(b)(3)) may require less discussion than significant new information that warrants reconsideration of the state's OSP and maximum allowable take determinations for a species.

One commentator recommended that a specific timeframe for the filing of paragraph (c) reports be established. We have added a specific time period to paragraph (c) (45 days), but any significant event which may require an emergency reconsideration of a state management plan is to be communicated to the appropriate Service as soon as possible within this new 45-day period.

Several commentators objected to the wording of paragraph (c)(1) which requires the state to report any change in a relevant statute or regulation *which might impair the state's ability to implement the program.* These commentators felt that the state should report all changes to relevant statutes and regulations.

The report required by paragraph (c) is distinct from the annual report and is intended to provide the opportunity for emergency review of significant events. States need not report under paragraph (c) minor changes in statutes and regulations, such as changes in time periods or minor procedural revisions. In our view, a requirement to report any minor changes would be unnecessarily burdensome on the states. Instead, states must report, under § 403.06(b)(1), on an annual basis all changes in laws submitted pursuant to § 403.03 (b) and (d). The appropriate Service must be alerted as soon as possible to changes which might impair the state's ability to implement its marine mammal management program. Although some commentators suggested that this standard was vague and did not provide assurance that significant changes would be immediately reported by the state, no change has been made in this standard. The state will be in the best position to judge immediately the effect of a change in state laws governing its program. By use of the phrase "may impair," doubtful situations must be resolved in favor of reporting the change to the Service. In addition, any change in the state management program that will qualify for immediate reporting is likely to be widely known. Concerned citizens or organizations can therefore play an important role in keeping the Services informed about changes in the state management program.

Section 403.07

This section provides procedures and standards for the Service's review of state management of a species of marine mammals and revocation of management authority. In addition, this section provides procedures for the state's voluntary return of management to the appropriate Service.

Numerous editorial and minor revisions have been made to this section in response to commentators' suggestions. Again, the word "transferred" has been substituted for the word "returned" when referring to the transfer to a state. "Returned" refers only to the return of management from a state to the Federal Government pursuant to this section. The word "implementation" has been added to paragraph (a) to clarify that implementation of the program is subject to review by the Services. Throughout this section, "approved

management program" has been substituted for the term "request for return of management authority" since the program being implemented, and therefore subject to review, is the management program that was approved. Paragraph (a)(1) has been changed to provide that after the Service has received information concerning implementation of the state management program, the determination of whether or not the state is in compliance with the Act and the regulations must be made within 30 days. In paragraph (a)(2) the phrase "and invite public comments thereon" has been inserted following the provision that notice be published in the **Federal Register**, to clarify our intent that the public have an opportunity to review the Service's decision to revoke. The phrase "or unless otherwise agreed upon" has been added to the end of paragraph (b)(1) to accommodate the possibility that a state may be able to advise the appropriate Service of its intent to return management well in advance of the effective date. In paragraph (b)(2) the words "and management" have been inserted following the word "conservation," to clarify that the implementation of all aspects of the state management program is of concern.

Paragraph (b)(2) of § 403.07 provides a mechanism for the return of marine mammal management authority to the appropriate Service should any aspect of the state management program be enjoined by court order so as to preclude effective conservation and management of the species. The State of Washington, in commenting on this provision, noted that there is no vehicle for "re-transfer" of management authority to the state should the injunction be dissolved or the matter causing the return of management to the Service otherwise be satisfactorily resolved. It is not the intent of these regulations to require resubmission of an entire state management program pursuant to § 403.03 should the events noted by the State of Washington occur. For example, if a preliminary injunction that caused management authority to be returned to the Service is dissolved, or should a final injunction be denied, the state management program for which management authority had originally been transferred would be revived and continue to apply. Likewise, if a final injunction is issued but the defect cured through, for example, state legislation, the original state management program, as amended by the curative legislation, would comply with this Part provided the new legislation cured that aspect of the state management program which had been enjoined.

Accordingly, § 403.07(b)(2) is amended by adding a sentence providing that when management authority has been returned to the appropriate Service pursuant to § 403.07(b)(2), it may be returned to the state ("re-transferred") should, in the judgment of the Service, the cause for return be alleviated in such a way as to ensure that the state's management program provides effective conservation and management of the species. Compliance with § 403.03 procedures is not required for this type of "re-transfer."

Several aspects of this provision should be noted. It applies if the state has concluded that the injunction precludes effective conservation and management of the species under the state management program and has, therefore, voluntarily returned management under § 403.07(b)(2). It also applies if the state notifies the appropriate Service that effective conservation and management is not precluded because of the injunction, but the Service has decided otherwise and revoked management authority pursuant to § 403.07(a). In order for the state to take advantage of the "re-transfer" provision of § 403.07(b)(2), the state should notify the Service of the resolution of the matter. This notification should specify how the matter has been resolved and describe why the state believes effective conservation and management of the species under the state management program is now possible. In addition, the ability to take advantage of the "re-transfer" provision of § 403.07(b)(2) assumes that no other aspect of the state management program other than that which was the subject of the injunction has been impermissibly altered since the injunction was issued. If another aspect of the state management program has been altered, the state must report this change in the notice to the Service that the cause for the injunction has been cured. The Service will review this change in the state management program as if it was reported pursuant to § 403.06(c). After the state has provided notice to the Service that the cause for the injunction has been cured (including the description of any other changes in the state management program), the Service may "re-transfer" management authority if, in their judgment, a certain standard is met. This standard is the same as for the original transfer of management to the state as set forth in § 403.03(h). If the Service declines to "re-transfer" pursuant to § 403.07(b)(2), the state may regain management authority only by complying with § 403.03.

One commentator requested guidance on the meaning of the term "substantial factual information" as used in paragraph (a). We are unable to be more specific in this regard. All information will be judged on a case-by-case basis. The Services retain an oversight responsibility under section 109 of the Act following transfer of management authority to a state and anyone may report any type of information to the appropriate Service concerning the implementation of a state management program. However, this procedure is not intended to provide a forum for arbitrary or unfounded statements by individuals opposed to state management per se.

One commentator noted that paragraph (a)(2) requires publication of a notice of intent to revoke management, but does not require publication of a contrary determination following receipt of any substantial factual information concerning the implementation of the state program. Since a finding that the state is in compliance with the Act and these regulations does not change the status quo, no general public notice is required. The individual or organization providing information to the Service will be informed of the decision pursuant to the Services' policy of responding to public inquiries and correspondence.

Two commentators noted that there is no provision under paragraph (a)(2) allowing the Services to impose an immediate emergency moratorium on taking within the state. There is no authority under the Act for such action by the Services.

One commentator requested that additional language be included in this section to require revocation of state management authority in the event that the state does not give adequate consideration to activities that are in the national interest, such as siting of energy facilities. No such authority exists under the Act.

Section 403.08

This section provides notification of the states to which management has been transferred. Accordingly, it will be updated from time to time when management has been transferred to a new state or for a new species.

This section has been revised to include reference to cooperative allocation agreements where they apply. The Marine Mammal Commission also requested the addition of reference to any state regulations adopted by the Services under § 403.05(b). However, we

intend to place these regulations, if and when adopted, under a separate section of this Part.

Applicability to Other Laws, Regulations and Requirements

Environmental assessments have been prepared in conjunction with these proposed regulations. They are available at the addresses noted in the preamble to this final rule. Based on the environmental assessments, the Department of the Interior and the Department of Commerce determined that the proposed rule would not be a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332(c).

The Department of the Interior and the Department of Commerce have determined that this is not a major rule and does not require preparation of a regulatory impact analysis under Executive Order 12291.

The Departments have also determined that this rule will not have a significant economic impact on a substantial number of small entities and thus a regulatory impact analysis need not be prepared under the Regulatory Flexibility Act, 5 U.S.C. 601. (The determinations by the FWS under Executive Order 12291 and the Regulatory Flexibility Act are discussed in more detail in a Determination of Effects which has been made a part of the Administrative record.)

The information collections contained in this final regulation are not subject to Office of Management and Budget clearance under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, since there are expected to be fewer than ten respondents annually.

Primary Authors

The primary authors of this final rule are John Bardwell and W. Michael Young, Department of the Interior; and Georgia Cranmore and Gretchen Beck, Department of Commerce.

List of Subjects in 50 CFR Part 403

Administrative practice and procedure, Alaska, Intergovernmental relations, Exports, Imports, Transportation, Marine mammals, Indians, Endangered and threatened wildlife.

Regulation Promulgation

For the reasons set out in the preamble, Subpart F of Part 18, Title 50, Code of Federal Regulations and Subpart H of Part 216, Title 50, Code of Federal Regulations are removed and replaced with the following references and new Part 403:

PART 18—[AMENDED]

Subpart F—Transfer of Management Authority to States

Regulations governing the transfer of management authority to states pursuant to Section 109 of the Marine Mammal Protection Act for marine mammal species under the jurisdiction of the Secretary of the Interior are found at Part 403 of this Title.

PART 216—[AMENDED]

Subpart H—Transfer of Management Authority to States

Regulations governing the transfer of management authority to states pursuant to Section 109 of the Marine Mammal Protection Act for marine mammal species under the jurisdiction of the Secretary of Commerce are found at Part 403 of this Title.

PART 403—TRANSFER OF MARINE MAMMAL MANAGEMENT AUTHORITY TO STATES

Sec.

403.01 Purpose and scope of regulations.
403.02 Definitions.
403.03 Review and approval of state request for management authority.
403.04 Determination and hearings under section 109(c) of the MMPA.
403.05 State and Federal responsibilities after transfer of management authority.
403.06 Monitoring and review of state management program.
403.07 Revocation and return of state management authority.
403.08 List of states to which management authority has been transferred.

Authority: 16 U.S.C. 1361 *et seq.*, as amended by Pub. L. 97–58.

§ 403.01 Purpose and scope of regulations.

The regulations contained in this Part implement section 109 of the Act which, upon a finding by the Secretary of compliance with certain requirements, provides for the transfer of marine mammal management authority to the states.

(a) The regulations of this Part apply the procedures for the transfer of marine mammal management authority to a state, the form and minimum requirements of a state application for the transfer of management authority, the relationship between Federal and state wildlife agencies both prior and subsequent to the transfer of management authority, and the revocation and return of management authority to the Federal Government.

(b) Nothing in this Part shall prevent: (1) The taking of a marine mammal by or on behalf of a Federal, state or local government official, in accordance with sections 18.22 or 216.22 of this Title and section 109(h) of the Act, or (2) the adoption or enforcement of any state law or regulation relating to any marine mammal taken before December 21, 1972.

(c) The information collection requirements contained in §§ 403.03, 403.06, and 403.07 of this Part do not require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*, because there are fewer than 10 respondents annually.

§ 403.02 Definitions.

The following definitions apply to this Part:

(a) The term "species" includes any population stock.

(b) "Optimum Sustainable Population" or "OSP" means a population size which falls within a range from the population level of a given species or stock which is the largest supportable within the ecosystem to the population level that results in maximum net productivity. Maximum net productivity is the greatest net annual increment in population numbers or biomass resulting from additions to the population due to reproduction and/or growth less losses due to natural mortality.

(c) "State management program" means existing and proposed state statutes, regulations, policies and other authorities which form the framework for the conservation of a species of marine mammals.

(d) "State regulation" means the whole or part of a state agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of a state agency and which is duly promulgated in accordance with established procedure.

(e) The "Act" means the Marine Mammal Protection Act (MMPA) of 1972, 16 U.S.C. 1361 *et seq.*, as amended by Pub. L. 97–58.

(f) The " Secretary" means the Secretary of the Interior or the Secretary of Commerce, depending on the species involved. Under Section 3(11) of the Act, the Secretary of Commerce has jurisdiction over members of the order Cetacea and members, other than walruses, of the order Pinnipedia; the Secretary of the Interior has jurdisdiction over all other mammals. These secretarial authorities have been delegated to the National Marine Fisheries Service and the Fish and Wildlife Service, respectively.

(g) The "Service" or "Services" means the Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS), as appropriate depending on the species involved. Any determination or finding required by this Part to be made by the "Service" must be made by the Director of the FWS or by the Assistant Administrator of the NMFS, or their delegees, as appropriate.

§ 403.03 Review and approval of State request for management authority.

(a) Any state may request the transfer of management authority for a species of marine mammals by submitting a written request to the Director of the Fish and Wildlife Service ("Director") for species of marine mammals under the jurisdiction of the FWS, or to the Assistant Administrator for Fisheries of the National Marine Fisheries Service ("Assistant Administrator") for species of marine mammals under the jurisdiction of the NMFS. The request must include:

(1) Copies of existing and proposed statutes, regulations, policies and other authorities of state law which comprise those aspects of the state management program outlined in paragraph (b) of this section, and, in the case of Alaska, paragraph (d) (1) through (3) of this section;

(2) A narrative discussion of the statutes, regulations, policies and other authorities which comprise those aspects of the state management program outlined in paragraph (b) of this section, and, in the case of Alaska, paragraph (d) of this section, which explains the program in terms of the requirements of the Act and the regulations of this Part; and

(3) Supplementary information as required by paragraph (c) of this section.

(b) A request for transfer of marine mammal management authority will not be approved unless it contains the following:

(1) The scientific and common names and estimated range of the species of marine mammals subject to the state management program.

(2) Provisions of state law concerning the take of marine mammals that

(i) Require that the taking of marine mammals be humane as defined by section 3(4) of the Act;

(ii) Do not permit the taking of marine mammals until the following have occurred:

(A) The state, pursuant to the requirements of § 403.04 of this Part, has determined that the species is at its Optimum Sustainable Population (OSP) and determined the maximum number of animals that may be taken without reducing the species below its OSP, and, in the case of Alaska, when a species is below OSP, the maximum numbers that can be taken for subsistence uses while allowing the species to increase toward its OSP;

(B) The determination as to OSP and maximum take are final and implemented under state law; and

(C) A cooperative allocation agreement, if required under § 403.05(a) of this Part, is implemented;

(iii) Do not permit take in excess of the maximum number of animals that may be taken as determined pursuant to § 403.04 of this Part; provided that for Alaska, subsistence take may be allowed in accordance with paragraph (d) of this section, and if the species is below OSP, any level of take allowed for subsistence use shall permit the species to increase toward OSP;

(iv) Do not permit take that is for scientific research or public display purposes except such take by or on behalf of the state, or pursuant to a Federal permit issued under §§ 18.31 or 216.31 of this Title; and

(v) Regulate the incidental taking of the species in a manner consistent with section 101(a) (2), (4) and (5) of the Act.

(3) Provisions for annually acquiring and evaluating data and other new evidence relating to OSP of the species and the maximum allowable take, and if warranted on the basis of such evaluation, for requiring reevaluations of OSP and maximum allowable take determinations pursuant to § 403.04.

(4) Procedures for the resolution of differences between the state and the appropriate Service that might arise during the development of a cooperative allocation agreement pursuant to § 403.05(a) of this Part.

(5) Procedures for the submission of an annual report meeting the requirements of § 403.06(b) of this Part to the appropriate Service regarding the administration of the state management program during the reporting period.

(6) A description of—

(i) The organization of state offices involved in the administration and enforcement of the state management program;

(ii) Any permit system relating to the marine mammals, the laws that apply to such permits, and the procedures to be used in granting or withholding such permits;

(iii) State laws relating to judicial review of administrative decisions as they relate to the state management program;

(iv) State laws relating to administrative rulemaking as they relate to the state management program;

(c) In addition to the aspects of the state management program required to be submitted by paragraph (b) of this section, the state shall submit information, in summary form, relating to

(1) The anticipated staffing and funding of state offices involved in the administration and enforcement of the state management program;

(2) Anticipated research and enforcement activities relating to conservation of the species for which management authority is sought; and

(3) Such other materials and information as the Service may request or which the state may deem necessary or advisable to demonstrate the compatibility of the state management program with the policy and purposes of the Act and the rules and regulations issued under the Act.

(d) In addition to the requirements contained in paragraphs (b) and (c) of this section, a request for the transfer of marine mammal management authority by the State of Alaska must contain the following concerning subsistence use of the species:

(1) A statute and regulations concerning the take of marine mammals that ensure that

(i) The taking of marine mammals species for subsistence uses will be the priority consumptive uses of the species;

(ii) If restrictions on subsistence uses of the species are required, such restrictions shall be based upon the customary and direct dependence upon the species as the mainstay of livelihood, local residency, and the availability of alternative resources; and

(iii) The taking of marine mammal species for subsistence uses is accomplished in a non-wasteful manner;

(2) Statutes or regulations that ensure that the appropriate state agency will

(i) Authorize nonsubsistence consumptive uses of a marine mammal species only if such uses will have no significant adverse impact on subsistence uses of the species;

(ii) Regulate nonsubsistence consumptive uses in a manner which, to the maximum extent practicable, provides economic opportunities, including, but not limited to, licensing of marine mammal hunting guides and the assignment of guiding areas, for residents of rural coastal villages of Alaska who engage in subsistence uses of the species; and

(iii) Make written findings supporting the authorizations and regulations described in this paragraph based solely on the administrative record before the agency;

(3) A narrative discussion of the statutes or regulations required under paragraph (2) above, and any additional policies or procedures concerning the regulation of nonsubsistence consumptive uses of marine mammals. This discussion must explain how the State's program satisfies the requirements of Section 109(f) of the Act, namely that the regulation of nonsubsistence consumptive uses of marine mammals provides, to the maximum extent praticable, economic opportunities for the residents of rural coastal

villages of Alaska who engage in subsistence uses of the species.

(e) To assist states in preparing the state management program for submission, the Service will also, at the written request of any state, make a preliminary review of any aspects of the state management program. This review will be advisory in nature and shall not be binding upon the Services. Notwithstanding preliminary review by the Service, once any proposed aspect of the state management program has been prepared and submitted in final form, it shall be subject to final review and approval under paragraphs (f) through (h) of this section.

(f)(1) After receiving the state's request, for management authority, the Service shall make an initial determination on whether the state's management program meets the requirements of the Act and these regulations.

(2) Within 45 days after receiving the state's request, unless the state and the Service agree to another time period, the Service shall publish a general notice of its initial determination in the **Federal Register** together with, in the case of a positive determination, the text of a proposed rule to transfer management authority to the state. The general notice shall contain a summary of the major components of the state's management program and shall indicate where the full text of the management program may be inspected or copied. The public shall be allowed to submit written comments and to request an informal public hearing on the Service's initial determination and the state's management program within 60 days of publication of the general notice.

(g) If requested, the Service may conduct an informal public hearing after publishing 30 days' advance notice of the date, location, and time of such hearing in the **Federal Register.**

(h) After considering all comments and other relevant information, the Service shall publish in the **Federal Register** its final determination on whether the state has developed and will implement a management program that meets the requirement of the Act and these regulations. In the case of a positive final determination, the Service shall publish with the notice a final regulation transferring management authority for the species to the state after the following requirements are satisfied:

(1) The state's determinations pursuant to § 403.04 of this Part are final and implemented under state law;

(2) Any cooperative allocation agreement required under § 403.05(a) of this Part is implemented; and,

(3) The state has enacted and submitted to the Service laws and policies that are substantially the same as those provided pursuant to § 403.03(a) in proposed form in the state's management program.

§ § 403.04 Determinations and hearings under section 109(c) of the MMPA.

(a) *Introduction.* In order to gain approval of its marine mammal management program the state must provide for a process, consistent with section 109(c) of the Act, to determine the optimum sustainable population of the species and the maximum number of animals that may be taken from populations it manages without reducing the species below OSP. The state process must be completed before the state may exercise any management authority over the subject marine mammals, and it must include the elements set forth below.

(b) *Basis, purpose, and scope.* The process set forth in this section is applicable to and required for only the determination of the OSP of the species and maximum number that may be taken without reducing it below its OSP and, in the case of Alaska if the species is below OSP, the maximum number of animals that may be taken, if any, for subsistence uses without preventing the species from increasing toward its OSP. The state need not allow the maximum take, as determined in accordance with this process, that is biologically permissible. The state may change regulations establishing bag limits, quotas, seasons, areas, manner of take, etc. within the maximum biologically permissible take pursuant to its other rulemaking criteria, authority, and procedures. Compliance with the process set forth in this section would not be required again unless the state proposes to modify its determinations of the status of the species with respect to its OSP or the maximum permissible take from that species.

(c) *Initial determination by the State.* The state agency with responsibility for managing the species in the event management authority is transferred to the state shall make initial determinations on the basis of the best scientific evidence available of: (1) Whether or not it is at its OSP; (2) if so, the maximum number of that species that nay be taken without reducing it below its OSP; and (3) if not, in the case of Alaska, the maximum number of animals that may be taken, if any, for subsistence uses without preventing the species from increasing toward its OSP.

(d) *Notice and review of initial determinations and request for hearing.* The state agency shall provide notice of its initial determinations to the Service and the public and shall provide access to or copies of the documentation supporting its determinations to the Service and the public. The state agency shall indicate, in the notice of its initial determinations, the location(s) and hours during which such documentation may be inspected, and the costs, if any of copies of such documentation. The state agency shall also indicate in the notice that any interested person may request a hearing regarding the initial determinations, and the state shall provide a reasonable time, not less than 30 days, for making the request, taking into account the time required to advise the public of the initial determinations and to make the supporting documentation readily available to interested persons for their consideration. If a request for a hearing is not made within the prescribed time period, the initial determinations shall be treated as final.

(e) *Notice of hearing.* If a request for a hearing is made within the prescribed time period by any interested person, the state agency shall provide notice of the hearing to the Service and the public not less than 30 days in advance of the scheduled date(s) of the hearing(s). The notice shall include the date(s), location(s), and purpose of the hearing, a recitation of the initial determinations, the name(s) of the person(s) who will preside at the hearing, and the manner and date by which interested persons must notify the state agency or presiding officer(s) of their desire to participate in the hearing. The state shall also make available and distribute upon request a list of witnesses and description of the documentation and other evidence that will be relied upon by the state's witnesses in support of its initial determinations sufficiently in advance of the hearing date so as to allow interested persons to prepare questions and supporting or rebuttal testimony for the hearing.

(f) *Conduct of the hearing.* (1) The hearing shall be publicly conducted and reported verbatim by an official reporter.

(2) The state shall sponsor all written documentation in support of its determinations with witnesses who are able, by virtue of training and experience, to respond fully to cross-examination regarding the facts and conclusions contained therein provided that, except by agreement of the parties, the state agency may not call any witnesses or introduce any

documentation into the record unless the advance notice requirements of paragraph (e) of this section are met with respect to such witnesses or documentation.

(3) Any interested person who has notificed the state agency of his desire to participate in the hearing pursuant to subparagraph (e) of this section may participate in the hearing by presenting oral or written testimony or cross-examining the witnesses or other parties with respect to matters relevant to the state's initial determinations, provided that any such written documentation must be sponsored by a witness who is able, by virtue of training and experience, to respond fully to cross-examination regarding the facts and conclusions contained therein.

(4) The presiding officer(s) shall conduct the hearing in accordance with such other rules of evidence, criteria, and procedures as are necessary and appropriate for the expeditious and effective determination of the issues. The presiding officer(s) may provide for oral argument and/or written briefs at the end of the hearing.

(5) Final determinations on the issues specified in paragraph (c) of this section must be supported by the best available scientific information so as to insure that any taking will be consistent with the maintenance of OSP.

(g) *Review of the hearing record and final determinations.* (1) The state agency shall provide for either: (i) Review and evaluation of the hearing record by the presiding officer(s) and transmittal by the presiding officer(s) of recommended final determinations to the decision-maker(s) in the state agency; or (ii) review and evaluation of the hearing record and final determinations by the state agency without benefit of any recommendations by the presiding officer(s). In any event, the final determinations by the state agency must be made solely on the basis of the record developed at the hearing. The state agency in making its final determinations, and/or presiding officer(s) in making his (their) recommended determinations, may not rely on oral or written evidence which was not presented at the hearing and made available to the parties for cross-examination and rebuttal testimony. Any such oral or written information transmitted to the presiding officer(s) or other members of the state agency responsible for the final determinations shall be treated as *ex parte* communications and may not be considered part of the record for decision.

(2) The state agency shall make final determinations of the issues set forth in paragraph (c) of this section and shall include in its statement of final determinations a statement of findings and conclusions and the reasons or basis therefor.

(3) The state agency shall advise the Service and the public of its final determinations and shall provide access to or copies of its decision document and Hearing Record.

(h) *Judicial review.* The state agency's final determinations after a hearing must be supported by substantial evidence in the record of the hearing. Opportunity for judicial review of the state agency's final determinations must be available under state law. The scope of judicial review shall be equivalent to that provided for in 5 U.S.C. 706(2) (A) through (E).

§ 403.05 State and Federal responsibilities after transfer of management authority.

(a) After determinations required by section 403.04 of this Part have been made in respect to a species whose range extends beyond the territorial waters of the state, the state shall not exercise management authority until a cooperative allocation agreement with the Secretary has been signed and the Service has transferred management authority pursuant to § 403.03(h). The cooperative allocation agreement shall provide procedures for allocating, on a timely basis, the maximum amount of take as determined by the state pursuant to § 403.04 of this Part. Such allocation shall give first priority to incidental take within the zone described in section 3(14)(B) of the Act as provided for under section 101(a) of the Act, except that in the case of Alaska, first priority shall be given to subsistence use.

(b) For those species to which subparagraph (a) of this section applies, the state may request the Service to regulate the taking of the species within the zone described in section 3(14)(B) of the Act for subsistence uses and/or hunting in a manner consistent with the regulation by the state of such taking within the state. If such a request is made, the Service shall adopt and enforce within such zone, such of the state's regulatory provisions as the Service considers to be consistent with the administration within such zone of section 101(a) of the Act.

(c) If management authority for a species has been transferred to a state pursuant to this subpart, the Service shall provide to the state an opportunity to review all requests for permits to remove live animals from habitat within the state for scientific research or public display purposes. If the state finds that issuance of the permit would not be consistent with its management program for the species:

(1) The state shall so inform the Service, together with the reasons for such finding, within 30 days of its receipt of the application, and the Service shall not issue the permit; and

(2) The Service shall provide to the permit applicant and the state an opportunity to adjust the permit application or otherwise reconcile it with the state management program for the species.

(d) After management of a species has been transferred to the state, state and Federal authorities shall cooperate to the maximum extent practicable in conserving the species of marine mammals.

§ 403.06 Monitoring and review of state management program.

(a) The Service has responsibility to monitor and review implementation of all state management programs approved pursuant to this Part.

(b) In order to facilitate such review, each state to which management authority has been transferred shall submit an annual report, not later than 120 days after the close of such state's first full fiscal or calendar year following the effective date of the Service's approval of the State management program, and at the same time each following year, or at such other time as may be agreed upon. The repot shall contain the following information current for each reporting period:

(1) Any changes in the state laws which comprise those aspects of the state management program submitted pursuant to section 403.03(b), and, in the case of Alaska, § 403.03(d), of this Part;

(2) Pertinent new data on the marine mammal species or the marine ecosystems in question including a summary of the status, trend and general health of the species;

(3) A summary of available information relating to takings under the state management program;

(4) A summary of state actions to protect species' habitat;

(5) A summary of all state research activity on the species;

(6) Any significant changes in the information provided with the original request for transfer of management authority;

(7) A summary of enforcement activity;

(8) A summary of budget and staffing levels for the marine mammal activities in the categories of research, management and enforcement;

(9) Any other information which the Service may request, consistent with the Act as amended, or which the state deems necessary or advisable to facilitate review by the Service of state management of the species.

(c) Each state having an approved management program shall file a report, in a timely manner, not to exceed 45 days from the occurrence of any of the following:

(1) Any change in a relevant state law (amendments, repealers, or new legislation or regulations or judicial precedent) as submitted pursuant to paragraphs (b)(2) through (b)(5), and in the case of Alaska, paragraph (d), of § 403.03 of this Part that may impair the State's ability to implement the program;

(2) Any significant natural or manmade occurrence or any new scientific information that may warrant reconsideration of the determinations made pursuant to § 403.04 of this Part.

(d) All components of the state request for transfer of management authority, as well as annual reports submitted under paragraph (b) of this section and any reports submitted under paragraph (c) of this section, shall be available for inspection and copying at the Office of the Chief, Division of Wildlife Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240, or, as appropriate, at the Office of Protected Species and Habitat Conservation, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce, Washington, D.C. 20235, and at the appropriate Service's regional office.

§ 403.07 Revocation and return of state management authority.

(a) *Revocation of management.* The Service shall have responsibility to review management of a species transferred to a state under this Part and to determine whether or not the implementation of the state management program continues to comply with the requirements of the Act, this Part and the state's approved management program.

(1) Upon receipt of any substantial factual information suggesting that the state management program is not being implemented or is being implemented in a manner inconsistent with the Act, this Part, or the state's approved management program, the Service shall, as soon as practicable but not later than 30 days after receipt, determine whether or not the state continues to comply with the requirements of the Act, this Part and the state's approved management program.

(2) Whenever pursuant to a review as specified in paragraph (a)(1) of this section, the Service determines that any substantial aspect of the state management program is not in compliance with the requirements of the Act, this Part or the state's approved management program, it shall provide written notice to the state of its intent to revoke management authority, together with a statement, in detail, of those actions or failures to act upon which such intent to revoke is based. The Service shall publish notice of such intent to revoke in the **Federal Register** and invite public comment thereon, and shall conduct an informal public hearing on the matter if requested by the state or if the Service otherwise determines it to be necessary. The Service shall provide to the state an opportunity for consultation between the Service and the state concerning such actions or failures and necessary remedial actions to be taken by the state.

(3) If within 90 days after notice is provided under paragraph (a)(2) of this section, the state has not taken such remedial measures as are necessary, in the judgment of the Service, to bring the state management program into compliance with the provision of the Act, this Part and the state's approved management program, the Service shall revoke the transfer of management authority by written notice to the state and publication in the **Federal Register.**

(b) *Voluntary return of management authority to the Service.* (1) If a state desires to return management of a species of marine mammals to the Service, it shall provide the Service notice of intent to return management. The Service shall accept the return of management, and such return shall become effective, upon publication of a notice in the **Federal Register** to this effect no sooner than 30 days (except in an emergency as determined by the Service) nor longer than 60 days after the state has provided notice of its intent to return management or unless otherwise agreed upon.

(2) If implementation of any aspect of the state management program is enjoined by court order, the state shall advise the Service of such injunction and its effect on the state management program. If the state determines that the effect of the injunction is to preclude effective conservation and management of the species under the terms of the state management program, it shall so notify the Service and such notification shall be treated as a notice of intent to return management as provided in paragraph (b)(1) of this section. If the state determines that the injunction does not preclude effective conservation and management of marine mammals under the terms of the state management program, it shall so notify the Service together with the basis for the state's determination and such notice shall be treated as a report submitted pursuant to the terms of § 403.06(c)(1) of this Part. In either case, the state shall provide notice to the Service as soon as practicable but not more than 30 days after issuance of the injunction. Management authority returned to the Service pursuant to this paragraph may be re-transferred to the state, notwithstanding the requirements of § 403.03, when, in the judgment of the Service, the cause for return of management authority to the Service has been alleviated in such a way as to allow effective conservation and management of the species consistent with the requirements of the Act and this Part.

(c) When revocation of a management authority pursuant to paragraph (a) of this section becomes final, or when a state returns management pursuant to paragraph (b) of this section, the Service shall resume such management authority and provide for the conservation of the species within the state in accordance with the provisions of the Act.

§ 403.08 List of states to which management has been transferred.

The following states have received management authority pursuant to this Part for the species listed and, where appropriate, cooperative allocation agreements pursuant to § 403.05(c) are in force:

[Reserved]

Dated: March 16, 1983

G. Craig Potter,

Acting Assistant Secretary for Fish and Wildlife and Parks.

Dated: April 18, 1983.

William G. Gordon,

Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration.

[FR Doc. 83-12127 Filed 5-5-83; 8:45 am]

BILLING CODE 1505-01-M

federal register

Wednesday
May 18, 1983

Part V

Department of the Interior

Bureau of Land Management

Use Authorizations; Special Recreation Permits, Other Than on Developed Recreation Sites; Proposed Rulemaking

Reprinted From the Federal Register of May 6, 1983

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 8370

Use Authorizations; Amendment of Subpart 8372—Special Recreation Permits, Other Than on Developed Recreation Sites

[NOTE: This document originally appeared in the issue of May 6, 1983 at 48 FR 20630–20635. It is reprinted at the request of the Agency because those pages were omitted in the production process from some copies of the May 6 issue.]

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rulemaking.

SUMMARY: The proposed rulemaking would amend 43 CFR Subpart 8372—Special Recreation Permits, Other Than on Developed Recreation Sites, by setting forth clearly a recitation of specifically prohibited acts under the regulations and the penalties that would apply upon conviction. It would: state grounds for exemption from Special Recreation Permit requirements; authorize the Director of the Bureau of Land Management to set recreation permit fee schedules to help reimburse the United States for costs incurred in permitting recreational use of public lands; replace the requirements that an applicant for a waiver of fees submit documentation of its official recognition as an educational or scientific institution with discretion to require such documentation on the part of the authorized officer; allow commercial educational users to obtain such waivers; and state the appeals procedure.

DATE: Comments should be submitted by June 30, 1983. Comments postmarked or received after this date may not be considered in the decisionmaking process in the final rulemaking.

ADDRESS: Comments should be sent to: Director (140), Bureau of Land Management, 1800 C street NW., Washington, D.C. 20240. Comments will be available for public review in Room 5555 of the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Bruce R. Brown,
or
Robert I. Conquergood, (202) 843–9353.

SUPPLEMENTARY INFORMATION: The proposed rulemaking would amend 43 CFR Subpart 8372 in four respects: (1) By giving the Director, Bureau of Land Management, discretion to set special recreation permit fees for the use of public lands administered by the Bureau; (2) by modifying the requirements for obtaining waivers of permit fees; (3) by clearly setting forth prohibitions relating to special recreation permits other than on developed recreation sites, and the penalties for violating those prohibitions; and (4) by adding a section stating the circumstances when special recreation permits are not required.

Section 8372.4 is amended in the proposed rulemaking to require the Director, Bureau of Land Management, to publish a schedule of fees for special recreation permits. This fee schedule is designed to require recreational users of the public lands to pay the costs of administering the permits. The proposal also allows the Bureau of Land Management to recover the actual costs of issuing and monitoring permits when the estimated costs exceeds certain levels, allows the authorized officer to require a nonrefundable partial prepayment to cover the cost of processing the application and to charge larger fees than those provided in the schedule if permitted by the Federal Land Policy Management Act of 1976 or the Land and Water Conservation Fund Act, as appropriate.

The following fees are required for special recreation uses of public lands administered by the Bureau of Land Management in accordance with proposed 43 CFR 8372.4(a)(1). This fee schedule will be effective upon the date of final publication in the **Federal Register.**

(1) Commercial use—a minimum of $100 or the amount from the table below, whichever is greater, is required. The adjusted daily charge recognizes that operators provide discounts to certain customers and groups that may vary from the initially advertised customer rate schedules. The fee per user day will be based on the adjusted daily charge per customer rather than the advertised rate schedule. Additional adjustments may be made if the advertised daily rate includes long distance transportation costs or lodging in local communities before or after the permitted use.

Adjusted daily charge collected by permittee from each participant	Fee paid to the Bureau per user day
$8.00 or less	$.25
8.01 to 20.00	.40
20.01 to 35.00	.80
35.01 to 50.00	1.30
50.01 to 75.00	1.90
75.01 to 100.00	2.60
100.01 to 125.00	3.40
125.01 to 150.00	4.10
150.01 to 175.00	4.90
175.01 to 200.00	5.60
200.01 to 250.00	6.75
250.01 to 300.00	8.25
Over 300.00	(1)

[1]Three percent of adjusted daily charge per participant.

(2) Competitive use. A minimum of $2.00 per user day or 3 percent of the gross receipts, whichever is greater, is required. When use is both commerical and competitive, the competitive fee shall be charged.

(3) Other uses. A minimum of $2.00 per user day is required.

The existing regulations, at § 8372.4(d), include a complicated set of criteria for waiver of fees for use of the public lands for educational or scientific purposes, including the need to present proof of accreditation and to demonstrate that the institution is noncommercial or that the activity is not connected with commercial aspects of the institution. These requirements have been shown to be unnecessarily burdensome and are removed from the proposed rulemaking. Instead, the authorized officer would have discretion to require documentation of accreditation by Federal, State or local government agencies, or any other documentation necessary to show that the use proposed is educational.

Proposed amended § 8372.0–7 clearly states acts that are prohibited under the subpart. In addition to prohibiting use of the public lands without obtaining the permits and paying the fees required by the subpart, this section prohibits: Violation of stipulations or conditions in such permits; knowing participation in the events or activities for which the required permit has not been issued; and failure to post a copy of a commercial or competitive permit in plain sight where all participants can read it. The proposed rulemaking also adds a paragraph stating the criminal and civil penalties that may be incurred by violators.

The proposed rulemaking adds a new § 8372.1–3 excepting certain uses from the requirement to obtain Special Recreation Permits and pay fees. These include events sponsored or co-sponsored by the Bureau of Land Management, events traversing less than 1 mile of public land and beginning and ending on other land, and, in the discretion of the authorized officer, non-commercial events with fewer than 50 vehicles, no cash prizes, no public advertising, and in compliance with off-road vehicle designations.

The proposed rulemaking includes other amendments that are editorial only, removes unnecessary or confusing language from the existing regulations and adds a section on appeals. All decisions of the authorized officer will be held in full force and effect pending appeal unless the Secretary of the Interior rules otherwise.

This proposed rulemaking is being published to coordinate with the public consideration of the Proposed Special Recreation Permit Policy of the Bureau of Land Management, which was

published in the Federal Register on March 16, 1983. Copies of this proposed policy document may be obtained by calling the telephone number listed above. The deadline for submitting public comments on both this proposed rulemaking and the proposed policy will be June 21, 1983.

The principal authors of this proposed rulemaking are Bruce R. Brown and Robert I. Conquergood, Division of Recreation, Cultural and Wilderness Resources, assisted by the staff of the Office of Legislation and Regulatory Management, Bureau of Land Management.

It is hereby determined that the publication of this proposed rulemaking is not a major Federal action significantly affecting the quality of the human environment and that a detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is not required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and that it will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). There will be no significant impact on any user group, and the proposal favors no demographic group.

The proposed rulemaking would serve to protect the recreation resources and opportunities on the public lands. The proposed rulemaking would only affect individuals and groups using the public lands for certain recreation purposes, and educational institutions using the public lands for educational or scientific purposes. The proposed increase in fees will compensate the United States for administering the program, with no significant impact on any entity.

Information collection requirements contained in this rulemaking have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*, and assigned clearance number 1004–0119.

List of Subjects in 43 CFR Part 8370

Public lands—recreation, Recreation areas, Surety bonds.

PART 8370—[AMENDED]

Under the authority of 43 U.S.C. 1201, the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*), the Oregon and California Railroad and Coos Bay Wagon Road Grant Lands Act (43 U.S.C. 1181a), the Act of September 15, 1960, as amended (16 U.S.C. 670g–n), the Land and Water Conservation Fund Act of 1965, as amended (16 U.S.C. 460*l*–6a), and the National Trails System Act (16 U.S.C. 1241 *et seq.*), it is proposed to amend Subpart 8372, Part 8370, Group 8300, Subchapter H, Chapter II of Title 43 of the Code of Federal Regulations as follows:

§ 8372.0–3 [Amended]

1. Section 8372.0–3 is amended by correcting the citation "16 U.S.C. 460(1–6a)" to read "16 U.S.C. 460*l*–6a."

2. Section 8372.0–5 is revised by:

a. Revising paragraph (b) to read as follows:

§ 8372.0–5 [Amended]

* * * * *

(b) "Actual expenses" are expenses necessarily incurred for the permitted activity or use. These include, but are not limited to, the actual costs of such items as expendable equipment and supplies. Actual expenses do not include any salaries, profit, increase of capital worth, allowances, or subsidies of any other activities of the permittee or sponsor, the purchase or amortization of nonexpendable supplies or equipment, any allowance for undersubscribed events or any monetary compensation for sponsors or participants."

* * * * *

b. Revising paragraph (e) to read as follows:

* * * * *

(e) "Educational use" is an academic activity sponsored by an accredited institution of learning.

* * * * *

3. Section 8372.0–7 is revised to read as follows:

§ 8372.0–7 Enforcement

(a) *Prohibited acts.* On all public lands, it is prohibited to: (1) Fail to obtain a permit and pay any fee required by this subpart; (2) violate stipulations or conditions of a permit issued under authority of this subpart; (3) participate knowingly in an event or use subject to the permit requirements of this subpart where no such permit has been issued; (4) fail to post a copy of any commercial or competitive permit where all participants have the opportunity to read it.

(b) *Penalties.* (1) Any person convicted of violating any prohibited act in this subpart may be subject to a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months. (2) Unauthorized users may be subject to civil action for unauthorized use of the public lands and their resources.

4. A new § 8372.1–3 is added to read as follows:

§ 8372.1–3 Exceptions.

(a) Special Recreation Permits are not required for uses that are sponsored or co-sponsored by the Bureau of Land Management.

(b) The authorized officer may determine that permits and fees are unnecessary where a use or event begins and ends on non-public lands, traverses less than 1 mile of public lands, and poses no threat of significant damage to public land resource values.

(c) The authorized officer may waive permit and fee requirements for off-road vehicle competitive events that are not commercial when the events comply with off-road vehicle designations for the use area, no cash prizes are awarded, fewer than 50 vehicles are involved and there is no public advertising for the event.

5. Section 8372.4 is amended by:

a. Amending paragraph (a) to read as follows:

§ 8372.4 [Amended]

(a) *Fees.* (1) Fees for Special Recreation Permits shall be established and maintained by the Director, Bureau of Land Management, and may be adjusted from time to time to reflect changes in costs. The fee schedule shall be incorporated in the Manual of the Bureau of Land Management, published periodically in the Federal Register and otherwise made generally available to the public.

(2) The authorized officer may charge fees larger than the minimum set in the current fee schedule if the authorized officer determines that such larger fees are needed to compensate the United States for costs incurred in connection with the issuance of permits and for uses of the public lands and their resources under said permits. The authorized officer shall notify the applicant of any fee larger than that provided in the schedule in writing within 15 days of receipt of the application.

(3) The authorized officer may require a nonrefundable prepayment of all or a portion of the fees from the schedule, not to exceed the estimated cost of processing the application, before processing the application.

(4) Actual costs to the United States shall be charged in lieu of the fees provided in the schedule when the estimated cost of issuing and monitoring the permit (estimated at the time of application) exceeds $5,000, except when the total estimated fees from the schedule over the term of the permit exceed the estimated actual cost. In that case, the fees from the schedule shall be charged. The authorized officer shall

notify the applicant in writing of such charges within 15 days of receipt of the permit application and shall not process said application until payment has been made for such charges.

* * * * *

b. Removing paragraph (b) in its entirety.

c. Redesignating paragraphs (c) and (d), as (b) and (c), respectively.

d. Amending paragraph (c), formerly paragraph (d), by removing paragraphs (c) (4) and (5) in their entirety and amending paragraph (c)(3) to read as follows:

* * * * *

(c) * * *

(3) Applicants for waiver of fees on this basis may be required to provide documentation of their official recognition as educational or scientific institutions by Federal, State or local government bodies or any other documentation necessary to demonstrate educational use as defined in section 8372.0–5(e) of this title. The use of recreational resources for which a waiver on this basis is requested shall relate directly to scientific or educational purposes and shall not be primarily for recreational purposes.

6. New § 8372.6 is added to read as follows:

§ 8372.6 Appeals.

(a) Any person adversely affected by a decision of the authorized officer under this part may appeal under Part 4 of this title from any final decision of the authorized officer.

(b) All decisions of the authorized officer under this Part shall remain effective pending appeal unless the Secretary rules otherwise.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

April 14, 1983.

[FR Doc. 83-12140 Filed 5-5-83; 8:45 am]

BILLING CODE 1505-01-M

federal register

Wednesday
May 18, 1983

Part VI

Federal Emergency Management Agency

Transportation Accident Planning and Preparedness Guidance; Availability of Guidance Document

Reprinted From the Federal Register of May 6, 1983

FEDERAL EMERGENCY MANAGEMENT AGENCY

Transportation Accident Planning and Preparedness Guidance; Availability of Transportation Guidance Document

[NOTE: This document originally appeared in the issue of May 6, 1983 at 48 FR 20635. It is reprinted at the request of the Agency because that page was omitted in the production process from some copies of the May 6 issue.]

AGENCY: Federal Emergency Management Agency.

ACTION: Notice of Availability of a transportation accident planning and prepardness guidance document and invitation for submittal of comments.

SUMMARY: The transportation guidance document, *Guidance for Developing State and Local Radiological Emergency Response Plans and Preparedness for Transportation Accidents*, is available for public distribution and comment. Copies will be distributed to State and local governments by the Federal Emergency Management Agency (FEMA) for review, comment and use.

This document provides planning and preparedness guidance in the form of 14 planning objectives and related criteria for use by State and local governments in developing emergency response plans for transportation accidents involving radioactive materials. The document also provides background information to support the application of the guidance to specific jurisdictions and to explain the unique characteristics of transportation accidents. This document is intended for interim use by State and local governments until a final edition is published early in 1984. Comments received by FEMA on the current, interim-use document will be analyzed with the results being used to develop the final edition.

This document has been developed by the Federal Radiological Preparedness Coordinating Committee's Subcommittee on Transportation Accidents which is co-chaired by the U.S. Department of Transportation and FEMA.

A copy of this document may be obtained from the: Federal Emergency Management Agency, P.O. Box 8181, Washington, D.C. 20024. Please reference the title of the document in your request.

Comments on this document will be received through September 6, 1983 and should be addressed to: Rules Docket Clerk, Federal Emergency Management Agency, Room 835, 500 C Street, SW., Washington, D.C. 20472.

Dated: April 29, 1982.

Joe D. Winkle,

Acting Deputy Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 83-12141 Filed 5-5-83; 8:45 am]

BILLING CODE 1505-01-M

federal register

Wednesday
May 18, 1983

Part VII

Department of Housing and Urban Development

Office of the Secretary

Nondiscrimination Based on Handicap in Federally-Assisted Programs and Activities of the Department of Housing and Urban Development

Reprinted From the Federal Register of May 6, 1983

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 8

[Docket No. R-83-528]

Nondiscrimination Based on Handicap in Federally-Assisted Programs and Activities of the Department of Housing and Urban Development

[NOTE: This document originally appeared in the issue of May 6, 1983 at 48 FR 20638. It is reprinted at the request of the Agency because pages 20638-20656 of that document were omitted in the production process from some copies of the May 6 issue. This reprint also incorporates an Agency correction to the effective date which was printed in the issue of May 10, 1983 at 48 FR 20902.]

AGENCY: Department of Housing and Urban Development (HUD).

ACTION: Interim rule.

SUMMARY: HUD adopts procedures and policies to assure nondiscrimination based on handicap in programs and activities receiving Federal financial assistance from the Department of Housing and Urban Development. The rule implements Section 504 of the Rehabilitation Act of 1973, as amended.

DATES:

Effective date: June 15, 1983.

Comment due date: August 4, 1983.

ADDRESS: Interested persons are invited to submit comments regarding this rule to the Office of General Counsel, Rules Docket, Room 10278, Department of Housing and Urban Development, 451 7th Street, SW., Washington, D.C. 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: John Putman, Special Advisor to Deputy Under Secretary for Intergovernmental Relations, Office of Housing, Office of Policy and Budget, Room 10184 at the above address (202) 755-6732. A telecommunications device for deaf persons (TDD) is available at (202) 426-0016. These are not toll free numbers. This notice will be available on tape for persons with vision impairments in the office of the Rules Docket Clerk shown above.

SUPPLEMENTARY INFORMATION: Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794) provides that "No otherwise qualified handicapped individual in the United States * * * shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance * * *."

On April 19, 1978, the Department published a Notice of Proposed Rulemaking (43 FR 16652) for public comment (the "1978 proposed rule"). In addition, 10 public hearings were conducted throughout the country. More than 225 individuals and organizations presented testimony at the public hearings. Transcripts were made of each public hearing and were analyzed along with 258 written comments received from other sources. The largest number of comments (c. 185) were received from organizations representing handicapped people. The next largest group (c. 131) was Federal, State or local agencies, including some 31 Housing Authorities. Seventeen comments were received from individuals or organizations representing the housing industry.

In general, both the organizations, representing disabled persons and the housing industry were critical of the 1978 proposed rule, but for different reasons. The principal concern expressed by the disabled consumer groups was the number of provisions for waivers and exceptions. On the other hand, most of the housing industry representatives felt that these should be expanded, and that funds should be provided by HUD to cover any costs incurred as a result of Section 504 requirements. Similarly, public agencies questioned the source of funds for assuring accessibility and were concerned that such costs would reduce the level of funds currently available for program purposes.

Subsequently, two events occurred which have direct bearing on the Department's implementation of Section 504 as it applies to HUD programs. These were: (1) the decision of the United States Supreme Court in *Southeastern Community College* v. *Davis*, 442 U.S. 397 (1979), and subsequent appellate decisions regarding the extent of recipient's obligations to accommodate the needs of handicapped persons, discussed more fully below in connection with the "program accessibility" provisions of the regulations, and (2) a Report to Congress (B-197756, June 19, 1981) issued by the Comptroller General entitled "Weaknesses in the Planning and Utilization of Rental Housing for Persons in Wheelchairs."

The GAO report concluded that HUD and the Farmers Home Administration "have no reliable statistics on the number of people using wheelchairs in the United States or on the characteristics of such persons, for example, their geographic location, age, income, family size, and need for federally subsidized housing * * * Also, they have no information to determine if a market exists for accessible units in the area serviced by the housing projects they support." The GAO report went on to state that: "HUD and FmHA need to have such information to determine if a market exists for accessible units and whether policies relating to housing the handicapped adequately respond to such a market."

The GAO surveyed 847 accessible housing units and determined that only 27% were actually occupied by persons using wheelchairs. The report concluded that HUD and FmHA need to do more with respect to out-reach programs and effectively advertising the availability of units accessible for handicapped individuals. Of equal importance to regulatory implementation of Section 504, GAO also recommended the elimination of nationwide percentage goals (previously adopted administratively under various HUD and FmHA programs) in favor of establishing local or regional goals, based upon a market analysis of demand.

Because of substantial changes that have been made from the 1978 proposed rule on grounds not fully discussed in connection with the publication of the 1978 proposed rule, the Department normally would publish this regulation as a revised proposed rule for further comment, rather than for immediate effect. However, on June 16, 1981, the United States District Court, Central District of California, issued an Order requiring HUD and certain other Federal agencies to publish final regulations implementing Section 504 of the Rehabilitation Act of 1973 on an expedited basis. *Paralyzed Veterans of America, etc., et al.* v. *William French Smith, et al.*, No. 79-1979 WPG, June 16, 1981. While the Department does not construe the District Court's order as necessarily overriding the public notice and comment requirements otherwise applicable, the Department believes, on balance, that the public interest requires that regulatory implementation of Section 504 with respect to HUD programs not be subjected to further delay. In reaching this conclusion, the Department has taken into account the fact that principal substantive requirements of Subpart C of the interim rule, regarding program accessibility, already are in effect through program regulations and the HUD Minimum Property Standards.

Accordingly, this rule is being published as an interim rule for effectiveness at the earliest date possible, subject to certain statutory requirements noted below. Public comments are solicited for consideration prior to issuance of a final rule.

At the outset, it will be useful to note certain preliminary observations

regarding the scope and nature of Section 504 and its regulatory implementation, as well as to note highlights of the history of Section 504's regulatory implementation by the Federal Government which form the backdrop of HUD's interim rule.

The language of Section 504 is almost identical to the nondiscrimination provisions of Section 601 of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) and Section 901 of Title IX of the Education Amendments of 1972 (20 U.S.C. 1681) and, like those statutes, establishes a governmentwide policy against discrimination in Federally assisted programs and activities—in this case, on the basis of handicap.

However, as was noted by the Department of Health, Education and Welfare (as it then was) in 1976 when first addressing the problems of regulatory implementation of Section 504:

"Section 504 * * * differs conceptually from both titles VI and IX. The premise of both title VI and title IX is that there are no inherent differences or inequalities between the general public and the persons protected by these statutes and, therefore, there should be no differential treatment in the administration of Federal programs. The concept of section 504, on the other hand, is far more complex. Handicapped persons may require different treatment in order to be afforded equal access to federally assisted programs and activities, and identical treatment may, in fact, constitute discrimination. The problem of establishing general rules as to when different treatment is prohibited or required is compounded by the diversity of existing handicaps and the differing degree to which particular persons may be affected. Thus, under section 504, questions arise as to when different treatment of handicapped persons should be considered improper and when it should be required.

Because the concepts underlying section 504 were new and complex and few judicial precedents existed in the area, the very general language of the statute creates serious problems of interpretation. There is almost no substantive legislative history surrounding the development and enactment of section 504. There were, for example, no public hearings accompanying the originial bills, and there was almost no substantive floor debate." (41 FR 20296, May 17, 1976).

At the time of the above writing, HEW also noted that there was then "no legislatively directed scheme of enforcement such as those provided in section 602 of Title VI * * * and 902 of Title IX" (ibid.). However, that void had been filled by Executive Order 11914, issued by President Ford, which prescribed specific enforcement procedures and sanctions for noncompliance, all based on precedents from Title VI and Title IX. Subsequently, Congress established legislatively, through Section 120(a) of the Rehabilitation Amendments of 1978 (adding Section 505 of the Rehabilitation Act, 29 U.S.C. 794–a), that the "remedies, procedures, and rights set forth in title VI of the Civil Rights Act of 1964 shall be available to any person aggrieved by any act or failure to act by any recipient of Federal assistance * * * under section 504 * * *."

As indicated, the first attempt by an Executive Department to address the issues of regulatory implementation of Section 504 was by HEW, which published a notice of intent to publish a proposed rule regarding programs or activities receiving Federal financial assistance from HEW in May 1976 (41 FR 20296), followed by a notice of proposed rulemaking in July 1976 (41 FR 29548) and a final rule in May 1977 (42 FR 22677). That final rule, as applicable to the programs of the Department of Health and Human Services, is now codified at 45 CFR Part 84. As will be noted below in the discussion of particular provisions, the HEW regulation was based in significant part upon provisions of HEW's then-existing regulations implementing Title VI and Title IX.

Executive Order 11914, referred to above, also assigned to HEW the task of issuing general standards for other departments and agencies of the Federal government to follow in promulgating regulations implementing Section 504. A proposed rule implementing this requirement of Executive Order 11914 was published by HEW in June 1977 (42 FR 32264) and a final rule, originally codified at 45 CFR Part 85, was published in January 1978 (43 FR 2132). In publishing its proposed rule for effectuating Section 504 to programs and activities receiving Federal financial assistance from HUD, the Department relied principally upon 45 CFR Part 85 but also adapted additional provisions from 45 CFR Part 85. The HEW regulation implementing Executive Order 11914, as it existed at 45 CFR Part 85 at the time of publication of HUD's proposed rule, is sometimes referred to in this preamble as the "HEW Implementation Guidelines."

By Executive Order 12250, issued by President Carter in November 1980, the authority of HHS (as successor to HEW) to promulgate general standards under Section 504 was transferred to the Department of Justice, which readopted the HEW Implementation Guideline without substantial change (except for modification of program accessibility provisions relating to mass transit systems made necessary by the decision of the District of Columbia Circuit Court of Appeals in *American Public Transit Association* v. *Lewis*, 655 F. 2d 1271 (D.C. Cir. 1981)). 28 CFR Part 41, adopted at 46 FR 40686, 40687 (August 11, 1981). As re-adopted by the Department of Justice, the HEW Implementation Guidelines are referred to herein as the "DOJ Implemenation Regulation."

The complexity of the issues involved in regulatory implementation of Section 504 which HEW noted more than six years ago have not diminished since that time. Judicial authority commencing with *Southeastern Community College* has called into question certain of the principal assumptions of the initial rulemaking as applied in particular contexts that are analogous, although not identical, to contexts pertinent to HUD programs. The Department is obliged to adhere as closely as possible to authoritative judicial interpretations of the scope of Section 504, as nearly as the Department is able to discern their direction.

As discussed more fully below in relation to Subpart C of this interim rule, the guidance that may be learned from judicial consideration to date of the program accessibility concept is less than complete, for while several decisions have either invalidated or criticized portions of agency regulations as requiring too much, no decision to date of which the Department is aware has addressed the concept in the context of housing facilities.

In engaging in substantive rulemaking under the authority of Section 504, it is not required absolutely that the Department define with precision the reach of the statutory mandate, and the Department does not pretend that it has done so in this rulemaking. Notwithstanding uncertainty that will persist regarding the exact limits of the statute itself, the Department believes that the provisions now being adopted for administrative implementation are reasonably related to the purposes of Section 504 while consistent with achievement of the objectives of the program statutes authorizing the Federal financial assistance (cf. Section 602, Civil Rights Act of 1964, 42 U.S.C. 2000d–1, made applicable to Section 504 enforcement by Section 505 of the Rehabilitation Act; *Lau* v. *Nichols*, 414 U.S. 563, 571 (1974) (Stewart, J., concurring); *Thorpe* v. *Housing Authority of the City of Durham*, 393 U.S. 268, 280–281 (1969)).

The regulation is divided into four subparts. Subpart A (General Provisions) outlines applicability, defines the important terms that are used throughout the regulation, and states in general terms the discriminatory acts that are prohibited. Subpart B (Employment) prescribes

requirements for nondiscrimination in the employment practices of recipients of Federal financial assistance. Subpart C (Program Accessibility) sets forth the requirement that no otherwise qualified handicapped person shall be denied accessibility to federally-assisted programs or activities. It also sets forth specific requirements and standards for non-housing and housing facilities. Subpart D (Enforcement) sets forth administrative enforcement provisions, and Subpart E governs the practice for hearings, decisions and administrative review, supplementing Subpart D.

Subpart A—General Provisions

Section 8.1 states the purpose of Part 8 as effectuating Section 504 with respect to any program or activity receiving Federal financial assistance from HUD. It notes that Part 8 does not effectuate Section 504 as it applies to any program or activity conducted by the Department. This refers to an amendment to Section 504, effected by Section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which extended its coverage to "any program or activity conducted by any Executive agency or by the United States Postal Service." The amendment further requires the head of each agency to "promulgate such regulations as may be necessary to carry out" the amendment and further requires that copies of any proposed regulation be submitted to "appropriate authorizing committees of the Congress" thirty days before taking effect. Regulations effectuating Section 504 as to Federally conducted programs are subject to the coordinating authority of the Department of Justice under Executive Order 12250. HUD is advised that the Department of Justice intends to establish an implementation guideline relating to Federally conducted programs, but no such guidance has been established to date. The Department anticipates that it will publish regulations effectuating Section 504 as to programs and activities conducted by the Department after evaluation of public comments received on the interim rule published herewith.

Section 8.1 also notes that compliance with the requirements of Part 8 does not assure compliance with requirements for accessibility by the physically handicapped imposed pursuant to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151, et seq.), where applicable. HUD regulations implementing the Architectural Barriers Act are located at 24 CFR Parts 40 and 41.

Paragraph (b) of Section 8.1 provides that the policies and standards for compliance established in Part 8 are established in contemplation of, and with a view to enforcement through, program administration and the administrative procedures described in Subparts D and E of Part 8. In view of the uncertainty noted above as to the exact limits of the statute itself, the Department wishes to emphasize that the policies and substantive requirements adopted in Part 8 are adopted only with a view to program administration by the Department and to enforcement through the procedures authorized by Section 505 of the Rehabilitation Act (including judicial enforcement of contractual assurances by the United States).

Section 8.2, identifying programs or activities to which Part 8 applies, is without substantive change from the proposed rule.

Section 8.3 defines terms used in Part 8. In its proposed rule, the Department generally provided definitions only of terms also defined in the HEW Implementation Guideline or in 45 CFR Part 84. For further clarification and in response to comments, the Department is adding definitions of further terms, including "accessible," "adaptable," "alteration," "multifamily project," and "project."

Several commentors objected to the notion set forth in the preamble to the proposed rule that the term "program accessibility," which was not defined in either 45 CFR Part 84 or 45 CFR Part 85, was not susceptible to a Departmentwide definition. Instead, program accessibility was defined separately with respect to different HUD program areas. Upon reconsideration, the Department has determined that program or activity accessibility can be defined in broad terms. Further, while "accessibility" in the context of HUD programs relates uniquely to the architectural needs of physically handicapped persons, program accessibility and activity accessibility clearly have a broader meaning applicable to all handicapped persons. For example, even though a facility in which a federally assisted program is conducted is free of architectural barriers and thus meets requirements for facility accessibility, the program is not accessible if management policies and procedures effectively bar handicapped people from participating in or otherwise benefiting from the program or activity. On the other hand, a program which is conducted in an inaccessible existing facility can be made accessible without altering the facility, where the program or activity can be delivered or otherwise be made available to a handicapped beneficiary without loss of essential program benefits.

With the foregoing consideration in mind, "accessible" is defined separately in the interim rule in the distinct contexts of program or activity accessibility, facility accessibility, and accessibility of an individual dwelling unit. The definition of "accessible," when used in relation to a facility or dwelling unit, are based in part upon definitions contained in the Minimum Guidelines and Requirements for Accessible Design issued recently by the Architectural and Transportation Barriers Compliance Board (the "ATBCB") (47 FR 33862, to be codified at 36 CFR Part 1190). An "accessible" dwelling unit includes an "adaptable" unit, i.e., one so planned and constructed that converting it to an accessible unit for a handicapped occupant is simply a matter of installing or adjusting such items as grab bars, lights, buzzers or kitchen equipment, and no major construction work such as widening doors or moving walls is required.

A definition of "alteration" has been added to refer consistently to structural changes in an existing facility. In the proposed regulation no definition was provided, and various synonyms or near synonyms such as remodeling, rehabilitation or retrofitting were used in the text. The definition utilized is based on that adopted by the ATBCB in the Minimum Guidelines.

In its proposed rule, the Department proposed utilization of the definition of "Federal financial assistance" used in the HEW Implementation Guideline. In this interim rule, however, the Department has adapted the definition contained in the Department's own Title VI regulation (24 CFR Part 1) on the ground that it is better tailored to encompass forms of assistance under HUD programs.

Public comments revealed concern that the proposed definition of "Federal financial assistance" excluded procurement contracts and contracts of insurance or guaranty. Procurement contracts are covered by the Department of Labor's regulation under Section 503 of the Act. In excluding programs of insurance and guaranty, the Department is following a Justice Department opinion of September 23, 1977, which advised that Congress intended the reach of Section 504 to be consistent with Title VI and Title IX both of which exclude programs of insurance and guaranty.

The definition of "handicapped person" is unchanged from the proposed rule, which in turn incorporated without change the definition then contained in the HEW Implementation Guideline and now continued in the DOJ Implementation Regulation. This definition also conforms to the statutory definition of handicapped person applicable to Section 504 which is set forth in Section 111(a) of the Rehabilitation Act Amendments of 1974 (29 U.S.C. 706). While there was strong support among commentors on the proposed rule for adoption of this definition, a number of related concerns were expressed as follows:

(1) *Coverage.* Representatives of several disability groups wanted their particular disability group to be specifically mentioned as eligible. The definition is written broadly to cover any person who has a physical or mental impairment that substantially limits one or more major life activities.

Several commentors mentioned the need to define specific learning disabilities, and to include the sensorily deprived and the minimally brain damaged. Physical or mental impairment is defined to include, among other impairments, "specific learning disabilities." The Department will interpret the term as it is used in Section 602 of the Education of the Handicapped Act, as amended, to describe such conditions as perceptual handicap, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.

Concern was also expressed by advocates of the mentally ill and the autistic with regard to their coverage. Both groups are clearly included in the "handicapped person." Whether they also are "qualified" for participation in a particular program or activity despite their handicap is a separate question.

(2) *Terminology.* Several commentors requested that the term "handicapped" be replaced by "disabled" wherever possible, and that the term "emotionally disturbed" be substituted for "mentally ill." Since both the Section 504 and existing regulatory implementation thereof use "handicapped," HUD will continue to use "handicapped" instead of "disabled" in Section 504 contexts. The term "emotionally disturbed" is considered too vague for regulatory purposes.

(3) *Eligibility for housing.* Eighteen (18) commentors recommended that the definition of handicapped person be amended to reflect the different types of dwelling units needed by different types of handicapped persons. Their concern was that non-handicapped or non-physically handicapped persons might be allowed or even required to use units adapted for the physically handicapped. Accordingly, the Department has added a provision at § 8.26 which addresses these concerns.

(4) *Interpretation of definition.* Several commentors stated that more guidance was needed in order for recipients to make a determination that an individual "has a history of" or "record of" an impairment, or "is regarded as having an impairment." Their particular concern was over the inclusion of drug addicts and alcoholics in the definition of handicapped persons. On this issue, HUD is following an opinion the Attorney General, dated April 12, 1977, which concluded that drug addiction and alcoholism are "physical or mental impairments" within the meaning of Section 7(6) of the Rehabilitation Act of 1973, as amended (29 U.S.C. 706), and that drug addicts and alcoholics are therefore "handicapped" for the purposes of Section 504. However, this does not necessarily mean that such individuals are "qualified handicapped persons" for the purposes of this rule. As noted by HEW in its analysis of 45 CFR Part 84, set forth in Appendix A thereto:

> "It cannot be emphasized too strongly that the statute and the regulation apply only to discrimination against qualified handicapped persons solely by reason of their handicap. The fact that drug addiction and alcoholism may be handicaps does not mean that these conditions must be ignored in determining whether an individual is qualified for services or employment opportunities. On the contrary, a recipient may hold a drug addict or alcoholic to the same standard of performance and behavior to which it holds others, even if any unsatisfactory performance or behavior is related to the person's drug addiction or alcoholism. In other words, while an alcoholic or drug addict may not be denied services or disqualified from employment solely because of his or her condition, the behavioral manifestation of the condition may be taken into account in determining whether he or she is qualified."

This interpretation is reflected in the definition of "qualified handicapped person," as discussed below.

A definition of "project" has been added in order to differentiate it from "facility" and in order to clarify the application of requirements for accessible dwelling units. As here defined, a project may include one or more buildings, sites or site developments, treated administratively as a single HUD assisted project. "Multifamily project" is defined as a project containing more than two dwelling units. The threshold of two units is chosen because it represents the demarcation between HUD's Minimum Property Standards for One- and Two-Family Dwellings and the Minimum Property Standards for Multifamily Dwellings.

As in the proposed rule, the definition of a "qualified handicapped person" with respect to a program or activity other than employment refers to one "who meets the essential eligibility requirements for participation in such program or activity or for receipt of benefits therefrom." For clarification, a provision is added that "essential eligibility requirements" include stated program eligibility requirements such as income or citizenship or alien status, as well as

> "* * * implicit requirements inherent in the nature of the program or activity, such as that an occupant of multifamily housing be capable of independent living (except to the extent that necessary support services are contemplated to be provided in connection with the program or activity or will otherwise be available to such occupant) and of complying with all obligations of occupancy, including the obligation to conduct himself or herself in a manner which will not disturb his or her neighbors' peaceful enjoyment of their accommodation and will be conducive to maintaining the housing facility in a decent, safe and sanitary condition. For example, a chronically mentally ill person whose condition poses a significant risk of substantial interference with the safety or enjoyment of others or with his own health or safety in the absence of necessary supportive services may be 'qualified' for occupancy in a project where such supportive services are provided but may not be 'qualified' for a project lacking such services."

The example referring to the chronically mentally ill confirms the Department's current practice under the Section 202 direct loan program for housing for the elderly or handicapped (see Announcement of Funding Availability published April 20, 1982 (47 FR 16892)). The Department emphasizes, however, that the factor of capability of independent living is not to be taken as an invitation to inquiries which infringe upon the privacy or dignity of applicants. Particularly in the case of persons whose handicaps are physical, a strong presumption in favor of the individual's own assessment of his or her capabilities is warranted in the absence of substantial evidence to the contrary. The mere existence of a person's physical disability, of course, does not constitute such evidence. For example, the fact that a person requires the use of a wheelchair is not evidence that he or she is incapable of independent living. The "significant risk" test is based upon *Doe* v. *New York University*, 666 F. 2d 761 (2d Cir. 1981). The Department does not regard the foregoing clarification as a departure from the intent of its proposed rule and

reiterates the following from the preamble to the proposed rule:

"* * * The Department wishes to emphasize that this regulation does not prohibit denying services or benefits of a program, such as occupancy in a housing project assisted by the Department for bona fide reasons, even if those reasons are also related to the handicap, so long as the basis for such denial is failure to meet eligibility criteria which are applied to all potential beneficiaries, handicapped and non-handicapped. Similarly, this regulation does not prohibit turning down a handicapped job applicant for bona fide job-related reasons, even if those reasons are also related to the handicap. For example, an applicant who could not perform the basic physical requirements for the position of 'housepainter' would not be considered a 'qualified handicapped person.' Likewise, if a handicapped individual had a history or pattern of anti-social behavior including, for example, criminal activity, he or she may be denied services or benefits of a program on the same basis as a non-handicapped person, even if the anti-social behavior is related to the handicap." (43 FR 16652)

The definition of "qualified handicapped person" excludes, with respect to both employment and programs or activities other than employment, any individual who is an alcoholic or drug abuser whose current use of alcohol or drugs prevents such individual from performing the duties of the job in question or whose employment, by reason of such current alcohol or drug use, would constitute a direct threat to property or the safety of others. The derivation of this exclusion from an opinion of the Attorney General is referred to above. The Department further notes that Congress responded in part to the concerns expressed at the time of adoption of the HEW regulation by providing, in 1978, that for purposes of Section 504 "as such section relates to employment," the term "handicapped individual" does not include any individual who is an alcoholic or drug abuser whose current use of alcohol or drugs prevents such individual from performing the duties of the job in question or whose employment, by reason of such current alcohol or drug abuse, would constitute a direct threat to property or the safety of others" (29 U.S.C. 706, as amended by Section 122(a) of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978). Inasmuch as the statutory provision relates to the term "handicapped individual" and not the term "qualified handicapped individual," the Department does not consider the provision exclusive, either in terms of activity for which an alcoholic or drug abuser may be found not qualified (i.e., employment) or in terms of the basis for finding such individual not qualified for a particular program or activity (i.e., "would constitute a direct threat to property or the safety of others"). The Department believes that an alcoholic or drug abuser may be found not qualified for a program or activity for failure to meet "essential eligibility requirements" of the program, as described in the rule, for reasons that may fall short of "a direct threat to property or the safety of others."

The proposed rule included a definition of "small provider" and exempted recipients meeting the definition from various specific requirements of the regulation such as preparation of transition plans and completion of required alteration within a three-year period. Over 100 commentors stated a position that too many recipients were covered by the definition and thus exempted from requirements of the rule. In view of other changes made in the regulations, the Department does not believe that the general exemption from "small providers" is required, and the definition has been eliminated. However, the Department invites comment as to whether such an exception may be advisable or appropriate with respect to any specific requirements of the regulations.

Section 8.4 states a general prohibition against discrimination on the basis of handicap in HUD-assisted programs and enumerates specific discriminatory acts prohibited. This section of the proposed rule was identical to that contained in the HEW Implementation Guideline (now continued in the DOJ Implementation Regulation), which in turn was based upon Title VI precedents. In the interim rule, the provision is unchanged from that contained in the proposed rule, except for additions of the word "solely" before "on the basis of handicap" and deletion of the words "or benefits from" from the phrase "any program or activity that receives or benefits from Federal financial assistance." These changes are made to conform the regulatory language to that of the statute, and deletion of the phrase "or benefits from" is not intended to alter the jurisdictional reach of Section 504 as it applies to HUD-assisted programs. The Department is aware that the phrase "or benefits from" may be seen as critical in the context of certain other government programs but is not aware of a context involving HUD programs where the phrase would make such a difference. However, the Department invites comment as to specific contexts in which an issue as to the jurisdictional reach of Section 504 may be seen as arising based upon this language.

The Department also invites comment as to whether the description of specific actions prohibited may raise special problems in the context of handicapped persons notwithstanding their appropriateness in the separate contexts of nondiscrimination based upon race, color, or national origin. This invitation is based upon the recognition, referred to above, of the different conceptual premises underlying Title VI and Title IX on the one hand, and Section 504 on the other.

Section 8.4(c) is unchanged from the proposed rule. It reiterates the provision of the DOJ Implementation Regulation which states that the exclusion of non-handicapped persons from the benefits of a program limited by Federal statute or executive order to handicapped persons, or the exclusion of a specific class of handicapped persons from a program limited by Federal statute or executive order to a different class of handicapped persons is not prohibited by this part. It further notes that certain of the Department's programs operate under statutory definitions of handicapped person which are more restrictive than the definition contained in § 8.3, and such definitions are not superseded or otherwise affected by this regulation. The differing statutory program definitions are provided in detail at Appendix B.

Section 8.4(d) provides, in language unchanged from the proposed rule, that recipients shall administer programs and activities in the most integrated setting appropriate to the needs of qualified handicapped persons. A number of comments recommended that this section be expanded or made more specific. The Department wishes to emphasize that it fully supports the concept of making programs available in the most integrated setting appropriate to the needs of qualified handicapped persons, and that this concept is key to the effective implementation of the program accessibility requirements. "Most integrated setting" refers not only to housing integrated into the community, but also to the availability of community and related services. Thus, in considering what constitutes "the most integrated setting," a recipient should verify not only that the setting itself is like those where non-handicapped people live, work and socialize but also that services such as shopping and transportation are available. This concept also is incorporated into § 8.25 of the interim

rule, regarding distribution of accessible dwelling units within a project.

Subpart B—Employment

Subpart B prescribes requirements for nondiscrimination in the employment practices of recipients. For the proposed rule, HUD incorporated directly the employment provisions of the HEW Implementation Guideline with the exception of the provision regarding preemployment inquiries, which incorporated additional language from HEW's Section 504 regulation relating to HEW programs (45 CFR 84.14).

Several Federal circuit courts which have considered coverage of employment discrimination under section 504 have ruled that employment is covered under section 504 only where a primary purpose of the assistance is to provide employment. *U.S.* v. *Cabrini Medical Center*, 639 F. 2d 908 (2d Cir. 1981); *Carmi* v. *Metropolitan St. Louis Sewer District*, 620 F. 2d 672 (8th Cir. 1980), *cert. denied*, 449 U.S. 892 (1980); *Trageser* v. *Libbie Rehabilitation Center, Inc.*, 590 F. 2d 87 (4th Cir. 1978), *cert. denied*, 442 U.S. 947 (1979); *Scanlon* v. *Atascadero State Hospital*, 677 F. 2d 1271 (9th Cir. 1982).

The Department of Justice has taken the position in litigation that these holdings misinterpret section 504. The holdings apply the limitation on employment coverage embodied in section 604 of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–3) to employment claims under section 504 by reason of section 505(a)(2) of the Rehabilitation Act, which was added by 1978 amendments and provides that the "remedies, procedures and rights" set forth in Title VI shall be available to persons aggrieved by actions which violate section 504 (29 U.S.C. 794a(a)(2)). The decisions cited above have held that section 505(a)(2) also extended Title VI's limitation on employment coverage to section 504. The Justice Department contends that the legislative history of section 505(a)(2) unequivocally demonstrates that Congress only intended to incorporate Title VI-patterned procedural remedies in the Rehabilitation Act did not intend to curtail substantive rights with respect to employment claims. The Justice Department's view has been adopted recently by two Courts of Appeals in *Jones* v. *Metropolitan Atlanta Rapid Transit Authority*, 681 F. 2d 1376 (11th Cir. 1982), and *LeStrange* v. *Consolidated Rail Corp.*, 687 F. 2d 767 (3rd Cir. 1982), cert. granted, —— S.Ct. (Feb. 22, 1983). In addition, the Supreme Court recently has rejected a somewhat similar attempt to read the limitation on employment coverage embodied in Section 604 of Title VI into Title IX of the Education Amendments of 1972. *North Haven Board of Education* v. *Bell*, 102 S.Ct. 1912 (1982). Accordingly, HUD believes it appropriate to continue to adhere to its previously proposed position that Section 504 extends to discrimination in employment even where the provision of employment is not the primary objective of the Federal financial assistance. However, pending further clarification of the law, § 8.14 provides that the requirements of this Subpart B will not be enforced where employment is not a primary objective of the Federal financial assistance in States located in the Second, Fourth, Eighth, and Ninth Circuits (i.e., New York, Connecticut, Vermont, Maryland, North Carolina, South Carolina, Virginia, West Virginia, Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota, and South Dakota, Alaska, Arizona, California, Idaho, Montana, Nevada, Oregon, Washington, Guam, and Hawaii).

Section 8.10 of the interim rule states the general prohibition against discrimination in employment and lists activities connected to employment to which the prohibition applies. It is substantially unchanged from the proposed rule, and is consistent with the DOJ Implementation Regulation, except for addition of the word "solely" and deletion of the phrase "or benefit from" for the reasons stated above.

Section 8.11 of the interim rule requires a recipient to make reasonable accommodation to the known physical or mental limitations of a qualified handicapped applicant or employee unless the recipient can demonstrate that the accommodation would impose an undue hardship on the operation of its program. The Department emphasizes that the requirement assumes that the handicapped applicant or employee is a "qualified handicapped person" with respect to the essential elements of the employment. Where a handicapped person is not qualified to perform a particular job, where reasonable accommodation does not overcome the effects of a person's handicap, or where reasonable accommodation causes under hardship to the employer, the failure to hire or promote the handicapped person does not constitute prohibited discrimination.

The largest number of comments on this subpart of the proposed rule (approximately 79 out of a total of 129) criticized the vagueness and lack of examples for the terms "reasonable accommodation" and "undue hardship." For additional guidance, the Department has incorporated into the interim rule further provisions from the HHS Section 504 regulations relating to HEW programs. Subsection (b) of § 8.11 makes clear that reasonable accommodation is intended to include, but is not limited to, the modification of work schedules, including part-time employment, and job restructuring. Job restructuring may entail shifting nonessential duties to other employees. In other cases, reasonable accommodation may include the relocation of particular offices or jobs so that they are in facilities or parts of facilities that are accessible to and usable by handicapped persons.

Subsection (c) of § 8.11, based upon 45 CFR 84.12, provides that in determining whether an accommodation would impose an "undue hardship" on the operation of a recipient's program, factors to be considered include: (1) The overall size of the recipient's program with respect to the number of employees, number and type of facilities, and size of budget; (2) the type of the recipient's operation, including the composition and structure of the recipient's workforce; and (3) the nature and cost of the accommodation needed.

The weight given to relevant factors in making the determination as to whether an accommodation constitutes undue hardship will vary depending on the facts of a particular situation. Thus, it would be considered reasonable for a large developer to accommodate an architect who is confined to a wheelchair by rearranging the workspace to permit easier access, by providing ramps, and by modifying restroom facilities so that they are accessible to and usable by the handicapped employee. On the other hand, a small developer might not be required to spend more than a nominal sum, such as that necessary to equip a telephone for use by a secretary with impaired hearing.

Section 8.12 of the proposed rule, based on the HEW Implementation Guideline, would have prohibited a recipient from using employment tests and criteria "that discriminate against handicapped persons" and would have required that a recipient ensure that employment tests "are adapted for use by persons who have handicaps that impair sensory, manual, or speaking skills."

For the interim rule, the department has adopted the somewhat clearer provisions of 45 CFR Part 84. Thus, § 8.12 prohibits employers from using tests or other selection criteria that screen out, or tend to screen out, handicapped persons unless the tests or criteria are shown to be job-related. This section takes into account that

some tests and criteria depend upon sensory, manual, or speaking skills that may not themselves be essential for the performance of the job in question and, yet, would disqualify a handicapped person. The recipient must select and administer tests so as best to ensure that the test will measure a handicapped person's actual ability to perform on the job rather than the person's ability to see, hear, speak, or perform manual tasks, except where such skills are the factors that the test purports to measure. For example, a person with a speech impediment might be well qualified for jobs that do not and need not require an ability to speak clearly. Yet, if given an oral test, the person would be unable to perform in a satisfactory manner. The test would not, therefore, predict job performance, but instead would reflect impaired speech.

Section 8.14 of the proposed rule, relating to preemployment inquiries, was based upon the HEW Implementation Guideline and also included part, but not all, of the fuller provisions of 45 CFR 84.14. For the interim rule, the Department has incorporated further provisions of 45 CFR 84.14. As revised, the section (renumbered § 8.13) contains a general prohibition against preemployment inquiries regarding a person's handicapped status. However, an employer may inquire into an applicant's ability to perform job-related tasks such as an applicant's ability to perform a job safely. For example, an employer may not ask if an applicant has a particular handicap, but may ask whether the person can perform a particular job without endangering his or her own well-being or that of other employees.

Subpart C—Program Accessibility

This subpart sets forth the requirements, methods and standards for making Departmental programs accessible.

In the Department's proposed rule as well as in the current DOJ Implementation Regulations, the "program accessibility" requirements deal exclusively with physical access to facilities by physically handicapped persons. However, "program accessibility" in its fullest sense is not limited to physical architectural barriers but includes communications barriers and other, perhaps less tangible, barriers as well. Given the nature of the Department's programs as well as the extent of the Department's evolving experience to date, the primary focus of Subpart C remains architectural barriers. In order to emphasize the broader general reach of the "program accessibility" requirement, however, the section stating the general rquirement has been restated without reference to facilities. As revised, Section 8.20 states that each program or activity which receives Federal financial assistance from HUD shall be operated so that the program or activity, when viewed in its entirety, is readily accessible to and usable by qualified handicapped persons. The Department invites comment as to specific further provisions which may be appropriate to further accessibility of the Department's programs outside the context of architectural barriers.

Subpart C, as revised, includes the scope of Subparts E, F and G of the proposed rule, which pertained to individual program areas (Low-Income Public Housing and Section 8 Housing Programs; Other Subsidized Housing Programs; and Community Planning and Development Programs), and those proposed subparts have been eliminated. As revised, the internal organization of Subpart C is as follows. Section 8.20, stating the general requirement as described above, is followed by a section dealing with non-housing facilities within which a covered program or activity is conducted or where application for participation therein is made or benefits distributable pursuant to the program or activity are distributed. This section would apply, for instance, to a facility where a program or activity assisted by Community Development Block Grant funds is conducted, or to an office of a public housing authority where applications for housing assistance are made. This section is followed by a series of sections dealing with housing programs. Finally, Section 8.30 prescribes the standards for physical accessibility to be followed where required, both for housing and non-housing facilities.

As indicated, the principal focus of the program accessibility concept in the context of HUD programs relates to architectural barriers. This is the area having the greatest impact on both recipients and program beneficiaries and potential beneficiaries, and it also is the area where the least guidance is available from the statute itself or its legislative history.

Section 504, on its face, does not prohibit or otherwise refer to architectural barriers, and the legislative history of the original enactment of Section 504 contains no references to architectural barriers. Prior to publishing its proposed rule to implement Section 504 with respect to HEW programs, HEW solicited public comment on the following question:

"Whether § 504 prohibitions extend to architectural barriers, and, if so, whether the nondiscrimination requirements apply to both new and existing buildings used in connection with federally assisted program or activities" (41 FR 20296 (May 17, 1976)).

After consideration of public comments, HEW answered both questions affirmatively, stating:

> Most of the comments agreed that the protection of section 504 did, in fact, extend to the concept of architectural barriers and that the proposed regulation should apply to both new and existing buildings. The proposed regulation adopts the position that section 504 deals with the issue of accessibility of buildings, whether new or existing, because the existence of architectural barries operates to exclude handicapped persons from the federally assisted programs and services held within them. (41 FR 29555 (July 16, 1976)).

The current DOJ Implementation Regulation sets forth program accessibility requirements dealing with architectural barriers which are consistent in approach with those proposed by HEW in 1976 and adopted by it in 1977 for application to HEW program recipients, and are in substantially the form adopted by HEW in 1978 for application to programs of all agencies.

The basis of HEW's conclusions regarding the scope of Section 504's application to architectural barriers is not stated in its rulemaking actions other than as set forth above. Considered in the light of the Supreme Court's decision in *Southeastern Community College v. Davis*, 442 U.S. 397 (1979), and the subsequent Court of Appeals decision in *American Public Transit Association v. Lewis*, 655 F. 2d 1271 (D.C. Cir. 1981), the breadth of the conclusions reached by HEW appears questionable. In particular, the Department believes that HEW did not give sufficient consideration to the fact that Congress had already legislated expressly in the area through the Architectural Barriers Act of 1968 and gave no indication of an intent to overide the specific provisions and limitations of that enactment through the general prohibitions of Section 504.

Southeastern Community College did not deal with program accessibility requirements in the context of architectural barriers. The principal issue in the case was whether the plantiff, who suffered from a hearing disability, was an "otherwise qualified handicapped individual" for a training program for registered nurses. The Court

concluded that the individual was not "qualified" but then went further to consider whether the recipient of Federal assistance was obligated to undertake affirmative action through program modifications that would overcome the effects of the disqualifying handicap. In this context, the Supreme Court held that "neither the language, purpose, nor history of Section 504 reveals an intent to impose an affirmative action obligation on all recipients of federal funds" (442 U.S. at 411). In reaching this conclusion, the Court noted that "[t]he language and structure of Rehabilitation Act of 1973 reflect a recognition by Congress of the distinction between the even-handed treatment of qualified handicapped persons and affirmative efforts to overcome the disabilities caused by handicap," (id. at 410), relying heavily on evidence that "demonstrated that Congress understood accommodation of the needs of handicapped individuals may require affirmative action and knew how to provide for it in those instances where it wished to do so" (Id.).

In *Southeastern Community College*, the comparisons which the Court made were to other provisions of the Rehabilitation Act itself, particularly Section 501(b), requiring affirmative action in employment by Federal agencies, and Section 503(a), which requires affirmative action in hiring by Federal contractors. Similarly, the Department believes that, in interpreting the intended scope of Section 504 with respect to architectural barriers, it cannot ignore Congress' express resolution on that subject as embodied in the Architectural Barriers Act of 1968 (42 U.S.C. 4151 et seq.). The appropriateness of this comparison is stregthened by the fact that, while the Architectural Barriers Act was enacted in 1968, Congress further legislated in relation to it in Section 502 of the Rehabilitation Act of 1973 (creating the Architectural and Transportation Barriers Compliance Board) without revising in any manner the provisions and scope of the Architectural Barriers Act itself.

Of particular importance in the context of the Department's consideration of the scope of Section 504 as it may relate to architectural barriers in residential structures assisted under HUD programs is the Architectural Barriers Act's express exclusion of "privately owned residential structure[s] not leased by the Government for subsidized housing programs" (42 U.S.C. 4151). In addition, the requirements of the Architectural Barriers Act affect existing buildings only when they are altered, without requiring that alterations be undertaken solely for the purpose of achieving accessibility (42 U.S.C. 4155). In adopting compliance standards the Department determines either are required by Section 504 as a matter of statutory construction or are reasonably related to the purposes of Section 504 while consistent with achievement of the objectives of the program statute authorizing the Federal financial assistance, the Department is compelled to reach a resolution which does not render these specific expressions of Congressional intent a nullity.

At the same time, the Department is also aware of the Supreme Court's warning that "the line between a lawful refusal to extend affirmative action and illegal discrimination against handicapped persons" is not always clear, and that "situations may arise where a refusal to modify an existing program might become unreasonable and discriminatory" (442 U.S. at 412–413). Subsequent decisions, while not defining the limits of the obligation, have confirmed that Section 504 requires at least "modest, affirmative steps to accommodate handicapped persons." *American Public Transit Association* v. *Lewis*, 655 F. 2d 1271, 1278 (D.C. Cir. 1981); see *Dopico* v. *Goldschmidt*, 687 F. 2d 644 (2d Cir. 1982); *New Mexico Association for Retarded Citizens* v. *State of New Mexico*, 678 F. 2d 847 (10th Cir. 1982). But the question of how much accommodation is called for "is purely economic and administrative. . . . [I]t turns more on considerations of practicality than on matters of entitlement, merit, and restitution. And, while it is bounded, after *Davis*, by a general proscription against massive expenditures, the question is one of the degree of effort necessary rather than whether any effort at all is required." *Dopico*, supra, at 653.

With this guidance in mind, the Department believes that failure to prescribe accessibility requirements in newly constructed or substantially rehabilitated Federally assisted housing, including privately-owned structures, would cross the line and be unreasonable and discriminatory in a manner prohibited by Section 504. The incremental additional cost involved in meeting accessibility standards for buildings or individual units in new construction, or rehabilitation substantial enough to be equivalent to new construction, is slight.

The interim rule provides, therefore, that newly constructed Federally assisted multifamily housing projects must meet accessibility standards as to exits, entrances, and other areas affecting facility accessibility. The same requirement is applicable when alterations are performed if the project contains 25 or more units and if the cost of alterations is 75% or more of the replacement cost of the completed project. If the foregoing qualification does not apply, alterations performed to common areas or to parts of facilities that affect accessibility are required to be accomplished, to the extent feasible, in compliance with accessibility standards. The foregoing requirements apply to all Federally assisted multifamily housing, except that construction or alteration of public housing to which accessibility standards promulgated pursuant to the Architectural Barriers Act are applicable are governed by those standards.

The requirements mentioned above relate to facility accessibility. Accessibility of individual dwelling units within multifamily housing projects is a separate subject. Standards published to date under the Architectural Barriers Act do not address the subject of the number of units required or recommended to be accessible, nor does the current edition of the American National Standard Specifications for Making Buildings and Facilities Accessible to and Usable by Physically Handicapped People (ANSI A 117.1–1980). (The Minimum Guidelines and Requirements for Accessible Design issued recently by the Architectural and Transportation Barriers Compliance Board (47 FR 33862, to be codified at 36 CFR Part 1190) adopted scoping provisions for common areas, and it is expected that scoping provisions regarding the number of dwelling units required to be made accessible for Architectural Barriers Act compliance will be included in uniform accessibility standards to be issued by the standard-setting agencies under that Act, including HUD.) The Department's proposed rule also did not attempt to prescribe a minimum number or percentage of units required to be made accessible, except only for a requirement that in a multifamily rehabilitation assisted by Community Development Block Grant funds, at least 2 percent of the units affected by the rehabilitation should be "barrier-free." However, requirements of minimum amounts of accessible units have been adopted by the Department under particular programs. Since 1970, HUD has required generally that 10 percent of the units in all new projects for the elderly be made accessible to persons in

wheelchairs. (This policy was modified in 1982, as noted below.) In 1977, the Department adopted a policy of requiring that not less than 5 percent of the units in non-elderly Section 8 projects be designed for and accessible to the physically handicapped; this policy is a current regulatory requirement, "where practicable", of the Section 8 new construction and substantial rehabilitation programs (24 CFR 880.202(f), 881.202(e)).

Several commentors on the proposed rule suggested a need for concrete percentage requirements for accessible units. In view of the criticisms contained in the General Accounting Office report referred to above, the Department considered making the number of accessible units required to be included in any project dependent entirely upon a prior assessment of the need for accessible units within a housing market area. The Department believes that, theoretically at least, such a requirement would fully satisfy the requirements of Section 504. On this basis, the requirement for 10 percent of the units in all new projects for the elderly was made more flexible in 1982, when sponsors of Section 202 elderly projects were advised to base the number of accessible units included in project proposals on a determination of need, to be reviewed by HUD taking into consideration the number of accessible units already existing and those which will be coming on the market in projects where architectural plans are already approved. However, on further consideration, the Department has concluded that, given the general unavailability of reliable data upon which such an assessment could be made which would be free of dispute, subjecting all housing proposals to prior completion of such a questionable assessment would unduly burden the administration of the programs.

Accordingly, the Department has elected to prescribe a fixed requirement that a minimum of 5% of the units in any newly constructed multifamily project containing 15 or more units including a public housing project meet accessibility standards, and that an additional 2% of units in any such project be accessible to persons with hearing or vision impairment (§ 8.22). The same requirement is applicable where alterations are undertaken to a project containing 25 or more units if the cost of alterations is 75% or more of the replacement cost of the completed project. In adopting the latter qualifications for accessibility requirements where alterations are concerned, the Department has sought to balance the need for accessible units against the structural restrictions and resulting financial impact on rehabilitation projects.

In view of the possibility noted by the GAO report that an oversupply of accessible units may exist in some areas as well as the contrary possibility that an undersupply may exist in other areas, the interim rule permits variances from the 5 percent minimum requirement. A sponsor or developer of a multifamily project may request a waiver of the 5% minimum upon demonstrating to the reasonable satisfaction of the Department, based on available current data, such as census data or a currently effective Housing Assistance Plan, that provision of accessible units in a project to the extent required by the minimum percentage requirements would exceed the need for such units in the housing market area. In addition, HUD may prescribe lower percentages for any housing market area based upon its determination that a sufficient number of accessible units are available to meet expected needs in such area. In addition to current available data of the type mentioned above, this determination may be based upon evidence that accessible units in the area are being occupied by persons not having the disabilities or impairments requiring the accessibility features of the units, provided that HUD further determines that reasonable efforts have been made to assure that information regarding the availability of accessible units reaches eligible qualified handicapped persons in the area. In reviewing a request by a sponsor or developer or in considering a reduction of requirements for an area, HUD must consult with organizations serving handicapped persons and may, in its discretion, consult with State and local governments. The interim rule also provides that HUD may prescribe higher percentages for an area upon request therefor by any State or local government or agency thereof based upon a demonstration of need or in response to evidence of such a need received in any other manner, except that in no case (other than group homes or independent living complexes for the handicapped) will more than 15% of the units in any project be required to be accessible to persons with mobility impairments. In determining whether an increase in the minimum requirements is appropriate in any area, HUD is required to take into account the expected needs of eligible non-handicapped persons.

In other cases where alterations are performed to privately owned Federally assisted multifamily projects, alterations are required to be accomplished in a manner consistent with achieving accessibility to the extent feasible, but in no such case are alterations required to be undertaken solely for the purpose of making units accessible. In this context, "feasibility" includes both structural and financial feasibility. As a definition of "structural feasibility", the Department has adopted one facet of the ATBCB's definition of "structural impracticability", viz., having little likelihood of being accomplished without removing or altering a load-bearing structural member (47 FR 33866, to be codified at 36 CFR 1190.3). However, the Department believes that the financial criterion adopted by the ATBCB, viz., an increased cost of 50 percent or more of the value of the element of the building or facility involved, while appropriate in an Architectural Barriers Act context where Federal financial assistance is assured to be a funding source for the alterations, is less appropriate where an alteration may be undertaken without Federal assistance or where cost limitations of a program under which rehabilitation assistance is provided may preclude cost additions of less than 50%. Accordingly, the interim rule provides that financial feasibility shall take into account the degree to which the alterations are funded by Federal financial assistance, the cost limitations (including unit cost limits) of the program under which such assistance is provided, and the relative cost of accomplishing such alterations in a manner either consistent or inconsistent with accessibility whether or not the alteration work is assisted with Federal financial assistance.

In the case of individual dwelling units, alterations are required to the extent feasible, to be accomplished in compliance with accessibility standards if, as a result of such alterations, the unit can be made accessible for persons of identifiable types or degrees of disability or impairment. For example, alterations are not required to be made in accordance with standards for accessibility to persons with mobility impairments if the unit is not located on a route accessible to such persons and alterations are not also being performed to the route. Unit alterations cease to be subject to the foregoing requirement with respect to standards for accessibility to mobility-impaired persons when 15% of the units in a project are accessible to such persons.

As indicated above, while alterations to privately owned residential structures are generally subject to requirements of consistency with achieving accessibility

within feasibility limitations, in no case are alterations required to be undertaken by a private owner solely for the purpose of making units accessible. This, however, is not the case in public housing, in which the Department believes that different requirements are appropriate in view of the differentiation made by Congress itself in the Architectural Barriers Act. The Department also considers it appropriate to take into account the fact that, by and large, alterations of public housing projects are funded entirely by funds provided by the Department for a modernization program to be funded under the Comprehensive Improvement Assistance Program. Section 8.24(c) of the interim rule prescribes the extent to which units in public housing projects governed by a modernization project must be made accessible. The Public Housing Authority (PHA) is required to assess, on a PHA-wide basis, the needs of current tenants and applicants on its waiting list for accessible units and the extent to which such need has not been met or cannot reasonably be expected to be met in the proximate future through development, alterations otherwise contemplated by such modernization project or other modernization projects, or other programs administered by the PHA (e.g., Section 8 Moderate Rehabilitation or Section 8 Existing Housing). If the PHA currently has no accessible units or if information regarding availability of accessible units has not been communicated sufficiently so that, as a result, the number of eligible qualified handicapped persons on the PHA's waiting list is not fairly representative of the number of such persons in the area, the PHA's assessment shall be required to include the needs of eligible qualified handicapped persons in the PHA's jurisdiction. If the PHA determines, on the basis of such assessment, that alterations to make additional units accessible must be included in its modernization program in order that the needs of handicapped individuals who are current tenants or applicants on its waiting list may be accommodated proportionately to the needs of non-handicapped individuals in the same categories, then the PHA shall provide in its modernization project for such structurally feasible alterations complying with applicable accessibility standards as may be required to achieve such objective (provided, however, that the PHA shall not be required to make more than five percent of the units covered by any modernization project accessible). If the alterations required to make additional units accessible pursuant to the foregoing would result in the modernization project being determined not to be financially feasible as defined in the modernization program regulation (i.e., the cost of the modernization program (excluding the cost of management improvements) would exceed the prototype cost of a new project), the PHA may request a waiver of the financial feasibility standard to such extent or of the requirement to make additional units accessible. The foregoing requirements are consistent with current administrative requirements of the modernization program.

Section 8.25 of the interim rule applies the "most integrated setting" concept of § 8.4(d), as well as the prohibition of § 8.4(b)(vii) against limiting the enjoyment of opportunities by a qualified handicapped person solely on the basis of handicap, to the housing context. It requires, to the extent feasible and subject to reasonable health and safety requirements, that accessible dwelling units be distributed throughout projects and sites and be available in a sufficient range of sizes and amenities so that a qualified handicapped person's choice of living arrangements is generally comparable to that of other persons eligible for housing assistance under the same program. It adds, however, that provision of an elevator in a multifamily project shall not be required solely for the purpose of permitting location of accessible units above or below the accessible grade level.

Section 8.26, governing occupancy of accessible units, is designed to remedy the shortcomings noted by GAO in the matching of accessible units with qualified handicapped persons needing them. It requires owners and managers having accessible units to adopt suitable means to assure that information regarding the availability of accessible units reaches eligible qualified handicapped persons and to take reasonable nondiscriminatory steps to maximize the utilization of such units by eligible qualified handicapped persons whose disability requires the accessibility features of the particular unit. To the extent necessary or appropriate to achieve this objective in the individual circumstances of the project, when an accessible unit becomes vacant, the owner or manager, before offering such unit to the applicant at the head of the waiting list, may offer such unit to (i) current occupants of other units of the same project, or comparable projects under common control, having disabilities or impairments requiring the accessibility features of the vacant unit and occupying units not having such features, or (ii) an eligible qualified applicant on the waiting list having disabilities or impairments requiring the accessibility features of the vacant unit, provided that such preference is not likely to delay unreasonably the availability of a unit for the applicant at the head of the waiting list. When offering an accessible unit to an applicant not having disabilities or impairments requiring the accessibility features of the unit, the owner or manager may require such applicant to agree (and may incorporate such agreement in the lease) to move to a nonaccessible unit when available. If reasonable efforts have been made to assure that information regarding the availability of accessible units reaches eligible qualified handicapped persons, an owner or manager is not required to hold an accessible unit vacant for longer than normal period in order to locate an eligible qualified handicapped person having disabilities or impairments requiring the accessibility features of the vacant unit. The Department believes that holding an accessible unit vacant for a longer than normal period would be unfair to non-handicapped applicants and inconsistent with Section 504's objective of even-handed treatment.

Section 8.27 governs the Section 8 Existing Housing program. The treatment of this program was among the most controversial aspects of the proposed rule. Commentors pointed out that this program is one of the most flexible, and potentially one of the most useful programs for integrating handicapped people into the community. Some 20 commentors directly criticized the outreach requirement of the proposed rule as weak or superfluous because they may not be existing accessible units in a particular community, PHAs will often lack the resources to fulfill this requirement, and under the proposed rule, owners whose sole source of Federal financial assistance was as recipients under the Section 8 Existing Housing Program would have been classified as small providers and not required to provide accessible housing.

The Department believes that, because of the nature of the Section 8 Existing Housing Program, requiring recipients—either handicapped certificate holders or building owners—to make alterations for accessibility would be ineffective and unenforceable, and would substantially reduce private-owner participation in this program. The Department also continues to believe that outreach efforts on the part of

public housing agencies to locate both qualified handicapped persons and accessible units is the most important component of program accessibility for the Section 8 Existing Housing Program. Accordingly, these provisions have been expanded in the interim rule. The Department also points out that owners participating in the Section 8 Existing Housing Program are "recipients" subject to the nondiscrimination requirements of Subpart A of the interim rule.

Section 8.28 consolidates the requirements in the proposed rule regarding homeownership programs which include Sections 235 and 235(j), Turnkey III and Indian Mutual Self-Help programs. The largest number of the comments received on this issue objected to the provision that the cost of making a home accessible may be passed on to the prospective homebuyer. Of particular concern was the likelihood that added costs would have to be paid by the homebuyer up front rather than amortized over the life of the mortgage. This would occur where additional costs put the total cost over allowable mortgage limits. The Department is without statutory authority to absorb additional costs over mortgage limits, except to the extent that an increase (up to 10%) may be granted pursuant to the authority granted under Section 235(p) (added by Section 206(a)(4) of the Housing and Community Development Act of 1980).

Several commentors objected to placing the responsibility on the handicapped person to work with the developer to determine which modification he or she would require. The Department believes that an individual homebuyer should have the opportunity to have his or her individual dwelling constructed as he or she wishes. Accessibility standards of § 8.30 will apply only to those accessibility features selected by the homebuyer.

Section 8.29 provides that if historic facilities become subject to alterations to which Part 8 applies and the provision of accessibility would substantially impair the historical or architectural integrity of the property, comments of the Advisory Council on Historic Preservation shall be obtained when required by Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470) and 36 CFR Part 800 prior to commencement of alterations. Accessibility to the historic facility subject to alterations need not be provided if such accessibility would substantially impair the historic features of the property or result in undue financial or administrative burden. A substantial impairment of the historical or architectural integrity of an historic facility constitutes a fundamental alteration in the program and is not required in light of the *Davis* opinion.

Section 8.30 prescribes the standards for facility accessibility or dwelling unit accessibility which are to be complied with when applicable. It provides that standards for accessibility for housing facilities or units to which HUD's Minimum Property Standards are applicable shall be those set forth in the American National Standards Institute ANSI A117.1–1980, Specifications for Buildings and Facilities Accessible to and Usable by Physically Handicapped Persons, subject to any conflict with a specific provision of the Minimum Property Standards, in which case the latter will govern. Standards for non-housing accessibility and for housing to which the Minimum Property Standards are not applicable will be the ANSI standard. Upon issuance of Uniform Federal Accessibility Standards by the standard-setting agencies under the Architectural Barriers Act, the Department will consider the extent to which those standards should be adopted for Section 504 compliance purposes.

Paragraph (b) of § 8.30 provides that the requirements of Subpart C relating to new construction shall be applicable to projects for which proposals or applications are submitted after the effective date of the regulations. Requirements relating to alterations are applicable to alterations for which proposals or applications are submitted after the effective date of the rule or, in the case of alterations which are not performed with Federal financial assistance, for which contracts are entered after such effective date. The Department notes that new construction or alterations to which Subpart C may not be applicable under this provision may still be subject to existing program requirements regarding accessibility.

Subpart D—Enforcement

The DOJ Implementation Regulation (and the predecessor HEW Implementation Guideline) requires each agency to establish an enforcement system for Section 504 and its implementing regulation which includes: (1) The enforcement and hearing procedures adopted for the enforcement of Title VI of the Civil Rights Act of 1964; (2) a requirement that recipients sign assurances of compliance with Section 504; and (3) a requirement that recipients (a) notify employees and beneficiaries of their rights under Section 504, (b) conduct self-evaluations of their compliance with Section 504 with the assistance of interested persons including handicapped persons and organizations representing handicapped persons, and (c) otherwise consult with these same individuals and organizations in achieving compliance with Section 504. In its proposed rule, HUD incorporated the sections pertinent to each of these requirements from HEW's Section 504 regulation covering HEW programs. In addition, recipients other than small providers were required to consult with interested persons including handicapped persons and organizations on at least an annual basis to assess compliance with the requirements of this part. Owners whose sole source of Federal financial assistance was as recipients under the Section 8 Existing Housing Program were exempted from the requirements for self-evaluation, consultation and notice.

The requirement of contractual assurances is important and indispensable as a means of assuring adequate compliance with the obligations imposed by Section 504 and by Part 8. The administrative enforcement scheme provided by Section 505 of the Rehabilitation Act, incorporating the enforcement scheme under Title VI, contemplates only termination of, or refusal to grant or to continue, assistance. This method of enforcement may be undesirable or inadequate in two frequent general contexts: when the burden of the funding termination will fall most heavily upon innocent program beneficiaries, or when the form of Federal financial asistance is an already-completed transfer or sale of real property or a one-time grant, leaving no continuing assistance to which the sanction can be applied.

Consequently, it has long been recognized that an important "other means authorized by law" (Section 602, Civil Rights Act of 1964 (42 U.S.C. 2000d–1)) for enforcement of civil rights obligations is a Government suit to enforce contractual assurances. See e.g., *U.S.* v. *Marion County School District*, 625 F. 2d 607 (5th Cir. 1980). The requirement for such assurances in any application for assistance and in grant agreements, cooperative agreements, and other contracts pursuant to which Federal financial assistance is extended by HUD is contained in § 8.50 of the interim rule.

Section 8.32 of the proposed rule would have imposed upon all recipients, other than owners receiving Section 8 Existing Housing assistance, certain requirements relating to evaluation by recipients of their compliance with Part

8. The details of the self-evaluation requirements were adopted from the HEW Section 504 regulation relating to HEW programs (now 45 CFR Part 84), which in turn adopted the concept from HEW's regulations implementing Title IX. The self-evaluation requirement does not have a precedent in Title VI regulation. In 45 CFR Part 84 and in Title IX regulations (see 45 CFR 86.3), the requirement is an integral part of provisions requiring remedial actions to overcome the effects of past discrimination or encouraging affirmative action in the absence of a finding of discrimination. As indicated elsewhere in this preamble, Section 504 has been held to be less susceptible to "affirmative action" requirements than may be appropriate under Title VI or Title IX. The Department also believes that the self-evaluation mechanism, while appropriate and feasible for institutional recipients of assistance of the type characteristic of HHS and other educational programs, is less so in the case of recipients under HUD programs who are principally private owners of real estate. Accordingly, the Department believes that the self-evaluation requirement is not necessary for effective enforcement of Section 504 obligations under HUD-assisted programs and has therefore deleted this requirement from the interim rule.

Section 8.51 requires that recipients notify participants, applicants, beneficiaries and employees, and unions or professional organizations holding collective bargaining or professional agreements with the recipient, that it does not discriminate on the basis of handicap in its programs or activities subject to Part 8.

For the remainder of its enforcement provisions, the proposed rule simply incorporated by reference the provisions of the Department's Title VI regulations at 24 CFR 1.6–1.12 and Part 2. In this interim rule, in order that attention may more easily be focused on such provisions in the context of Section 504 enforcement, the provisions are fully set out in §§ 8.52–8.56 of Subpart D and in Subpart E. The provisions are identical to the Title VI regulation with the following exceptions. Section 8.53(a) provides that the responsible Department official or designee shall from time to time review the practices of recipients to determine whether they are complying with this Part. This provision refers to the Department official to whom general responsibility for Section 504 enforcement is delegated. A provision has been added to the effect that, in addition, program administrators shall include in normal program compliance reviews and monitoring procedures appropriate actions to review and monitor compliance with general or specific program requirements designed to effectuate the requirements of Section 504 and Part 8.

Similar recognition of the fact that Section 504 objectives may be incorporated into program regulations appears in § 8.54(d). Paragraph (d) prescribes certain prerequisites to actions to effect compliance "by any other means authorized by law." This, too, refers to action by the Department official to whom general enforcement responsibility under Section 504 is delegated. The additional provision provides that this provision shall not be construed to prevent a program administrator from utilizing such procedures and sanctions established under such program as may be appropriate to assure or secure compliance with a specific requirement of such program designed to effectuate the objectives of Section 504 or Part 8.

In addition, a requirement of notice to the Governor of a State or chief executive officer of a unit of general local government following a determination of noncompliance in any program or activity funded in whole or in part with community development block grant assistance under Title I of the Housing and Community Development Act of 1974 has been added at § 8.54(d). This requirement is based on Section 109 of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5309).

Other Information

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR Part 50, which implement Section 102(2)(C) of the National Environment Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk at the above address.

This rule does not constitute a "major rule" as that term is defined in Section 1(b) of the Executive Order 12291 on Federal Regulation. Analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Pursuant to the provisions of 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities. The regulation allows recipients to adopt the least costly means of achieving compliance where existing facilities are inaccessible. In addition, employers are required to make accommodations for qualified handicapped persons only if those accommodations do not cause an undue economic hardship.

This rule was listed as item H–70–78 in the Department's Semiannual Agenda of Regulations published on October 28, 1982 (47 FR 48422, 48427) pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

List of Subjects in 24 CFR Part 8

Administrative practice and procedure, Housing, Loan programs—housing and community development, Grant programs—housing and community development, Handicapped, Civil rights, Reporting and recordkeeping requirements, Equal employment opportunity.

Accordingly, 24 CFR Subtitle A is hereby amended by adding a new Part 8 thereto, reading as follows:

PART 8—NONDISCRIMINATION BASED ON HANDICAP IN FEDERALLY ASSISTED PROGRAMS AND ACTIVITIES OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Subpart A—General Provisions

Sec.

8.1 Purpose.
8.2 Applicability.
8.3 Definitions
8.4 Discrimination prohibited.

Subpart B—Employment

8.10 General prohibitions against employment discrimination.
8.11 Reasonable accommodation.
8.12 Employment criteria.
8.13 Preemployment inquiries.
8.14 Exception States.

Subpart C—Program Accessibility

8.20 General requirements concerning program accessibility.
8.21 Non-housing facilities.
8.22 Housing facilities—new construction.
8.23 Housing facilities—alterations.
8.24 Public housing.
8.25 Distribution of accessible dwelling units.
8.26 Occupancy of accessible dwelling units.
8.27 Section 8 Existing Housing.

Sec.
8.28 Homeownership programs (Sections 235 and 235(j), Turnkey III and Indian Mutual Self-Help Programs).
8.29 Historic facilities.
8.30 Standards; effective date of requirements.

Subpart D—Enforcement

8.50 Assurances required.
8.51 Notice.
8.52 Compliance information.
8.53 Conduct of investigations.
8.54 Procedure for effecting compliance.
8.55 Hearings.
8.56 Decisions and notices.

Subpart E—Practice and Procedure for Hearings

8.60 General information.
8.61 Appearance and practice.
8.62 Parties.
8.63 Form, execution, service and filing of documents.
8.64 Time.
8.65 Proceedings prior to hearing.
8.66 Responsibilities and duties of presiding officer.
8.67 Hearing procedures.
8.68 The record.
8.69 Posthearing procedures, decisions.
8.70 Judicial standards of practice.
8.71 Post-termination proceedings.
8.82 Definitions.

Appendix A—Federal financial assistance of the Department of Housing and Urban Development to which this part applies.
Appendix B—Statutory definitions of handicapped persons.

Authority: Sec. 7, 504, 505, Rehabilitation Act of 1973 as amended (29 U.S.C. 706, 794, 794a); Sec. 109 Housing and Community Development Act of 1974, as amended (42 U.S.C. 5309); and Sec. 7(d), Department of Housing and Urban Development (42 U.S.C. 3535(d)).

Subpart A—General Provisions

§ 8.1 Purpose.

(a) The purpose of this part is to effectuate Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), to the end that no otherwise qualified handicapped person in the United States shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, so be subjected to discrimination under any program or activity receiving Federal financial assistance from the Department of Housing and Urban Development. This Part does not effectuate Section 504 as it applies to any program or activity conducted by the Department. Compliance with the requirements of this part does not assure compliance with requirements for accessibility by the physically-handicapped imposed pursuant to the Architectural Barriers Act of 1968, as amended, (42 U.S.C. 4151 et seq.), where applicable.

(b) The policies and standards for compliance established by this part are established in contemplation of, and with a view to enforcement through, the Department's administration of programs or activities receiving Federal financial assistance and the administrative procedures described in Subparts D and E of this Part (including, without limitation, judicial enforcement pursuant to § 8.53(a) of this Part).

§ 8.2 Applicability.

This part applies to each program or activity that receives Federal financial assistance from HUD, including any program or activity assisted under the statutes listed in Appendix A of this part. The fact that certain financial assistance is not listed in Appendix A shall not mean that such financial assistance is not covered if Section 504 of the Act is otherwise applicable. Other statutes now in effect or hereafter enacted under which Federal financial assistance is extended by the Department may be added to Appendix A, or other changes therein may be made, by notice published in the **Federal Register.**

§ 8.3 Definitions.

As used in this part, the following terms have the following meanings:

"Accessible", when used with respect to a program or activity, means that such program or activity is conducted, delivered, or offered in such a way that qualified handicapped persons can benefit from and participate in the program or activity.

"Accessible", when used with respect to a facility or portion thereof other than an individual dwelling unit, means that such facility or portion thereof complies with the specifications and requirements of the applicable standards prescribed by § 8.30 of this Part and can be approached, entered, and used by phusically handicapped persons. The phrase "accessible to and usable by" is used throughout this part as a synonym for accessible.

"Accessible", when used with respect to an individual dwelling unit, means that such unit is located on an accessible route and is constructed in compliance with the specifications and requirements of the applicable standards prescribed by § 8.30 of this Part, or is adaptable to meet such standards, so that such unit, as constructed or adapted, can be approached, entered, and used by a physically handicapped person who is disabled or has a hearing or vision impairment. "Accessible route" means a continuous unobstructed path connecting accessible elements and spaces in a building or facility which complies with the space and reach requirements of applicable standards prescribed by § 8.30 of this Part; provided, however, that an accessible route which serves only accessible units for persons with hearing or vision impairments need not comply with those requirements intended to effect accessibility for persons with mobility impairments. When a unit in an existing facility which is being made accessible as a result of alterations is intended for use by a specific qualified handicapped person (e.g., a current occupant of such unit or of another unit under the control of the same recipient, or an applicant on a waiting list), such unit will be deemed accessible if it meets the requirements of applicable standards which address the particular disability or impairment of such person.

"Adaptable" means that certain elements of a dwelling unit, such as kitchen counters and sinks, are constructed so as to be able to be added to, raised, lowered, or otherwise altered, or walls are of sufficient strength to receive grab bars, so as to accommodate the needs of either disabled or nondisabled persons, or to accommodate the needs of persons with different types or degrees of disability. For example, in a unit adaptable for a vision-impaired person the wiring for audible emergency alarms may be installed but the alarms themselves need not be installed until such time as the unit is made ready for occupancy by a vision-impaired person.

"Alteration" means any change in a facility or its permanent fixtures or equipment. It includes, but is not limited to, remodeling, renovation, rehabilitation, reconstruction, changes or rearrangements in structural parts and extraordinary repairs. It does not include normal maintenance or repairs, reroofing, interior decoration, or changes to mechanical systems.

"Applicant for assistance" means an individual or public or private entity which submits an application, request, plan, or statement required to be approved by or to be satisfactory to, a Department official or (in the case of a subgrantee) by a prospective recipient as a condition to becoming eligible for Federal financial assistance.

"Department" or "HUD" means the Department of Housing and Urban Development.

"Facility" means all or any portion of buildings, structures, equipment, roads, walks, parking lots, or other real or personal property or interest in such property.

"Federal financial assistance" includes: (1) Grants, loans, and advances of Federal funds, (2) the grant

or donation of Federal property and interests in property, (3) the detail of Federal personnel, (4) the sale or lease of, or the permission to use (as other than a casual or transient basis), Federal property or any interest in such property without consideration or at a nominal consideration, or at a consideration which is reduced (i) for the purpose of assisting the recipient, or (ii) in recognition of the public interest to be served by such sale or lease to the recipient, and (5) any Federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance or subsidy. In the case of Federal financial assistance described in clauses (2) and (4), the program or activity which receives Federal financial assistance shall be deemed to continue so long as the property is used for the purpose for which the Federal financial assistance is extended. The term "Federal financial assistance" does not include a procurement contract or payments pursuant thereto or a contract of insurance or guaranty.

Handicap" means any condition or characteristic that renders a person as defined herein.

"Handicapped person" means any person who has a physical or mental impairment which substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. As used in this definition, the phrase:

(1) "Physical or mental impairment" means: (i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological, musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or (ii) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, drug addiction and alcoholism.

(2) "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.

(3) "Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) "Is regarded as having an impairment" means: (i) Has a physical or mental impairment that does not substantially limit major life activities but that is treated by a recipient as constituting such a limitation; (ii) has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or (iii) has none of the impairments defined in paragraph (1) of this definition but is treated by a recipient as having such an impairment.

"Multifamily project" means a project containing more than two dwelling units.

"Project" means the whole of one or more residential structures and appurtenant structures, equipment, roads, walls, and parking lots which are covered by a single contract for Federal financial assistance or application therefor, or are treated as such a whole for processing purposes, whether or not located on a common site.

"Qualified handicapped persons" means:

(1) With respect to employment, a handicapped person who, with reasonable accommodation, can perform the essential functions of the job in question. The term does not include any individual who is an alcoholic or drug abuser whose current use of alcohol or drugs prevents such individual from performing the duties of the job in question or whose employment, by reason of such current alcohol or drug abuse, would constitute a direct threat to property or the safety of others; and

(2) With respect to a program or activity other than employment, a handicapped person who meets the essential eligibility requirements for participation in such program or activity or for receipt of benefits therefrom except that the term does not include any individual whose current use of alcohol or drugs would constitute a direct threat to the property or safety of others. "Essential eligibility requirements" include stated eligibility requirements such as income or citizenship or alien status as well as implicit requirements inherent in the nature of the program or activity, such as that an occupant of multifamily housing be capable of independent living (except to the extent that necessary support services are contemplated to be provided in connection with the program or activity or will otherwise be available to such occupant) and of complying with all obligations of occupancy, including the obligation to conduct himself or herself in a manner which will not disturb his or her neighbors' peaceful enjoyment of their accommodation and will be conducive to maintaining the housing facility in a decent, safe and sanitary condition. For example, a chronically mentally ill person whose condition poses a significant risk of substantial interference with the safety or enjoyment of others or with his own health or safety in the absence of necessary supportive services may be "qualified" for occupancy in a project where such supportive services are provided but may not be "qualified" for a project lacking such services.

"Recipient" means any State or its political subdivision, any instrumentality of a State or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance.

"Responsible Department official" means the Secretary or, to the extent of any delegation of authority by the Secretary to act under this part, any other Department official to whom authority has been delegated.

"Secretary" means the Secretary of Housing and Urban Development.

"Section 504" means Section 504 of the Rehabilitation Act of 1973, as amended (28 U.S.C. 794).

§ 8.4 Discrimination prohibited.

(a) *General.* No qualified handicapped person shall, solely on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity that receives Federal financial assistance from the Department.

(b) *Specific Discriminatory actions prohibited.* (1) A recipient, in providing any aid, benefit, or service in a program or activity that receives Federal financial assistance from the Department may not, directly or through contractual, licensing, or other arrangements, solely on the basis of handicap:

(i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or

service that is not equivalent to that afforded others;

(iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective as that provided to others;

(iv) Provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons from that provided to others unless such action is necessary to provide qualified handicapped persons with aids, benefits, or services that are as effective as those provided to others;

(v) Aid or perpetuate discrimination against a qualified handicapped person by providing significant assistance to an agency, organization, or person that discriminates on the basis of handicap in providing any aid, benefit, or service to beneficiaries of the recipient's program;

(vi) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

(vii) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service.

(2) For purposes of this part, aids, benefits, and services to be equally effective are not required to produce the identical result or level of achievement for handicapped and non-handicapped persons, but must afford handicapped persons equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement.

(3) A recipient may not deny a qualified handicapped person the opportunity to participate in programs or activities that are not separate or different despite the existence of separate or different programs or activities designed specifically for the handicapped.

(4) A recipient may not, directly or through contractual or other arrangements, utilize criteria or methods of administration:

(i) that subject qualified handicapped persons to discrimination on the basis of handicap;

(ii) that defeat or substantially impair accomplishment of the objectives of the recipient's program with respect to handicapped persons; or

(iii) that perpetuate the discrimination of another recipient if both recipients are subject to common administrative control or are agencies of the same state.

(5) In determining the site or location of a facility, an applicant for assistance or a recipient may not make selections:

(i) that exclude handicapped persons from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity that receives Federal financial assistance, or

(ii) that defeat or substantially impair the accomplishment of the objectives of the program or activity with respect to handicapped persons.

(6) Exceptions to this requirement may be approved by the responsible Department official if an applicant for assistance or a recipient can demonstrate that:

(i) there are no sites available in the community that are accessible or that can be made accessible to handicapped persons at a cost that will not render the facility financially infeasible; and

(ii) the alternative to compliance with this requirement would be nonparticipation in the program or activity receiving Federal financial assistance.

(c) Programs limited by Federal law:

(1) The exclusion of non-handicapped persons from the benefits of a program limited by Federal statute or executive order to handicapped persons, or the exclusion of a specific class of handicapped persons from a program limited by Federal statute or executive order to a different class of handicapped persons, is not prohibited by this part.

(2) Certain of the Department's programs operate under statutory definitions of "handicapped persons" which are more restrictive than § 8.3 (see Appendix B), and such definitions are not superseded or otherwise affected by this regulation.

(d) Recipients shall administer programs and activities in the most integrated setting appropriate to the needs of qualified handicapped persons.

(e) Recipients shall take appropriate steps to ensure that communications with their applicants, employees, and beneficiaries are available to persons with impaired vision and hearing.

Subpart B—Employment

§ 8.10 General prohibitions against employment discrimination.

(a) No qualified handicapped person shall, solely on the basis of handicap, be subjected to discrimination in employment under any program or activity that receives Federal financial assistance from the Department.

(b) A recipient may no limit, segregate, or classify applicants or employees in any way that adversely affects their opportunities or status because of handicap.

(c) The prohibition against discrimination in employment applies to the following activities:

(1) Recruitment, advertising, and the processing of applications for employment;

(2) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, injury or illness, and rehiring.

(3) Rates of pay or any other form of compensation and changes in compensation;

(4) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

(5) Leaves of absence, sick leave, or any other leave;

(6) Fringe benefits available by virtue of employment, whether or not administered by the recipient;

(7) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;

(8) Employer sponsored activities, including social or recreational programs; and

(9) Any other term, condition, or privilege of employment.

(d) A recipient may not participate in a contractual or other relationship that has the effect of subjecting qualified handicapped applicants or employees to discrimination prohibited by this subpart. The relationships referred to in this subparagraph include relationships with employment and referral agencies, with labor unions, with organizations providing or administering fringe benefits to employees of the recipient, and with organizations providing training and apprenticeship programs.

§ 8.11 Reasonable accommodation.

(a) A recipient shall make reasonable accommodation to the known physical or mental limitations of qualified handicapped applicant or employee unless the recipient can demonstrate that the accommodation would impose an undue hardship on the operation of its program.

(b) Reasonable accommodation may include: (1) Making facilities used by employees readily accessible to and usable by handicapped persons and (2) Job restructuring, job relocation, part-time or modified work schedules, acquisitions or modification of equipment or devices, the provision of readers or interpreters, and other similar actions.

(c) In determining, pursuant to paragraph (a) of this section, whether an accommodation would impose an undue hardship on the operation of a recipient's program, factors to be considered include:

(1) The overall size of the recipient's program with respect to number of employees, number and type of facilities, and size of budget;

(2) The type of the recipient's operation, including the composition and structure of the recipient's work force; and

(3) The nature and cost of the accommodation needed.

(d) A recipient may not deny any employment opportunity to a qualified handicapped employee or applicant if the basis for the denial is the need to make reasonable accommodation to the physical or mental limitations of the employee or applicant.

§ 8.12 Employment criteria.

(a) A recipient may not make use of any employment test or other selection criterion that screens out or tends to screen out handicapped persons or any class of handicapped persons unless: (1) The test or other selection criterion is shown to be job-related for the position in question; and (2) Alternative job-related tests or criteria that do not tend to screen out as many handicapped persons have not been shown by the responsible HUD official to be available.

(b) A recipient shall select and administer tests concerning employment to ensure that when administered to an applicant or employee who has a handicap that impairs sensory, manual, or speaking skills, the test results accurately reflect the applicant's or employee's job skills, aptitude, or whatever other factor the test purports to measure, rather than reflecting the applicant's or employee's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).

§ 8.13 Preemployment inquiries.

(a) Except as provided in paragraphs (b) and (c) of this section, a recipient may not make preemployment inquiry or conduct a preemployment medical examination of an applicant to determine whether the applicant is a handicapped person or the nature or severity of a handicap. A recipient may, however, make preemployment inquiry into an applicant's ability to perform job-related functions.

(b) When a recipient is undertaking affirmative action efforts, voluntary or otherwise, the recipient may invite applicants for employment to indicate whether and to what extent they are handicapped; *Provided*, that:

(1) The recipient states clearly on any written questionnaire used for this purpose or makes clear orally if no written questionnaire is used that the information requested is intended for use solely in connection with its remedial action obligations or its voluntary or affirmative action efforts; and

(2) The recipient states clearly that the information is being requested on a voluntary basis, that it will be kept confidential as provided in paragraph (d) of this section, that refusal to provide it will not subject the applicant or employee to any adverse treatment, and that it will be used only in accordance with this part.

(c) Nothing in this section shall prohibit a recipient from conditioning an offer of employment on the results of medical examination conducted prior to the employee's entrance on duty. *Provided*, that: (1) All entering employees in that category of job classification must take such an examination regardless of whether or not they are handicapped; and (2) The results of such an examination are used only in accordance with the requirements of this part.

(d) Information obtained in accordance with this section as to the medical condition or history of the applicant shall be collected and maintained on separate forms that shall be accorded confidentiality as medical records, except that:

(1) Supervisors and managers may be informed regarding restrictions on the work or duties of handicapped persons and regarding necessary accommodations;

(2) First aid and safety personnel may be informed, where appropriate, if the condition might require emergency treatment; and

(3) Government officials investigating compliance with the Act shall be provided relevant information upon request.

§ 8.14 Exception States.

Until such time as this section may be further amended, the provisions of this Subpart B shall be enforced in the States comprising the Second Circuit (Connecticut, New York, and Vermont), Fourth Circuit (Maryland, North Carolina, South Carolina, Virginia, and West Virginia), and Eighth Circuit (Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota, and South Dakota), and Ninth Circuit (Alaska, Arizona, California, Idaho, Montana, Nevada, Oregon, Washington, Guam, and Hawaii) only with respect to programs or activities in which the provision of employment is a primary objective.

Subpart C—Program Accessibility

§ 8.20 General requirement concerning program accessibility.

Each program or activity that receives Federal financial assistance from the Department shall be operated so that the program or activity, when viewed in this entirety, is readily accessible to and usable by qualified handicapped persons.

§ 8.21 Non-housing facilities.

(a) No qualified handicapped person shall be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity that receives Federal financial assistance from the Department because a recipient's facilities within which such program or activity is conducted, or where application for participation therein is made or the benefits distributable pursuant to such program or activity are distributed, are inaccessible to or unusable by handicapped persons.

(b) This section does not require that each of a recipient's facilities described in paragraph (a) of this section be accessible, or that every part of such facilities be accessible, so long as sufficient such facilities or parts thereof are accessible to make participation in such program and the benefits thereof readily available to qualified handicapped persons.

(c) This section does not require that the facilities described in paragraph (a) of this section maintained by every recipient must meet the requirements of paragraph (b) of this section if there are facilities of other recipients in the area pertinent to the same program or activity which meet the requirements of paragraph (b) of this section to a degree sufficient to make the program or activity, when viewed in its entirety, available for participation by qualified handicapped persons, and if compliance by the recipient through the means enumerated in paragraph (d) of this section would result in a fundamental alteration in the nature of its program or activity or in undue financial or administrative burden. In such event, however, a recipient whose facilities are inaccessible shall take reasonable steps to direct qualified handicapped persons to facilities of other recipients which are accessible and where participation in the program or activity by the qualified handicapped person may be achieved.

(d) A recipient may comply with the requirements of this section through such means as: (1) location of programs or services to accessible facilities or

accessible portions of facilities; (2) the addition or redesign of equipment (e.g., appliances or furnishings); (3) changes in management policies or procedures (e.g., establishing preferences for qualified handicapped persons on waiting lists for the program or activity at accessible facilities); (4) acquisition or construction of additional facilities, or alterations to existing facilities on a selective basis; or (5) any other methods that result in making its program or activity accessible to handicapped persons.

(e) Construction or alterations of facilities described in paragraph (a) of this section to which standards issued pursuant to the Architectural Barriers Act are applicable shall be performed in accordance with such standards.

(f) Facilities described in paragraph (a) of this section to which paragraph (e) of this section is not applicable shall be constructed in compliance with the specifications and requirements of the applicable standards prescribed by § 8.30.

(g) Alterations of existing facilities described in paragraph (a) of this section to which paragraph (e) of this section is not applicable shall be performed in compliance with the specifications and requirements of the applicable standards prescribed by § 8.30 to the extent set forth herein. Alterations to which paragraph (e) of this section is not applicable performed to portions (including common areas) of existing facilities described in paragraph (a) of this section that affect participation by qualified handicapped persons in a program or activity conducted therein shall, to the extent feasible, be accomplished in a manner consistent with the standards prescribed in § 8.30.

(h) For the purposes of paragraph (g) of this section and §§ 8.23 and 8.24(c), "feasibility" shall include structural and financial feasibility. An alteration may be considered not structurally feasible when it has little likelihood of being accomplished without removing or altering a load-bearing structural member. Financial feasibility shall take into account the degree to which the alteration work is to be assisted with Federal financial assistance, the cost limitations (including unit cost limits) of the program under which such assistance is provided, and the relative cost of accomplishing such alterations in manners consistent and inconsistent with accessibility whether or not the alteration work is assisted with Federal financial assistance.

§ 8.22 Housing facilities—new construction.

(a) New construction of a multifamily project (including a public housing project as required by § 8.24) assisted by Federal financial assistance or covered by a contract for Federal financial assistance from the Department (including, in the case of a Section 8 project, an Agreement to Enter into a Housing Assistance Payments Contract) shall be performed in compliance with the specifications and requirements of the applicable standards prescribed in § 8.30. Subject to paragraphs (b) and (c) of this section, a minimum of five percent of the total dwelling units in a project containing not less than 15 dwelling units (but not less than one unit in any such project) shall be accessible for persons with mobility impairments and an additional two percent (but not less than one unit) in such a project shall be accessible for persons with hearing or vision impairment.

(b) Notwithstanding the provisions of paragraph (a) of this section, a sponsor or developer of a multifamily project otherwise subject to the requirements of paragraph (a) of this section may request a waiver of such requirements upon demonstrating to the reasonable satisfaction of HUD that provision of accessible units in such project to the extent otherwise required by paragraph (a) of this section would exceed the need for such units in the housing market area. Such demonstration shall be based on census data or other available current data (including a currently effective Housing Assistance Plan). In addition, HUD may prescribe lower percentages than those prescribed in paragraph (a) of this section for any housing market area based upon its determination that a sufficient number of accessible units are available in such area for the expected needs in such area. Such determination by HUD may be based upon evidence that accessible units in the area are being occupied by persons not having the disabilities or impairments requiring the accessibility features of the units, provided that HUD further determines that reasonable efforts have been made to assure that information regarding the availability of accessible units reaches eligible qualified handicapped persons in the area. In reviewing a request by a sponsor or developer or in considering a reduction of requirements for an area, HUD shall consult with organizations serving handicapped persons and may, in its discretion, consult with State and local governments.

(c) HUD may prescribe higher percentages than those prescribed in paragraph (a) of this section for any area upon request therefor by any State or local government or agency thereof based upon demonstration to the reasonable satisfaction of HUD of a need therefor, based on census data or other available current data (including a currently effective Housing Assistance Plan), or in response to evidence of such a need received in any other manner. In reviewing such request or otherwise assessing the existence of such needs, HUD shall take into account the expected needs of eligible non-handicapped persons as well as the needs of qualified handicapped persons. Except for group homes or independent living complexes for handicapped persons, in no event shall more than 15 percent of the units in any project be required to be accessible to persons with mobility impairments.

§ 8.23 Housing facilities—alterations.

(a) Alterations of existing multifamily housing (other than public housing) assisted by Federal financial assistance or covered by a contract for Federal financial assistance from the Department (including an Agreement to Enter into Housing Assistance Payments Contract) shall be performed in compliance with the specifications and requirements of the applicable standards prescribed by § 8.30 to the extent provided herein. If the facility contains 25 or more units and if the cost of the alterations is 75 percent or more of the replacement cost of the completed facility, the provisions of § 8.22 shall apply. If the preceding sentence does not apply, there shall be no minimum number of units required to be made accessible. Alterations performed to common areas of facilities or parts of facilities that affect accessiblity of the facility shall, to the extent feasible, be accomplished in compliance with the specifications and requirements of the applicable standards prescribed by § 8.30. Alterations to dwelling units shall, to the extent feasible, be accomplished in compliance with specifications and requirements of applicable standards prescribed by § 8.30 if, as a result of such alterations, the unit can be made accessible for persons of identifiable types or degrees of disability or impairment. However, alterations to units shall not be subject to the foregoing requirement with respect to standards for accessibility to persons with mobility impairments from and after such time as 15% of the units in a project are accessible to such persons.

(b) This section does not apply to an individual who borrows or receives

funds to rehabilitate a dwelling unit in which he or she resides or intends to reside.

§ 8.24 Public housing.

(a) Construction of any public housing project, whether or not constituting a "residential structure" as defined in 24 CFR 40.2, shall be performed in compliance with the standards applicable to residential structures pursuant to 24 CFR 40.4 and, in addition, shall be subject to the requirements of § 8.22 regarding accessible units.

(b) Alteration of any public housing project, whether or not constituting a "residential structure" as defined in 24 CFR 40.2, performed as part of a modernization program pursuant to 24 CFR Part 868 and which involves structural parts or building elements to which the standards made applicable pursuant to 24 CFR 40.4 are applicable shall be performed in accordance with such standards.

(c) Dwelling units in public housing projects covered by a modernization project pursuant to 24 CFR Part 868 shall be made accessible to the extent required by this paragraph. The PHA shall assess, on a PHA-wide basis, the needs of current tenants and applicants on its waiting list for accessible units and the extent to which such needs have not been met or cannot reasonably be expected to be met in the proximate future through development, alterations otherwise contemplated by such modernization project or other modernization projects, or other programs administered by the PHA (e.g., Section 8 Moderate Rehabilitation or Section 8 Existing Housing). (If the PHA currently has no accessible units or information regarding availability of accessible units has not been communicated sufficiently so that, as a result, the number of eligible qualified handicapped persons on the PHA's waiting list is not fairly representative of the number of such persons in the area, the PHA's assessment shall be required to include the needs of eligible qualified handicapped persons in the PHA's jurisdiction.) If the PHA determines, on the basis of such assessment, that alterations to make additional units accessible must be included in its modernization program in order that the needs of eligible qualified handicapped individuals who are current tenants or applicants on its waiting list may be accommodated proportionally to the needs of non-handicapped individuals in the same categories, then the PHA shall provide in its modernization project for such structurally feasible alterations complying with the specifications and requirements of applicable standards prescribed by § 8.30 as may be required to achieve such objective (provided, however, that the PHA shall not be required to make more than five percent of the units covered by any modernization project accessible). If alterations required to make additional units accessible pursuant to the foregoing would result in the modernization project being determined not to be financially feasible (as defined in 24 CFR 868.3), the PHA may request a waiver of the financial feasibility standard to such extent or of the requirement to make additional units accessible otherwise made applicable by this section.

§ 8.25 Distribution of accessible dwelling units.

Accessible dwelling units required by §§ 8.22, 8.23(a), or 8.24 (a) or (c) shall, to the extent feasible and subject to reasonable health and safety requirements, be distributed throughout projects and sites and shall be available in a sufficient range of sizes and amenities so that a qualified handicapped person's choice of living arrangements is generally comparable to that of other persons eligible for housing assistance under the same program. This provision shall not be construed to require provision of an elevator in any multifamily project solely for the purpose of permitting location of accessible units above or below the accessible grade level.

§ 8.26 Occupancy of accessible dwelling units.

Owners and managers of multifamily project having accessible units shall adopt suitable means to assure that information regarding the availability of accessible units reaches eligible qualified handicapped persons, and shall take reasonable nondiscriminatory steps to maximize the utilization of such units by eligible qualified handicapped persons whose disability requires the accessibility features of the particular unit. To the extent necessary or appropriate to achieve the foregoing objective in the individual circumstances of the project, when an accessible unit becomes vacant, the owner or manager, before offering such unit to the applicant at the head of the waiting list, may offer such unit to (a) current occupants of other units of the same project, or comparable projects under common control, having disabilities or impairments requiring the accessibility features of the vacant unit and occupying units not having such features or (b) an eligible qualified applicant on the waiting list having disabilities or impairments requiring the accessibility features of the vacant unit, provided that such preference is not likely to delay unreasonably the availability of a unit for the applicant at the head of the waiting list. When offering such unit to an applicant not having disabilities or impairments requiring the accessibility features of the unit, the owner or manager may require such applicant to agree (and may incorporate such agreement in the lease) to move to a nonaccessible unit when available. If reasonable efforts have been made to assure that information regarding the availability of accessible units reaches eligible qualified handicapped persons, an owner or manager shall not be required to hold an accessible unit vacant for a longer than normal period in order to locate an eligible qualified handicapped person having disabilities or impairments requiring the accessibility features of the vacant unit.

§ 8.27 Section 8 Existing Housing.

A PHA conducting a Section 8 Existing Housing program under 24 CFR Part 882 shall:

(a) In providing notice of the availability and nature of housing assistance for lower-income families pursuant to 24 CFR 882.207, adopt suitable means to assure that such notice reaches eligible qualified handicapped persons;

(b) In its activities to encourage participation by owners and others pursuant to § 882.208, include encouragement of participation by owners and having accessible units;

(c) Include a current listing of known available accessible units in the Certificate Holder's Packet distributed to qualified handicapped Certificate holders;

(d) Take into account the special problem of ability to locate an accessible unit when considering requests by qualified handicapped persons for extensions of Certificates pursuant to 24 CFR 882.209(d);

(e) If necessary in order that the needs of eligible qualified handicapped individuals on its waiting list may be met proportionally to the needs of eligible nonhandicapped individuals, request increases in contract rents for accessible units pursuant to 24 CFR 882.106.

§ 8.28 Homeownership programs (Sections 235 and 235(j), Turnkey III and Indian Mutual Self-Help Programs).

Any housing units newly constructed or rehabilitated for purchase by a prospective eligible qualified handicapped owner-occupant shall be

made accessible upon request of the prospective buyer if the nature of the handicap so requires. In such case, the buyer shall consult with the seller or builder/sponsor regarding the specific design features to be provided. When accessibility features selected at the option of the homebuyer features shall comply with the relevant standards. The buyer shall be permitted to depart from particular specifications of these standards in order to accommodate his/her specific handicap. The cost of making a facility accessible pursuant to this paragraph may be included in the mortgage amount within the allowable mortgage limits, where applicable. To the extent such costs exceed allowable mortgage limits, they may be passed on to the prospective homebuyer, subject to maximum sales price limitations (see 24 CFR 235.320.)

§ 8.29 Historic facilities.

If historic facilities (listed, or eligible to be listed, in the National Register of Historic Places, or facilities similarly listed pursuant to a State, county, or local statute) become subject to alterations to which this Part applies and the provisions of accessibility would substantially impair the historical or architectural integrity of the property, comments of the Advisory Council on Historic Preservation shall be obtained when required by Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470) and 36 CFR Part 800 prior to commencement of alterations. Accessibility to the historic facility subject to alterations need not be provided if such accessibility would substantially impair the historic features of the property or result in undue financial or administrative burden.

§ 8.30 Standards; effective date of requirements.

(a) Standards for accessibility for housing facilities or units to which HUD's Minimum Property Standards are applicable shall be those set forth in the American National Standards Institute ANSI A117.1–1980, Specifications for Buildings and Facilities Accessible to and Usable by Physically Handicapped Persons, published by the American National Standards Institute, Inc., 1430 Broadway, New York, New York 10008 (hereinafter "ANSI Standard"), except that in any case of conflict with a specific standard set forth or incorporated in the applicable Minimum Property Standards, the latter shall govern as long as ready access is provided. Standards for non-housing accessibility and for housing to which the Minimum Property Standards are not applicable shall be the ANSI Standard.

(b) The requirement of this Subpart C relating to new construction shall be applicable to projects for which proposals or applications are submitted after [effective date of this Part]. The requirements of this Subpart C relating to alterations shall be applicable to all alterations for which proposals or applications are submitted after August 4, 1983 or, in the case of alterations not performed with Federal financial assistance, for which contracts are entered after August 4, 1983. For purposes of this paragraph, in the context of Community Development Block Grant programs not requiring applications, the final statement required to be submitted to the Department by the grantee shall be deemed an "application."

Subpart D—Enforcement

§ 8.50 Assurances required.

(a) *General.* Every application for Federal financial assistance from the Department submitted on or after August 4, 1983 under any program or activity which requires approval of applications on a project or similar basis shall, as a condition to its approval and the extension of any Federal financial assistance pursuant to such application, contain or be accompanied by the assurance by the applicant that no qualified handicapped person shall, solely by reason of his or her handicap, be excluded from the participation in, be denied the benefits of, or be subject to discrimination under such program or activity, and such program or activity shall be operated and administered in compliance with all requirements imposed by or pursuant to this Part. Every grant agreement, cooperative agreement, or other contract pursuant to which Federal financial assistance from the Department is extended which is entered into or amended on or after August 4, 1983 shall contain an assurance by the grantee or other contracting party that no qualified handicapped person shall, solely by reason of his or her handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under the program of activity receiving Federal financial assistance, and such program of activity shall be operated and administered in compliance with all requirements imposed by or pursuant to this Part. The responsible Department official shall specify the form of the foregoing assurance for any covered program activity and the extent to which similar assurances (and the form thereof) shall be required of subrecipients, contractors and subcontractors, transferees, successors in interest, and other participants in the program or activity. Any such assurance shall include provisions which give the Department a right to seek its judicial enforcement.

(b) *Duration of obligation.* In the case of an application, agreement or contract for Federal financial assistance in the form of a transfer of real property or an interest therein, or a sale or lease of real property or interest therein without consideration or at a nominal consideration, or at a consideration which is reduced (1) for the purpose of assisting the recipient or (2) in recognition of the public interest to be served by such sale or lease to the recipient, the assurance made pursuant to paragraph (a) of this section shall obligate the applicant, and the agreement or contract pursuant to which such Federal financial assistance is provided shall contain a similar assurance which shall obligate the recipient (including any successor, assignee, or transferee of the recipient), for the period during which the real property is used for the purpose for which Federal financial assistance is extended. In cases where the Federal financial assistance is provided on a continuing basis, the assurance shall obligate the applicant or recipient for the period during which Federal financial assistance is provided. In cases where the Federal financial assistance is provided on an advance or one-time basis, the assurance shall obligate the applicant or recipient for such period during which the program or activity benefits from receipt of such assistance as determined by the responsible Department official.

§ 8.51 Notice.

Recipients shall take appropriate initial and continuing steps to notify participants, applicants, beneficiaries, and employees, and unions or professional organizations holding collective bargaining or professional agreements with the recipient, that it does not discriminate on the basis of handicap in its programs or activities subject to this Part.

§ 8.52 Compliance information.

(a) *Cooperation and assistance.*

The responsible Department official and each Department official who by law or delegation has the principal responsibility within the Department for the administration of any program of Federal financial assistance subject to this Part shall to the fullest extent practicable seek the cooperation of

recipients in obtaining compliance with this Part and shall provide assistance and guidance to recipients to help them comply voluntarily with this Part.

(b) *Compliance reports.* Each recipient shall keep such records and submit to the responsible Department official or his/her designee timely, complete, and accurate compliance reports at such times, and in such form and containing such information, as the responsible Department official or his/her designee may determine to be necessary to enable him/her to ascertain whether the recipient has complied or is complying with this Part. In general, recipients should have available for the Department data showing the extent to which handicapped persons are beneficiaries of federally assisted programs.

(c) *Access to sources of information.* Each recipient shall permit access by the responsible Department official or his/her designee during normal business hours to such of its books, records, accounts, and other sources of information, and its facilities, as may be pertinent to ascertain compliance with this Part. Where any information required of a recipient is in the exclusive possession of any other agency, institution, or person and this agency, institution, or persons shall fail or refuse to furnish this information, the recipient shall so certify in its report and shall set forth what efforts it has made to obtain the information.

(d) *Information to beneficiaries and participants.* Each recipient shall make available to participants, beneficiaries, and other interested persons such information regarding the provisions of this Part and its applicability to the program or activity under which the recipient receives Federal financial assistance, and make such information available to them in such manner, as the responsible Department official finds necessary to apprise such persons of the protections against discrimination assured them by Section 504 and this Part.

§ 8.53 Conduct of investigations.

(a) *Periodic compliance reviews.* The responsible Department official or designee shall from time to time review the practices of recipients to detemine whether they are complying with this Part. In addition, each Department official who by law or delegation has principal responsibility within the Department for the administration of any program of Federal financial assistance subject to this Part shall include in normal program compliance reviews and monitoring procedures appropriate actions to review and monitor compliance with general or specific program requirements designed to effectuate the requirements of Section 504 and this Part.

(b) *Complaints.* Any person who believes himself/herself or any specific class of persons to be subjected to discrimination prohibited by this Part may either personally or by a representative, file with the responsible Department official or designee a written complaint. A complaint must be filed not later than 180 days from the date of the alleged discrimination, unless the time for filing is extended by the responsible department official or designee.

(c) *Investigations.* The responsible Department official or designee shall make a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with this Part. The investigation should include, where appropriate, a review of the pertinent practices and policies of the recipient, the circumstances under which the possible noncompliance with this Part occurred, and other factors relevant to a determination as to whether the recipient has failed to comply with this Part.

(d) *Resolution of matters.* (1) If an investigation pursuant to paragraph (c) of this section indicates a failure to comply with this Part, the responsible Department official or designee will so inform the recipient and the matter will be resolved by informal means whenever possible. If it has been determined that the matter cannot be resolved by informal means, action will be taken as provided for in § 8.53(c).

(2) If an investigation does not warrant action pursuant to subparagraph (1) of this paragraph the responsible Department official or designee will so inform the recipient and the complainant, if any, in writing.

(e) *Intimidatory or retaliatory acts prohibited.* No recipient or other person shall intimidate, threaten, coerce, or discriminate against any person for the purpose of interfering with any right or privilege secured by Section 504 or this Part, or because he/she has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this Part. The identity of complainants shall be kept confidential except to the extent necessary to carry out the purposes of this Part, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

§ 8.54 Procedure for effecting compliance.

(a) *General.* If there appears to be a failure or threatened failure to comply with this Part and if the noncompliance or threatened noncompliance cannot be corrected by informal means, compliance with this Part may be effected by the suspension or termination of or refusal to grant or to continue Federal financial assistance, or by any other means authorized by law. Such other means may include, but are not limited to:

(1) A reference to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any law of the United States, or any assurance or other contractual undertaking, and

(2) any applicable proceeding under State or local law.

(b) *Noncompliance with § 8.50.* If an applicant or a recipient of assistance under a contract which is extended or amended on or after August 4, 1983 fails or refuses to furnish an assurance required under § 8.50 or otherwise fails or refuses to comply with the requirements imposed by or pursuant to that section, Federal financial assistance may be refused in accordance with the procedures of paragraph (c) of this section. The Department shall not be required to provide assistance in such a case during the pendency of the administrative proceeding under such paragraph, except that the Department shall continue assistance during the pendency of such proceedings where such assistance is due and payable pursuant to a contract therefor approved prior to an express finding, on the record, of noncompliance with this Part.

(c) *Termination of or refusal to grant or to continue Federal financial assistance.* No order suspending, terminating, or refusing to grant or continue Federal financial assistance shall become effective until:

(1) the responsible Department official has advised the applicant or recipient of his/her failure to comply and has determined that compliance cannot be secured by voluntary means;

(2) there has been an express finding on the record, after opportunity for hearing, of a failure by the applicant or recipient to comply with a requirement imposed by or pursuant to this Part;

(3) the action has been approved by the Secretary; and

(4) the expiration of 30 days after the Secretary has filed with the committees of the House and Senate having legislative jurisdiction over the program or activity involved a full written report

of the circumstances and the grounds for such action. Any action to suspend or terminate or to refuse to grant or to continue Federal financial assistance shall be limited to the particular political entity, or part thereof, or other recipient as to whom such a finding has been made and shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found.

(d) *Notice to State or local government.* Whenever the Secretary determines that a State or unit of general local government which is a recipient of Federal financial assistance under Title I of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301 et seq.) has failed to comply with a requirement of Section 504 or this Part with respect to a program or activity funded in whole or in part with such assistance, he shall notify the Governor of such State or the chief executive officer of such unit of general local government of the noncompliance and shall request the Governor or the chief executive officer to secure compliance. Such notice shall be given not less than 60 days prior to (1) an order suspending, terminating, or refusing to grant or continue Federal financial assistance becoming effective pursuant to paragraph (c) of this section, or (2) any action to effect compliance by any other means authorized by law taken pursuant to paragraph (c) of this section.

(e) *Other means authorized by law.* No action to effect compliance by any other means authorized by law shall be taken until:

(1) the responsible Department official has determined that compliance cannot be secured by voluntary means;

(2) the recipient or other person has been notified of its failure to comply and of the action to be taken to effect compliance; and

(3) the expiration of at least 10 days from the mailing of such notice to the applicant or recipient. During this period of at least 10 days additional efforts shall be made to persuade the applicant or recipient to comply with this Part and to take such corrective action as may be appropriate.

However, this paragraph shall not be construed to prevent a Department official who by law or delegation has principal responsibility within the Department for the administration of any program of Federal financial assistance subject to this Part from utilizing such procedures and sanctions established under such program as may be appropriate to assure or secure compliance with a specific requirement of such program designed to effectuate the objectives of Section 504 or this Part.

§ 8.55 Hearings.

(a) *Opportunity for hearing.* Whenever an opportunity for a hearing is required by § 8.54(c), reasonable notice shall be given by registered or certified mail, return receipt requested, to the affected applicant or recipient of the action proposed to be taken, the specific provision under which the proposed action against it is to be taken, and the matters of fact or law asserted as the basis for this action, and either:

(1) Fix a date not less than 20 days after the date of such notice within which the applicant or recipient may request of the reasponsible Department official that the matter be scheduled for hearing, or

(2) Advise the applicant or recipient that the matter in question has been set down for hearing at a stated time and place. The time and place so fixed shall be reasonable and shall be subject to change for cause. The complainant, if any, shall be advised of the time and place of the hearing. An applicant or recipient may waive a hearing and submit written information and argument for the record. The failure of an applicant or recipient to request a hearing under this paragraph or to appear at a hearing for which a date has been set shall be deemed to be a waiver of the right to a hearing under §8.54(c) and consent to the making of a decision on the basis of such information as is available.

(b) *Time and place of hearing.* Hearings shall be held at the offices of the Department in Washington, D.C., at a time fixed by the responsible Department official unless he/she determines that the convenience of the applicant or recipient or of the Department requires that another place be selected. Hearings shall be held before the responsible Department official or, at his/her discretion, before a hearing examiner designated in accordance with 5 U.S.C. 3105 and 3344.

(c) *Right to counsel.* In all proceedings under this section, the applicant or recipient and the Department shall have the right to be represented by counsel.

(d) *Procedures, evidence, and record.* (1) The hearing, decision, and any administrative review thereof shall be conducted in conformity with 5 U.S.C. 554–557 and in accordance with subpart E of this Part relating to the conduct of the hearing, giving of notices subsequent to those provided for in paragraph (a) of this section, taking of testimony, exhibits, arguments and briefs, requests for findings, and other related matters. Both the Department and the applicant or recipient shall be entitled to introduce all relevent evidence of the issues as stated in the notice for hearing or as determined by the officer conducting the hearing at the onset of or during the hearing.

(2) Technical rules of evidence shall not apply to hearings conducted pursuant to this Part, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where reasonably necessary by the officer conducting the hearing. The hearing officer may include irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the Department and the applicant or recipient, and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence except to the extent the substance thereof is stipulated for the record. All decisions shall be based upon the hearing record and written findings shall be made.

(e) *Consolidated or joint hearings.* In cases in which the same or related facts are asserted to constitute noncompliance with this Part with respect to two or more programs or activities to which this Part applies, or noncompliance with this Part and the regulations of one or more other Federal departments or agencies issued under Section 504, the Secretary may, by agreement with such other departments or agencies, where applicable, provide for the conduct of consolidated or joint hearings, and for the application to such hearings of rules of procedure not inconsistent with this Part. Final decisions in such cases insofar as this Part is concerned, shall be made in accordance with § 8.56.

§ 8.56 Decisions and notices.

(a) *Decision by person other than the responsible Department official.* If the hearing is held by a hearing examiner, such hearing examiner shall either make an initial decision, if so authorized, or certify the entire record including his/her recommended findings and proposed decision to the responsible Department official for a final decision, and a copy of such initial decision or certification shall be mailed to the applicant or recipient requested. Where the initial decision is made by the hearing examiner, the applicant or recipient may, within the period provided for in Subpart E of this Part, file with the responsible Department official

exceptions to the initial decision, with reasons thereof. In the absence of exceptions, the responsible Department official may on his/her own motion within 45 days after the initial decision serve on the applicant or recipient a notice that he/she will review the decision. Upon the filing of such exceptions or of such notice of review and responsible Department official shall review the initial decision and issue his/her own decision thereon including the reasons therefor. In the absence of either exceptions or a notice of review the initial decision shall constitute the final decision of the responsible Department official, in which event a copy shall also be sent to the complainant.

(b) *Decisions on record or review by the responsible Department official.* Whenever a record is certified to the responsible Department official for decision or he/she reviews the decision of a hearing examiner pursuant to paragraph (a) or (c) of this section, or whenever the responsible Department official conducts the hearing, the applicant or recipient shall be given reasonable opportunity to file briefs or other written statements of its contentions, and a copy of the final decision of the responsible Department official shall be given in writing to the applicant or recipient, and to the complainant, if any, by certified or registered mail, return receipt requested.

(c) *Decisions on record where a hearing is waived.* Whenever a hearing is waived pursuant to § 8.55(a)(2), the decision of a hearing examiner or responsible Department official shall be based on the record and a copy of such decision shall be given in writing to the applicant or recipient, and to the complainant, if any, by certified or registered mail, return receipt requested.

(d) *Rulings required.* Each decision of a hearing examiner or responsible Department official shall set forth a ruling on each finding, conclusion, or exception presented, and shall identify the requirement or requirements imposed by or pursuant to this Part with which it is found that the applicant or recipient has failed to comply.

(e) *Content of orders.* The final decision may provide for suspension or termination of, or refusal to grant or continue, Federal financial assistance, in whole or in part, to the program or activity involved and may contain such terms, conditions, and other provisions as are consistent with and will effectuate the purposes of Section 504 and this Part, including provisions designed to assure that no Federal financial assistance will thereafter be extended for such program or activity to the applicant or recipient determined by such decision to be in default in its performance of an assurance given by it pursuant to this Part, or to have otherwise failed to comply with this Part, unless and until it corrects its noncompliance and satisfies the responsible Department official that it will fully comply with this Part.

(f) *Posttermination proceedings.* (1) Any applicant or recipient adversely affected by an order issued under paragraph (e) of this section shall be restored to full eligibility to receive Federal financial assistance if it satisfies the terms and conditions of that order for such eligibility or if it brings itself into compliance with this part and provides reasonable assurance that it will fully comply with this Part.

(2) Any applicant or recipient adversely affected by an order entered pursuant to paragraph (e) of this section may at any time request the responsible Department official to restore fully its eligibility to receive Federal financial assistance. Any such request shall be supported by information showing that the applicant or recipient has met the requirements of paragraph (1) of this paragraph. If the responsible Department official determines that those requirements have been satisfied, he/she shall restore such eligibility.

(3) If the responsible Department official denies any such request, the applicant or recipient may submit a request for a hearing in writing, specifying why it believes such official to have been in error. It shall thereupon be given an expeditious hearing, with a decision on the record, in accordance with the Practice and Procedure for Hearings issued by the Department (Subpart E). The applicant or recipient will be restored to such eligibility if it proves at such a hearing that it satisfied the requirements of subparagraph (1) of this paragraph. While proceedings under this paragraph are pending, the sanctions imposed by the order issued under paragraph (e) of this section shall remain in effect.

(g) *Forms and instruction.* The responsible Department official shall assure that forms and detailed instructions and procedures for effectuating this Part are issued and promptly made available to interested persons.

(h) *Supervision and coordination.* The Secretary may from time to time assign to officials of the Department, or to officials of other departments or agencies of the Government with the consent of such department or agency, responsibilities in connection with the effectuation of the purposes of Section 504 and this Part (other than responsibility for final decision as provided in § 8.56), including the achievement of effective coordination and maximum uniformity within the Department and within the Executive Branch of the Government in the application of Section 504 and this Part to similar programs or activities and in similar situations. Any action taken, determination made, or requirement imposed by an official of another department or agency acting pursuant to an assignment of responsibility under this paragraph shall have the same effect as though such action has been taken by the responsible official of this Department.

Subpart E—Practice and Procedure for Hearings

§ 8.60 General information.

(a) *Scope of rules.* The rules of procedure in this Subpart supplement Subpart D of this Part and govern the practice for hearings, decisions, and administrative review conducted by the Department of Housing and Urban Development, including each of its organizational units, pursuant to Section 504 of the Rehabilitation Act of 1973 (as amended) and this Part.

(b) *Records to be public.* All pleadings, correspondence, exhibits, transcripts of testimony, exceptions, briefs, decisions, and other documents filed in the docket in any proceeding may be inspected and copied in the office of the Civil Rights docket clerk during regular business hours. Inquiries may be addressed to the Civil Rights docket clerk, Department of Housing and Urban Development, Washington, D.C. 20410.

(c) *Use of number.* As used in this part, words importing the singular number may extend and be applied to several persons or things, and vice versa.

(d) *Suspension of rules.* The responsible Department official with respect to pending matters may modify or waive any rule in this Subpart E upon his/her determination that no party will be unduly prejudiced and the ends of justice will thereby be served, and upon notice to all parties.

§ 8.61 Appearance and practice.

(a) *Appearance.* A party may appear in person or by counsel and participate fully in any proceeding. A State agency or any instrumentality thereof, a political subdivision of the State or instrumentality thereof, or a corporation may appear by any of its officers or employees duly authorized to appear on its behalf. Counsel must be members in

good standing of the bar of any State, Territory, or possession of the United States or of the District of Columbia or the Commonwealth of Puerto Rico.

(b) *Authority for representation.* Any individual acting in a representative capacity in any proceeding may be required to show his/her authority to act in such capacity.

(c) *Exclusion from hearing for misconduct.* Disrespectful, disorderly, or contumacious language or contemptuous conduct, refusal to comply with directions, or continued use of dilatory tactics by any person at any hearing before a presiding officer shall constitute grounds for immediate exclusion of such person from the hearing by the presiding officer.

§ 8.62 Parties.

(a) *Parties; General Counsel a party.* (1) The term party shall include an applicant or recipient or other person with respect to whom a notice of hearing or opportunity for hearing has been served naming him/her as respondent. (2) The General Counsel of the Department of Housing and Urban Development shall be deemed a party to all proceedings.

(b) *Amici curiae.* (1) Any interested person or organization may file a petition to participate in a proceeding as an amicus curiae. Such petition shall be filed prior to the prehearing conference or, if none is held, before the commencement of the hearing, unless the petitioner shows good cause for filing the petition later. The presiding officer may grant the petition if he/she finds that the petitioner has a legitimate interest in the proceedings, and that such participation will not unduly delay the outcome and may contribute materially to the proper disposition thereof. An amicus curiae is not a party and may not introduce evidence at a hearing. (2) An amicus curiae may submit a statement of position to the presiding officer prior to the beginning of a hearing, and shall serve a copy on each party. The amicus curiae may submit a brief on each occasion a decision is to be made or a prior decision is subject to review. Such brief shall be filed and served on each party within the time limits applicable to the party whose position he/she deems himself/herself to support; or if he/she does not deem himself/herself to support the position of any party, within the longest time limit applicable to any party at that particular stage of the proceedings. (3) When all parties have completed their initial examination of a witness, any amicus curiae may request the presiding officer to propound specific questions to the witness. The presiding officer, in his/her discretion, may grant any such request if he/she believes the proposed additional testimony may assist materially in elucidating factual matters at issue between the parties and will not expand the issues.

(c) *Complainants not parties.* A person submitting a complaint pursuant to § 8.53 of this Part is not a party to the proceedings governed by this party, but may petition, after proceedings are initiated, to become an amicus curiae. In any event a complainant shall be advised of the time and place of the hearing.

§ 8.63 Form, execution, service and filing of documents.

(a) *Form of documents to be filed.* Documents to be filed under the rules of this Subpart E shall be dated, the original signed in ink, shall show the docket description and title of the proceeding and the title, if any, and address of the signatory. Copies need not be signed, but the name of the person signing the original shall be reproduced. Documents shall be legible and shall not be more than 8½ inches wide and 12 inches long.

(b) *Signature of documents.* The signature of a party, authorized officer, employee or attorney constitutes a certificate that he/she has read the document, that to the best of his/her knowledge, information, and belief there is good ground to support it, and that it is not interposed for delay. If a document is not signed or is signed with intent to defeat the purpose of this section, it may be stricken as sham and false and the proceeding may proceed as though the document had not been filed. Similar action may be taken if scandalous or indecent matter is inserted.

(c) *Filing and service.* All notices by the responsible Department official or the presiding officer, and all written motions, requests, petitions, memoranda, pleadings, exceptions, briefs, decisions, and correspondence to the responsible Department official or the presiding officer from a party, or vice versa, relating to a proceeding after its commencement shall be filed and served on all parties. Parties shall supply the original and two copies of documents submitted for filing. Filings shall be made with the Civil Rights docket clerk at the address stated in the notice of hearing or notice of opportunity for hearing, during regular business hours. Regular business hours are every Monday through Friday (legal holidays in the District of Columbia excepted) from 8:45 a.m. to 5:15 p.m., e.s.t. or d.s.t., whichever is effective in the District of Columbia at the time. Originals only of exhibits and transcripts of testimony need be filed. For requirements of service on amici curiae, see § 8.69(f).

(d) *Service—how made.* Service shall be made by personal delivery of one copy of each person to be served or by registered or certified mail, return receipt requested, properly addressed with postage prepaid. When a party or amicus has appeared by attorney or other representative, service upon such attorney or representative will be deemed service upon the party or amicus. Documents served by mail preferably should be mailed in sufficient time to reach the addressee by the date on which the original is due to be filed.

(e) *Date of service.* The date of service shall be the day when the matter is deposited in the U.S. mail or is delivered in person, except that the date of service of the initial notice of hearing or opportunity for hearing shall be the date of its delivery, or of its attempted delivery if refused.

(f) *Certificate of service.* The original of every document filed and required to be served upon parties to a proceeding shall be endorsed with a certificate of service signed by the party making service or by his/her attorney or representative, stating that such service has been made, the date of service, and the manner of service, whether by mail or personal delivery.

§ 8.64 Time.

(a) *Computation.* In computing any period of time under the rules of this Subpart E or in an order issued hereunder, the time begins with the day following the act, event, or default, and includes the last day of the period, unless it is a Saturday, Sunday, or legal holiday observed in the District of Columbia, in which event it includes the next following business day. When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded from the computation.

(b) *Extension of time or postponement.* Requests for extension of time should be served on all parties and should set forth the reasons for the application. Applications may be granted upon a showing of good cause by the applicant. From the designation of a presiding officer until the issuance of his/her decision, such requests should be addressed to him/her. Answers to such requests are permitted if made promptly.

(c) *Reduction of time to file documents.* For good cause, the responsible Department official with

respect to pending matters may reduce any time limit prescribed by the rules in this Subpart E except as provided by law or other express provisions in this Part 8.

§ 8.65 Proceedings prior to hearing.

(a) *Notice of hearing or opportunity for hearing.* Proceedings are commenced by mailing a notice of hearing or opportunity for hearing to an affected applicant or recipient, pursuant to this part.

(b) *Answer to notice.* The respondent, applicant, or recipient may file an answer to the notice within 20 days after service thereof. Answers shall admit or deny specifically and in detail each allegation of the notice, unless the respondent party is without knowledge, in which case the answer should so state, and the statement will be deemed a denial. Allegations of fact in the notice not denied or controverted by answer shall be deemed admitted. Matters alleged as affirmative defenses shall be separately stated and numbered. Failure of the respondent to file an answer within the 20-day period following service of the notice may be deemed an admission of all matters of fact recited in the notice.

(c) *Amendment of notice or answer.* The General Counsel may amend the notice of hearing or opportunity for hearing once as a matter of course before an answer thereto is served, and each respondent may amend his/her answer once as a matter of course not later than 10 days before the date fixed for hearing but in no event later than 20 days from the date of service of his/her original answer. Otherwise a notice or answer may be amended only by leave of the presiding officer. A respondent shall file an answer to an amended notice within the time remaining for filing the answer to the original notice or within 10 days after service of the amended notice, whichever period may be longer, unless the presiding officer otherwise orders.

(d) *Request for hearing.* Within 20 days after service of a notice of opportunity for hearing which does not fix a date for hearing, the respondent, either in the answer or in a separate document, may request a hearing. Failure of the respondent to request a hearing shall be deemed a waiver of all right to a hearing and to constitute consent to the making of a decision on the basis of such information as is available.

(e) *Consolidation.* The responsible Department official may provide for proceedings in the Department to be joined or consolidated for hearing with proceedings in other Federal departments or agencies, by agreement with such other departments or agencies. All parties to any proceeding consolidated subsequently to service of the notice of hearing or opportunity for hearing shall be promptly served with notice of such consolidation.

(f) *Motions.* Motions and petitions shall state the relief sought, the authority relied upon, and the facts alleged. If made before or after the hearing, these matters shall be in writing. If made at the hearing, they may be stated orally; but the presiding officer may require that they be reduced to writing and filed and served on all parties in the same manner as a formal motion. Motions, answers, and replies shall be addressed to the presiding officer. A repetitious motion will not be entertained.

(g) *Responses to motions and petitions.* Within 8 days after a written motion or petition is served, or such other period as the responsible Department official or the presiding officer may fix, any party may file a response thereto. An immediate oral response may be made to an oral motion.

(h) *Disposition of motions and petitions.* The responsible Department official or the presiding officer may not sustain or grant a written motion or petition prior to expiration of the time for filing responses thereto, but may overrule or deny such motion or petition without awaiting responses: *Provided, however,* that prehearing conferences, hearings, and decisions need not be delayed pending disposition of motions or petitions. Oral motions and petitions may be ruled on immediately. Motions and petitions submitted to the presiding officer or the responsible Department official, respectively, not disposed of in separate rulings or in their respective decisions will be deemed denied. Oral argument shall not be held on written motions or petitions unless the presiding officer in his/her discretion expressly so orders.

§ 8.66 Responsibilities and duties of presiding officer.

(a) *Who presides.* A presiding officer shall preside over all proceedings held under this Subpart E.

(b) *Designation of hearing examiner.* The designation of a hearing examiner as presiding officer shall be in writing, and shall specify whether the examiner is to make an initial decision or to certify the entire record, including his/her recommended findings and proposed decision, to the responsible Department official, and may also fix the time and place of hearing. A copy of such designation shall be served on all parties. After service of the designation of a hearing examiner to preside, and until such examiner makes the decision, motions and petitions shall be submitted to him/her. In the case of the death, illness, disqualification, or unavailability of the designated hearing examiner, another hearing examiner may be designated to take his/her place.

(c) *Authority of presiding officer.* The presiding officer shall have the duty to conduct a fair hearing, to take all necessary action to avoid delay, and to maintain order. He/She shall have all powers necessary to these ends, including (but not limited to) the power to:

(1) Arrange and issue notice of the date, time and place of hearings or, upon due notice to the parties, change the date, time and place of hearings previously set.

(2) Hold conferences to settle, simplify, or fix the issues in a proceeding, or to consider other matters that may aid in the expeditious disposition of the proceeding.

(3) Require parties and amici curiae to state their position with respect to the various issues in the proceeding.

(4) Administer oaths and affirmations.

(5) Rule on motions and other procedural items on matters pending before him/her.

(6) Regulate the course of the hearing and the conduct of counsel therein.

(7) Examine witnesses and direct witnesses to testify.

(8) Receive, rule on, exclude, or limit evidence.

(9) Fix the time for filing motions, petitions, briefs, or other items in matters pending before him/her.

(10) Issue initial or recommended decisions, or final decisions where the responsible Department official presides.

(11) Take any action authorized by the rules in this Subpart E or in conformance with the provisions of 5 U.S.C. 551–559 (the Administrative Procedure Act).

§ 8.67 Hearing procedures.

(a) *Statements of positions and trial briefs.* The presiding officer may require parties and amici curiae to file written statements of position prior to the beginning of a hearing, to submit trial briefs, and to participate in conferences to settle, simplify, or fix the issues in a proceeding.

(b) *Evidentiary purpose.* (1) The hearing is directed to receiving factual evidence and expert opinion testimony related to the issues in the proceeding. Argument will not be received in evidence; rather it should be presented

in statements, memoranda, or briefs, as determined by the presiding officer. Brief opening statements, which shall be limited to statement of the party's position and what he/she intends to prove, may be made at hearings.

(2) Hearings for the reception of evidence will be held only in cases where issues of fact must be resolved in order to determine whether the respondent has failed to comply with one or more applicable requirements of this Part. In any case where it appears from the respondent's answer to the notice of hearing or opportunity for hearing, from his/her failure timely to answer, or from his/her admissions or stipulations in the record, that there are no matters of material fact in dispute, the presiding officer may enter an order so finding, vacating the hearing date if one has been set, and fixing the time for filing briefs under § 8.69(a). Thereafter the proceedings shall go to conclusion in accordance with § 8.69 of this Part. The presiding officer may allow an appeal from such officer in accordance with paragraph (p) of this section.

(c) *Testimony.* Testimony shall be given orally under oath or affirmation by witnesses at the hearing; but the presiding officer, in his/her discretion, may require or permit that the direct testimony of any witness be prepared in writing and served on all parties in advance of the hearing. Such testimony may be adopted by the witness at the hearing and filed as part of the record thereof. Unless authorized by the presiding officer, witnesses will not be permitted to read prepared testimony into the record. Except as provided in paragraphs (e) and (f), of this section, witnesses shall be available at the hearing for cross-examination.

(d) *Exhibits.* Proposed exhibits shall be exchanged at the prehearing conference, or otherwise prior to the hearing if the presiding officer so requires. Proposed exhibits not so exchanged may be denied admission as evidence. The authenticity of all proposed exhibits exchanged prior to hearing will be deemed admitted unless written objection thereto is filed prior to the hearing or unless good cause is shown at the hearing for failure to file such written objection.

(e) *Affidavits.* An affidavit is not inadmissible as such. Unless the presiding officer fixes other time periods affidavits shall be filed and served on the parties not later than 15 days prior to the hearing; and, not less than seven days prior to hearing, a party may file and serve written objection to any affidavit on the ground that he/she believes it necessary to test the truth of assertions therein at hearing. In such event the assertions objected to will not be received in evidence unless the affiant is made available for cross-examination, or the presiding officer determines that cross-examination is not necessary for the full and true disclosure of facts referred to in such assertions. Notwithstanding any objection, however, affidavits may be considered in the case of any respondent who waives a hearing.

(f) *Dispositions.* Upon such terms as the presiding officer determines to be just, and for the convenience of the parties or of the Department, the presiding officer may authorize or direct the testimony of any witness to be taken by deposition.

(g) *Admissions as to facts and documents.* Not later than 15 days prior to the scheduled date of the hearing except for good cause shown, or prior to such earlier date as the presiding officer may order, any party may serve upon an opposing party a written request for the admission of the genuineness and authenticity of any relevant documents described in and exhibited with the request, or for the admission of the truth of any relevant matters of fact stated in the request. Each of the matters of which an admission is requested shall be deemed admitted unless within a period designated in the request (not less than 10 days after service thereof, or within such further time as the presiding officer may allow upon motion and notice) the party to whom the request is directed serves upon the requesting party a sworn statement either denying specifically the matters of which an admission is requested or setting forth in detail the reasons why he cannot truthfully either admit or deny such matters. Copies of requests for admission and answers thereto shall be served on all parties. Any admission made by a party to such request is only for the purposes of the pending proceeding, or any proceeding or action instituted for the enforcment of any order entered therein, and shall not constitute an admission by him/her for any other purposes or be used against him/her in any other proceeding or action.

(h) *Evidence.* Irrelevant, immaterial, unreliable, and unduly repetitious evidence will be excluded.

(i) *Cross-examination.* A witness may be cross-examined on any matter material to the proceeding.

(j) *Unsponsored written material.* Letters expressing views or urging action and other unsponsored written material regarding matters in issue in a hearing will be placed in the correspondence section of the docket of the proceeding. These data are not deemed part of the evidence or record in the hearing.

(k) *Objections.* Objections to evidence shall be timely and briefly state the ground relied upon.

(l) *Exceptions to rulings of presiding officer unnecessary.* Exceptions to rulings of the presiding officer are unnecessary. It is sufficient that a party, at the time the ruling of the presiding officer is sought, makes known the action which he/she desires the presiding officer to take, or his/her objection to an action taken, and his/her grounds therefor.

(m) *Official notice.* Where official notice is taken or is to be taken of a material fact not appearing in the evidence of record, any party, on timely request, shall be afforded an opportunity to show the contrary.

(n) *Public document items.* Whenever there is offered (in whole or in part) a public document, such as an official report, decision, opinion, or published scientific or economic statistical data issued by any of the executive departments (or their subdivisions), legislative agencies or committees, or administrative agencies of the Federal Government (including Government-owned corporations), or a similar document issued by a State or its agencies, and such document (or part thereof) has been shown by the offeror to be reasonably available to the public, such document need not be produced or marked for identification, but may be offered for official notice, as a public document item by specifying the document or relevant part thereof.

(o) *Offer or proof.* An offer of proof made in connection with an objection taken to any ruling of the presiding officer rejecting or excluding proffered oral testimony shall consist of a statement of the substance of the evidence which counsel contends would be adduced by such testimony; and, if the excluded evidence consists of evidence in documentary or written form or of reference to documents or records, a copy of such evidence shall be marked for identification and shall accompany the record as the offer of proof.

(p) *Appeals from ruling of presiding officer.* Rulings of the presiding officer may not be appealed to the responsible Department official prior to consideration of the entire proceeding except with the consent of the presiding officer and where he/she certifies on the record or in writing that the allowance of an interlocutory appeal is clearly necessary to prevent exceptional delay, expenses, or prejudice to any party, or substantial detriment to the public

interest. If an appeal is allowed, any party may file a brief with the responsible Department official within such period as the presiding officer directs. No oral argument will be heard unless the responsible Department official directs otherwise. At any time prior to submission of the proceeding for decision, the responsible Department official may direct the presiding officer to certify any question or the entire record to him/her for decision. Where the entire records so certified, the presiding officer shall recommend a decision.

§ 8.68 The record.

(a) *Official transcript.* The Department will designate the official reporter for all hearings. The official transcripts of testimony taken, together with any exhibits, briefs, or memoranda of law filed therewith shall be filed with the Department. Transcripts of testimony in hearings may be obtained from the official reporter by the parties and the public at rates not to exceed the maximum rates fixed by the contract between the Department and the reporter. Upon notice to all parties, the presiding officer may authorize corrections to the transcript which involve matters of substance.

(b) *Record for decision.* The transcript of testimony, exhibits, and all papers and requests filed in the proceedings, except the correspondence section of the docket, including rulings and any recommended or initial decision shall constitute the exclusive record for decision.

§ 8.69 Posthearing procedures, decisions.

(a) *Posthearing briefs: proposed findings and conclusions.*

(1) The presiding officer shall fix the time for filing posthearing briefs, which may contain proposed findings of fact and conclusions of law and, if permitted, reply briefs.

(2) Briefs should include a summary of the evidence relied upon, together with references to exhibit numbers and pages of the transcript, with citations of the authorities relied upon.

(b) *Decisions following hearing.* When the time for submission of posthearing briefs has expired, the presiding officer, if the responsible Department official, shall make a final decision. If the presiding officer is a hearing examiner, he/she shall certify the entire record, including recommended findings and proposed decision, to the responsible Department official or, if so authorized, shall make an initial decision. A copy of the recommended findings and proposed decision, or of the initial decision, shall be served upon all parties, and amici, if any.

(c) *Exceptions to initial or recommended decisions.* Within 30 days after the mailing of an initial or recommended decision, any party may file exceptions to the decision, stating reasons therefor, with the responsible Department official. Any other party may file a response thereto within 45 days after the mailing of the decision. Upon the filing of such exceptions, the responsible Department official shall review the decision and issue a decision thereon.

(d) *Final decisions.* (1) The responsible Department official shall make the final decision in all proceedings under this part after expiration of all applicable time limits provided in § 8.69(a) or § 8.69(c).

(2) Where the hearing is conducted by a hearing examiner who makes an initial decision, if no exceptions thereto are filed within the 30-day period specified in subparagraph (3) of this paragraph, such initial decision shall become the final decision of the responsible Department official upon his/her approval thereof and shall constitute "final agency action" within the meaning of 5 U.S.C. 704 (formerly section 10(c) of the Administrative Procedure Act), subject to the provisions of paragraph (c) of this section.

(3) Where the final decision of the responsible Department official does not provide for the suspension or termination of, or the refusal to grant or continue, Federal financial assistance or the imposition of any other sanction, it is an "order" within the meaning of 5 U.S.C. 551(6) (formerly section 2(d) of the Administrative Procedure Act). When such final decision of the responsible Department official (other than the Secretary) does provide for suspension or termination of, or the refusal to grant or continue, Federal financial assistance or the imposition of any other sanction, such decision shall not constitute an "order" or "final agency action" until approved by the Secretary.

(4) All final decisions shall be promptly served on all parties, and amici, if any.

(e) *Oral argument to the responsible Department official.*

(1) If any party desires to argue a case orally on exceptions or replies to exceptions to an initial or recommended decision, or upon review on initiative of the responsible Department official, he/she shall make such request in writing. The responsible Department official may grant or deny such requests in his/her discretion. If granted, notice of oral argument will be served on all parties. The Notice will set forth the order of presentation, the amount of time allotted, and the time and place for argument. The names of persons who will argue should be filed with the Civil Rights docket clerk not later than seven days before the date set for oral argument.

(2) The purpose of oral argument is to emphasize and clarify the written argument in the briefs. Reading at length from the brief or other texts is not favored. Participants should confine their arguments to points of controlling importance and to points upon which exceptions have been filed. Consolidation of appearances at oral argument by parties taking the same side will permit the parties' interests to be presented more effectively in the time allotted.

(3) Pamphlets, charts, and other written material may be presented at oral argument only if such material is limited to facts already in the record and is served on all parties and filed with the Civil Rights docket clerk at least seven days before the argument.

(f) *Service on amici curiae.* All briefs, exceptions, memoranda, requests, and decisions referred to in § 8.50 shall be served upon amici curiae at the same time and in the same manner required for service on parties. Any written statements of position and trial briefs required of parties under § 8.48(a) shall be served on amici.

§ 8.70 Judicial standards of practice.

(a) *Conduct.* Parties and their representatives are expected to conduct themselves with honor and dignity and observe judicial standards of practice and ethics in all proceedings. They should not indulge in offensive personalities, unseemly wrangling, or intemperate accusations or characterizations. A representative of any party whether or not a lawyer shall observe the traditional responsibilities of lawyers as officers of the court and use his/her best efforts to restrain his/her client from improprieties in connection with a proceeding.

(b) *Improper conduct.* With respect to any proceeding it is improper for any interested person to attempt to sway the judgment of the responsible Department official by undertaking to bring pressure or influence to bear upon any officer having a responsibility for a decision in the proceeding, or his/her staff. It is improper that such interested persons or any members of the Department's staff or the presiding officer give statements to communications media, by paid advertisement or otherwise, designed to influence the judgment of any officer

having responsibility for a decision in the proceeding, or his/her staff. It is improper for any person to solicit communications to any such officer, or his/her staff, other than proper communications by parties or amici curiae.

(c) *Ex parte communications.* Only persons employed by or assigned to work with the responsible Department official who perform no investigative or prosecuting function in connection with a proceeding shall communicate ex parte with the responsible Department official, or the presiding officer, or any employee or person involved in the decisional process in such proceedings with respect to the merits of that or a factually related proceeding. The responsible Department official, the presiding officer, or any employee or person involved in the decisional process of a proceeding shall communicate ex parte with respect to the merits of that or a factually related proceeding only with persons who are employed by or assigned to work with them and who perform no investigative or prosecuting function in connection with the proceeding.

(d) *Expeditious treatment.* Requests for expeditious treatment of matters pending before the responsible Department official or the presiding officer are deemed communications on the merits, and are improper except when forwarded from parties to a proceeding and served upon all other parties thereto. Such communications should be in the form of a motion.

(e) *Matters not prohibited.* A request for information which merely inquires about the status of a proceeding without discussing issues or expressing points of view is not deemed an ex parte communication. Such requests should be directed to the Civil Rights docket clerk. Communications with respect to minor procedural matters or inquiries or emergency requests for extensions of time are not deemed ex parte communications prohibited by paragraph (c) of this section. Where feasible, however, such communications should be by letter with copies to all parties. Ex parte communications between a respondent and the responsible Department official or the Secretary with respect to securing such respondent's voluntary compliance with any requirement of § 8.55 of this Part are not prohibited.

(f) *Filing of ex parte communications.* A prohibited communication in writing received by the Secretary, the responsible Department official, or by the presiding officer, shall be made public by placing it in the correspondence file of the docket in the case and will not be considered as part of the record for decision. If the prohibited communication is received orally, a memorandum setting forth its substance shall be made and filed in the correspondence section of the docket in the case. A person referred to in such memorandum may file a comment for inclusion in the docket if he/she considers the memorandum to be incorrect.

§ 8.71 Post-termination proceedings.

(a) An applicant or recipient adversely affected by the order terminating, discontinuing, or refusing Federal financial assistance in consequence of proceedings pursuant to this title may request the responsible Department official for an order authorizing payment, or permitting resumption, of Federal financial assistance. Such request shall be in writing and shall affirmatively show that, since entry of the order, it has brought its program or activity into compliance with the requirements of Section 504 and this Part, and shall set forth specifically, and in detail, the steps which it has taken to achieve such compliance. If the responsible Department official denies such request, the applicant or recipient shall be given an expeditious hearing if it so requests in writing and specifies why it believes the responsible Department official to have been in error. The request for such a hearing shall be addressed to the responsible Department official and shall be made within 30 days after the applicant or recipient is informed that the responsible Department official has refused to authorize payment or permit resumption of Federal financial assistance.

(b) In the event that a hearing shall be requested pursuant to paragraph (a) of this section, the hearing procedures established by this part shall be applicable to the proceedings, except as otherwise provided in this section.

§ 8.72 Definitions.

(a) The definitions contained in § 8.3 of this Part, to the extent applicable, apply to this subpart.

(b) The term "hearing examiner" is used in the sense in which it is used in 5 U.S.C. 3105 and 3344 (formerly sec. 11 of the Administrative Procedure Act).

(c) "Presiding officer," in any particular matter, may be the assigned hearing examiner or the responsible Department official.

Appendix A—Federal Financial Assistance of the Department of Housing and Urban Development to Which This Part Applies

(The Catalog of Federal Domestic Assistance number is shown in parenthesis after each program. Programs without a number are not listed in the Catalog of Federal Domestic Assistance as of the effective date of this interim rule.)

Community Planning and Development Programs

Community development block grant program. Title I of the Housing and Community Development Act of 1974, as amended; 42 U.S.C. 5301. (14.218)

Community development block grants/small cities program. Title I of the Housing and Community Development Act of 1974, 42 U.S.C. 5301. (14.219)

Community development block grants/state's program. Title I of the Housing and Community Development Act of 1974, as amended, 42 U.S.C. 5301. (14.228)

Community development block grants/Secretary's discretionary fund. Section 107 of the Housing and Community Development Act of 1974, as amended. (14.229)

Urban renewal programs. (Urban renewal projects and neighborhood development programs, code enforcement programs, demolition programs, rehabilitation grants, interim assistance grants, and community renewal programs.) Title I, Housing Act of 1949, as amended, 42 U.S.C. 1450.

Model Cities Program. Title I, Demonstration Cities and Metropolitan Development Act of 1966, 42 U.S.C. 3301.

Comprehensive planning assistance. Section 701, Housing Act of 1954, 40 U.S.C. 461. (14.203)

Rehabilitation loan program. Section 312, Housing Act of 1964, 42 U.S.C. , 1452b. (14.220)

Urban Homesteading. Section 810 of the Housing and Community Development Act of 1974, 12 U.S.C. 1706e. (14.222)

Urban Development Action Grants. Section 19 of the Housing and Community Development Act of 1977, 42 U.S.C. 5301. (14.221)

Neighborhood Self-Help Development Program, Title VII, Housing and Community Development Act of 1978, 42 U.S.C. 8121. (14.800)

Livable Cities Program, Title VIII, Housing and Community Development Act of 1978, 42 U.S.C. 8141.

Loans and grants for new community development programs, (excluding assistance in the form of guarantees). Title VII, Housing and Urban

Development Act of 1970, 42 U.S.C. § 4511. (14.207)

Housing Programs

Lower-income housing assistance payments program. (Section 8.) Section 8, United States Housing Act of 1937 as amended 42 U.S.C. 1437f. (14.156)

Low-income public housing (including operating subsidies, modernization and Indian housing). United States Housing Act of 1937, 42 U.S.C. 1437. (14.146)

Public housing—Comprehensive Improvement Assistance Program (Public Housing Modernization). United States Housing Act of 1937, as amended, 42 U.S.C. 1430–1437. (14.158)

Operating assistance for troubled multifamily housing project (Troubled Projects Program (Flexible Subsidy)). Housing and Community Development Amendment of 1978, 12 U.S.C. 1715z–1. (14.164)

Public facilities liquidating programs. Title II of the Independent Offices Appropriations Act of 1955, Pub. L. 83–428, 12 U.S.C. 1701g–5.

Technical assistance to contractors or subcontractors. Section 911(b), Housing and Urban Development Act of 1970, 15 U.S.C. 694(a). Note.

Nonprofit sponsor assistance program. Section 106(b) of the Housing and Urban Development Act of 1968. (14.141)

Homeownership for lower income families, with assistance. Section 235(i), National Housing Act, 12 U.S.C. 1715z. (14.105)

Homes released from rehabilitation project mortgage, with assistance. Section 235(j) National Housing Act, 12 U.S.C. 1715z.

Rental and cooperative housing for lower income families. Section 236, National Housing Act, 12 U.S.C. 1715z–1. (14.103)

Direct loans for housing for the elderly or handicapped. Section 202, Housing Act of 1959, 12 U.S.C. 1701g. (14.157)

Assistance for Housing in Alaska. Section 1004 Demonstration Cities and Metropolitan Development Act of 1966, 42 U.S.C. 3371.

Technical assistance and interest subsidies to State housing finance and development agencies (Section 802). Section 802, Housing and Community Development Act of 1974, 42 U.S.C. 1440.

Emergency mortgage relief loan program. Section 106 of the Emergency Homeowner's Relief Act, 12 U.S.C. 2705.

Rent supplements. Section 101, Housing and Urban Development Act of 1965, 12 U.S.C. 1701s. (14.149)

Counseling for homebuyers, homeowners and tenants. Section 106, Housing and Urban Development Act of 1968, as amended by Section 903(a), Housing and Urban Development Act of 1970, 12 U.S.C. 1701x.

Low-income housing—homeownership opportunities for low-income families (turnkey III—mutual help for Indian areas). United States Housing Act of 1937, 42 U.S.C. 1401–1435.

Community services for tenants. Section 3, U.S. Housing Act of 1937, 42 U.S.C. 1437a.

Congregate Housing Services Program, Title IV, Housing and Community Development Act of 1978, 42 U.S.C. 8001. (14.170)

Surplus land for low and moderate income housing. Section 414 of the Housing and Urban Development Act of 1969, 40 U.S.C. 484b. (14. 211)

GNMA

Special assistance functions. Section 305, National Housing Act, 12 U.S.C. 1720, [including purchase of below market interest rate mortgages insured by FHA under section 221(d)(4), National Housing Act, 12 U.S.C. 1715L(d)(3), and the "Tandem" program, section 305(i) National Housing Act].

Policy Development and Research

Research and technology, (excluding contracts for procurement). Title V, Housing and Urban Development Act of 1970, 42 U.S.C. 1701z–1 [including the following current programs: Modular Integrated Utility System (MIUS), Tenant Management Program, Urban Observatory, and Urban Reinvestment Task Force]. (14.506)

Solar heating and cooling demonstration program. Solar Heating and Cooling Act of 1974, 42 U.S.C. 5501.

Fair Housing and Equal Opportunity

Fair housing assistance program. Title VIII of the Civil Rights Act of 1968; as amended, 42 U.S.C. 3601. (14.506)

Solar Energy and Energy Conservation Bank

Solar Energy and Energy Conservation Bank—financial assistance. Title V, Energy Security Act, 12 U.S.C. 3601–20.

Appendix B—Statutory Definitions of Handicapped Persons

The following programs operate under the statutory definition of handicapped person in Section 202(d)(4) of the Housing Act of 1959, as amended, 12 U.S.C. 1701q(d)(4): Homes released from rehabilitation project mortgage (Section 221(h), National Housing Act); Condominium units released from a Section 221(d)(3) mortgage (Section 221(i), National Housing Act); Housing for the Elderly or Handicapped (Section 202, Housing Act of 1959); and Rental and Cooperative Housing for Lower Income Persons (Section 236(j)(2)(B) and Section 236(i)(4), National Housing Act). This definition reads as follows:

The term "elderly or handicapped families" means families which consist of two or more persons and the head of which (or his spouse) is sixty-two years of age or over or is handicapped, and such term also means a single person who is sixty-two years of age or over or is handicapped. A person shall be considered handicapped if such a person is determined, pursuant to regulations issued by the Secretary, to have an impairment which (A) is expected to be of long-continued and indefinite duration, (B) substantially impedes his/her ability to live independently; and (C) is of such a nature that such ability could be improved by more suitable housing conditions. A person shall also be considered handicapped if such person is a developmentally disabled individual as defined in Section 102(a)(5) of the Developmental Disabilities Services and Facilities Construction Amendments of 1970, as amended.

The following programs operate under a definition of handicapped person found in Section 3(2), United States Housing Act of 1937, as amended: Low-Income Public Housing; and Section 8, U.S. Housing Act of 1937, Housing Assistance Payments Program. This definition reads as follows:

The term "families" includes families consisting of a single person in the case of (A) a person who is at least sixty-two years of age or is under a disability as defined in section 223 of the Social Security Act or in section 102(a)(5) of the Developmental Disability Services and Facilities Construction Amendments of 1970, as amended, or is handicapped * * *. A person shall be considered handicapped if such person is determined, pursuant to regulations issued by the Secretary, to have an impairment which (i) is expected to be of long-continued and indefinite duration, (ii) substantially impedes his ability to live independently, and (iii) is of such a nature that such ability could be improved by more suitable housing conditions.

The two statutory definitions (i.e., section 202(d)(4) of the Housing Act of 1959 and section 3(2) of the U.S. Housing Act) are essentially the same except that the latter definition includes a person who "is under a disability as defined in section 223 of the Social Security Act" and the former does not; and section 202(b)(4) requires that the family (or his or her spouse) be elderly or handicapped, while section 3(2) does not make this distinction. The criteria for determining whether a person is handicapped are the same in both statutes: to have an impairment which (i) is expected to be of long-continued and indefinite duration; (ii) substantially

impedes his/her ability to live independently; and (iii) is of such a nature that such ability could be improved by more suitable housing conditions.

Dated: April 11, 1983.

Samuel R. Pierce, Jr.,

Secretary.

[FR Doc. 83-11931 Filed 5-5-83; 8:45 am]

BILLING CODE 1505-01-M

Reader Aids

Federal Register

Vol. 48, No. 97

Wednesday, May 18, 1983

INFORMATION AND ASSISTANCE

PUBLICATIONS

Code of Federal Regulations

CFR Unit	202-523-3419 523-3517
General information, index, and finding aids	523-5227
Incorporation by reference	523-4534
Printing schedules and pricing information	523-3419

Federal Register

Corrections	523-5237
Daily Issue Unit	523-5237
General information, index, and finding aids	523-5227
Privacy Act	523-5237
Public Inspection Desk	523-5215
Scheduling of documents	523-3187

Laws

Indexes	523-5282
Law numbers and dates	523-5282 523-5266
Slip law orders (GPO)	275-3030

Presidential Documents

Executive orders and proclamations	523-5233
Public Papers of the President	523-5235
Weekly Compilation of Presidential Documents	523-5235
United States Government Manual	523-5230

SERVICES

Agency services	523-5237
Automation	523-3408
Library	523-4986
Magnetic tapes of FR issues and CFR volumes (GPO)	275-2867
Public Inspection Desk	523-5215
Special Projects	523-4534
Subscription orders (GPO)	783-3238
Subscription problems (GPO)	275-3054
TTY for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, MAY

19693-19866.....2
19867-20032.....3
20033-20216.....4
20217-20402.....5
20403-20680.....6
20681-20890.....9
20891-21108.....10
21109-21296.....11
21297-21522.....12
21523-21876.....13
21877-22128.....16
21129-22286.....17
22287-22498.....18

CFR PARTS AFFECTED DURING MAY

At the end of each month, the Office of the Federal Register publishes separately a list of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

1 CFR

Proposed Rules:
Ch. III.....20417

3 CFR

Executive Orders:
May 5, 1855
(Revoked in part by PLO 6380).....22151
July 2, 1910
(Revoked in part by PLO 6377).....22149
August 25, 1915
(Revoked in part by PLO 6384).....22152
11157 (Amended by EO 12420).....21525
11735 (Amended by EO 12418).....20891
12123 (Amended by EO 12418).....20891
12155 (Amended by EO 12417).....20035
12316 (Amended by EO 12418).....20891
12417.....20035
12418.....20891
12419.....20893
12420.....21525
12421.....21879

Proclamations:
5057.....20033
5058.....21297
5059.....21299
5060.....21523
5061.....21877

5 CFR

1320.....21109
2470.....19693
2471.....19693
2472.....19694

7 CFR

2.....20403, 21301
55.....20681
56.....20681
59.....20681
70.....20681
210.....20895, 20896
215.....20895, 20896
220.....20895, 20896
225.....20896
226.....20896, 21527
235.....20896
245.....20896
271.....22129
272.....20403, 22129
273.....20403, 22129
274.....22129
275.....22129
276.....22129
319.....20403
360.....20037
729.....20403
907.....20217, 21301
910.....20403, 21530
918.....21531
929.....22287
967.....21532
979.....20898, 21881
1040.....22287
1049.....19698
1131.....19699
1446.....21533
1464.....21109
1701.....20404, 21547
1942.....20217

Proposed Rules:
Ch. XVIII.....20425
21.....19884
27.....20715
28.....19721
29.....20720
52.....19884
226.....21587
989.....21147, 21339
1001.....20920
1004.....21961
1007.....21962
1013.....22303
1033.....22313
1036.....22313
1040.....20418
1065.....20424
1099.....20425
1120.....22318
1125.....20058
1126.....22318
1132.....22318
1133.....20058
1136.....20925
1138.....22318
1139.....20929
1446.....21152, 22318

8 CFR

100.....20684
103.....20221
204.....20221
205.....20221
208.....20684
212.....20221, 20684
214.....19867, 20221, 20684, 22131
231.....21548
234.....20684
238.....20898
245.....20684

Proposed Rules:
214.....21593

9 CFR

92.....19867-19872, 21549

166 22288
318 20221
Proposed Rules:
319 19722

10 CFR

70 22131
Proposed Rules:
Ch. II 20866
20 ..... 20721, 20723
40 19722
50 20426
150 20723
790 20000
1017 20091

11 CFR

110 21553

12 CFR

217 ..... 21881, 21882
556 21554
563 21302
571 21302
590 21554
591 21554
Proposed Rules:
Ch. III 22319
205 20723
226 20724
304 20092
309 20092
337 ..... 20240, 22155, 22163
556 20930
561 19723
563 ..... 19723, 20930
614 20426
615 20426
619 20426

13 CFR

Proposed Rules:
101 19872
116 20933
120 21110
121 20560

14 CFR

21 21882
23 21882
39 ..... 19700, 20685, 21305, 21307, 21891–21894
71 ..... 20222, 20686–20688, 21895
91 21308
97 ..... 20222, 21896
249 ..... 21310, 1245 22132
Proposed Rules:
21 ..... 19727, 19733
39 ..... 20727, 21963
71 ..... 19736–19740, 20241, 20728, 20729, 21964
75 20241
121 21339
135 21339
159 19838
253 22323
254 22323

15 CFR

4a 20040
369 20043
370 20043
371 20899
375 20043
379 20899
385 20899
388 20043
390 ..... 20043, 20225
399 20899
903 20688
Proposed Rules:
50 20432
939 20730
981 21154

16 CFR

5 20044
13 ..... 20046, 20047
305 20047
1406 21898
1610 21310
1615 21310
1616 21310
Proposed Rules:
13 ..... 20093, 20730, 21156, 22164
444 20096
1201 20762

17 CFR

1 20900
12 21923
140 22133
146 22133
170 22136
180 22136
200 ..... 19873, 21112
229 19873
230 19873
239 19873
240 19873
249 19873
Proposed Rules:
1 20097
180 22167
240 20097
270 19887
275 22328

18 CFR

Proposed Rules:
4 20934
11 20934
35 21161
271 20432
410 19893

19 CFR

201 20225
210 ..... 20225, 21112, 21115
211 20225
Proposed Rules:
12 20242
24 21965
101 21966
111 21343

20 CFR

404 21924–21931
416 21931–21944
628 22143
Proposed Rules:
Ch. V 21594
404 ..... 21967, 21970
416 ..... 21967, 21970

21 CFR

444 ..... 21563, 22144
448 21563
455 21563
510 ..... 20901, 21564
520 ..... 21565, 21566
522 21567
524 21566
540 20901
558 ..... 20902, 21564, 22144
660 20405
Proposed Rules:
131 20433
148 21595
158 20935
184 22169
610 20433
640 19897
660 20433

22 CFR

11 19701

23 CFR

Ch. I 20022, 21317

24 CFR

0 21567
8 ..... 20638, 20902, 22470
108 20903
200 19877
201 21569
203 ..... 19877, 21570
205 21570
207 21570
213 21570
220 21570
221 21570
232 21570
233 19877
234 ..... 19877, 21570
235 21570
236 21570
237 19877
241 21570
242 21570
244 21570
426 19878
880 20227
881 20227
883 20227
884 20227
886 20227

26 CFR

1 ..... 20047, 20244, 20938
5f 21115
401 19878
Proposed Rules:
1 21166
20 21167
301 21167

27 CFR

9 22145
Proposed Rules:
9 21973

28 CFR

0 22290
1 22290

29 CFR

1 20408
5 20408
2619 21573
Proposed Rules:
XXVI 20247
1613 19705
1952 20434
2606 22330
2616 19710

30 CFR

250 ..... 20227, 22146
700 20392
701 ..... 20392, 22092, 22110
716 21446
779 21446
780 22092
783 21446
784 22092
785 ..... 20392, 21446
816 ..... 20392, 22092, 22110
817 ..... 20392, 22092, 22110
823 21446
827 20392
904 19710
917 21574
936 20049
947 22291
Proposed Rules:
905 20939
914 ..... 20763, 22169
925 20764

31 CFR

1 21945

32 CFR

294 20228
983 20408
984 20408

33 CFR

100 19712
117 ..... 19713, 20229, 21325
165 ..... 20230, 21325
401 20690
Proposed Rules:
117 ..... 19741, 21975
161 20248
207 20249
320 21466
322 21466
323 21466
325 21466
327 21466
328 21466
330 21466

34 CFR

73 22147
510 20692
690 21852
Proposed Rules:
691 21862

36 CFR

Ch. I 21121
7 21945
901 20903
Proposed Rules:
50 22284
61 19742
211 20765

38 CFR

17 ..... 19714, 19878

36 22292
Proposed Rules:
3 21595
21 20939

39 CFR

10 21131
601 20408
3002 19878
Proposed Rules:
10 20949
447 21343
956 21343

40 CFR

52 ..... 19715, 19716, 19878, 20051, 20231, 20233, 21326 21579, 22294–22298
60 20693
61 20693
81 21947
145 19717
180 ..... 20052–20055, 21131–21133
271 21953
712 21294
720 21722
Proposed Rules:
4 22335
52 ..... 19748, 19750, 19898, 19900, 20766, 21975, 22335
81 22336
124 21098
180 ..... 20950, 22337
192 20768
228 20440
261 22170
264 ..... 20440, 21101
265 20440
267 20440
270 21098–21103
271 21977
320 21598
721 20668

41 CFR

Ch. 1 21580
Ch. 101 ..... 21327, 22149
3–3 20904
4–2 19718
14–1 21133
51–4 21328
101 20056
Proposed Rules:
44–17 20441
101–41 21351
114–50 20768

42 CFR

57 20214
405 21254
Proposed Rules:
36 22171

43 CFR

Public Land orders:
2634 (Revoked in part by PLO 6379) 22151
6335 (Corrected by PLO 6383) 22152
6376 22149
6377 22149
6378 22150
6379 22151
6380 22151
6381 22151
6382 22152
6383 22152
6384 22152
6385 22153
Proposed Rules:
426 ..... 19900, 20768
1600 20364
4100 21820
8370 ..... 20630, 22462

44 CFR

64 ..... 20234, 20236, 20910, 21580, 21582
65 20694–20701
67 ..... 20409, 20912
70 20701–20713
Proposed Rules:
67 ..... 20443, 20444, 20769, 20770, 20950, 21351

45 CFR

303 20237
650 19860
Proposed Rules:
1626 19750

46 CFR

Proposed Rules:
10 20770
30 19755
67 20249
151 19755
153 19755
157 20770

47 CFR

22 21329
73 ..... 19879, 19882, 20918, 20919, 21478
74 21478
81 21583
Proposed Rules:
Ch. I 20771, 21351
2 21354
21 19759
22 ..... 19759, 20952, 21354
23 19759
61 21356
73 ..... 19917, 20252, 20953–20966, 22173
74 19759
78 19759
81 19759
83 21599
87 19759
90 19759
94 19759
150 19759

49 CFR

Ch. X 20919
25 20714
172 19719
175 19719
571 ..... 20237, 21955
1033 20409
1039 20412
Proposed Rules:
100–179 (Ch. I) 20255, 20780
229 20257
571 ..... 19760, 20259
574 19761
1309 20780
1310 20780

50 CFR

18 ..... 20614, 22446
32 21957
216 ..... 20614, 22446
403 ..... 20614, 22446
611 ..... 21336, 22153, 22299
661 21135
642 20415
662 22301
672 22299
675 ..... 21336, 22299
Proposed Rules:
17 ..... 20450, 21169, 21604, 22173
32 20100
227 20098
260 20261
611 21978
628 20102
646 21607

AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday). This is a voluntary program. (See OFR NOTICE 41 FR 32914, August 6, 1976.) Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday.

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/SECRETARY	USDA/ASCS		DOT/SECRETARY	USDA/ASCS
DOT/COAST GUARD	USDA/FNS		DOT/COAST GUARD	USDA/FNS
DOT/FAA	USDA/REA		DOT/FAA	USDA/REA
DOT/FHWA	USDA/SCS		DOT/FHWA	USDA/SCS
DOT/FRA	MSPB/OPM		DOT/FRA	MSPB/OPM
DOT/MA	LABOR		DOT/MA	LABOR
DOT/NHTSA	HHS/FDA		DOT/NHTSA	HHS/FDA
DOT/RSPA			DOT/RSPA	
DOT/SLSDC			DOT/SLSDC	
DOT/UMTA			DOT/UMTA	

Note: The Office of the Federal Register proposes to terminate the formal program of agency publication on assigned days of the week. See 48 FR 19283, April 28, 1983.

List of Public Laws

Last Listing May 13, 1983

This is a continuing list of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (phone 202–275–3030).

S. 1011 / Pub. L. 98-29 To amend the Federal Deposit Insurance Act to provide for the issuance of income capital certificates. (May 16, 1983; 97 Stat. 189) Price: $1.75.