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5-31-83
Vol. 48 No. 105
Pages 24025-24310

federal register

Tuesday
May 31, 1983

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Environmental Protection Agency

Arms and Munitions
Alcohol, Tobacco and Firearms Bureau

Aviation Safety
Federal Aviation Administration

Banks, Banking
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Food and Drug Administration

Freedom of Information
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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.

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Presidential Documents

Title 3—

The President

Executive Order 12423 of May 26, 1983

Foreign Assistance and Arms Control

By the authority vested in me as President by the Constitution and statutes of the United States of America, including Section 621 of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2381), and Section 2778 of Title 22 of the United States Code, it is hereby ordered as follows:

Section 1. Section 1–301(b) of Executive Order No. 12163, as amended, is further amended by deleting "and 635(g)" and inserting in lieu thereof "635(g), and 636(i)".

Sec. 2. Section 1(d) of Executive Order No. 11958, as amended, is further amended to provide as follows: "Those under Sections 22(a), 29 and 30 of the Act to the Secretary of Defense.".

Ronald Reagan

THE WHITE HOUSE,
May 26, 1983.

[FR Doc. 83–14689
Filed 5–27–83; 10:37 am]
Billing code 3195–01–M

Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
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 1065

Milk in the Nebraska-Western Iowa Marketing Area; Temporary Revision of Diversion Limitation Percentage

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Temporary revision of rules.

SUMMARY: This action temporarily relaxes for May through August 1983 the limit on how much milk not needed for fluid (bottling) use may be moved directly from farms to nonpool manufacturing plants and still be priced under the order. The revision is made in response to a request by a cooperative association representing producers supplying the market in order to prevent uneconomic movements of milk.

EFFECTIVE DATE: May 31, 1983.

FOR FURTHER INFORMATION CONTACT: Robert F. Groene, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447-2089.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Proposed Temporary Revision of Diversion Limitation Percentage: Issued May 2, 1983; published May 6, 1983 (48 FR 20424).

This action has been reviewed under USDA procedures established to implement Executive Order 12291 and has been classified as a "non-major" action.

It has been determined that the need for adjusting certain provisions of the order on an emergency basis precludes following certain review procedures set forth in Executive Order 12291. Such procedures would require that this document be submitted for review to the Office of Management and Budget at least 10 days prior to its publication in the **Federal Register**. However, this would not permit the completion of the procedure in time to give interested parties timely notice that the limit on allowable diversions of producer milk to nonpool manufacturing plants would be relaxed for May 1983. The initial request for this action was received April 27, 1983. Public comments on the proposed action were due May 13.

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This temporary revision is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C 601 *et seq.*) and the provisions of § 1065.13(d)(4) of the Nebraska-Western Iowa milk order.

Notice of proposed rulemaking was published in the **Federal Register** (48 FR 20424) concerning a proposed relaxation of the limits on the amount of milk that may be moved directly from producer farms to nonpool manufacturing plants for the months of May through August 1983. Interested parties were afforded the opportunity to comment on the proposal by submitting written data, views, and arguments. No comments in opposition to the proposal were received.

After consideration of all relevant material, including the proposal set forth in the aforesaid notice, data, views and arguments filed thereon, and other available information, it is hereby found and determined that for the months of May through August 1983 the diversion limitation percentages set forth in § 1065.13(d) should be increased from the present 50 percent to 60 percent.

Pursuant to the provisions of § 1065.13(d)(4), the diversion limitation percentages set forth in § 1065.13(d) (2) and (3) may be increased or decreased up to 20 percentage points during any month to prevent uneconomic shipments merely for the purpose of assuring that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

National Farmers Organization, a cooperative association which represents producers supplying the Nebraska-Western Iowa market, requested that the percentage of allowable diversions be relaxed by 10 percentage points for the months of May through August 1983. The cooperative cited Class I utilization percentages of 34–36 percent for May through August 1982 and stated that because of increasing producer receipts and decreased Class I disposition the percentage of producer milk needed to satisfy the fluid milk requirements of the market during the months of May through August 1983 will be somewhat less than the Class I percentages for last year. Without a relaxation of diversion limits, the cooperative states that it will be forced to deliver milk to a pool distributing plant and then pump it back out and deliver it to a manufacturing plant if the milk of its members regularly associated with the market is to remain a part of the marketwide pool.

Under the present supply-demand conditions, it is concluded that a relaxation of the diversion limits by 10 percentage points for the months of May through August 1983 will prevent uneconomic movements of milk merely for the purpose of qualifying it as producer milk under the order.

It is hereby found and determined that thirty days' notice of the effective date is impractical, unnecessary, and contrary to the public interest in that:

(a) This temporary revision is necessary to reflect current marketing conditions and to maintain orderly marketing in the marketing area for the months of May through August 1983;

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

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

Therefore, good cause exists for making this temporary revision effective for the months of May through August 1983.

List of Subjects in 7 CFR Part 1065

Milk marketing orders, Milk, Dairy products.

It is therefore ordered, that the aforesaid provisions in § 1065.13(d) (2) and (3) of the order are hereby revised for the months of May through August 1983.

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

Effective date: May 31, 1983.

Signed at Washington, D.C., on: May 24, 1983.

Edward T. Coughlin,

Director, Dairy Division

[FR Doc. 83-14427 Filed 5-27-83; 8:45 am]

BILLING CODE 3410-02-M

Farmers Home Administration

7 CFR Part 1924

Suspension and Debarment Proceedings

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) is removing from the Code of Federal Regulations (CFR) an Exhibit to a regulation which governs the procedure for appealing a determination of debarment by FmHA. This Exhibit is being removed since these regulations are contained elsewhere in the CFR. The intended effect of this action is to remove an funneeded Exhibit to a regulation from the CFR.

EFFECTIVE DATE: May 31, 1983.

FOR FURTHER INFORMATION CONTACT: Angela Corley Saunders, Staff Assistant, Program Support Staff, Farmers Home Administration, USDA, Room 6309, South Agricultural Building, Washington, D.C., 20250, telephone (202) 382–9653.

SUPPLEMENTARY INFORMATION: This final action has been reviewed under USDA procedures established in Secretary's Memorandum 1512–1 which implements Executive Order 12291 and has been determined to be exempt from those requirements because it involves only internal Agency management. It is the policy of this Department that rules relating to public property, loans, grants, benefits, or contracts shall be published for comment notwithstanding the exception in 5 U.S.C. 553 with respect to such rules. This action, however, is not published for proposed rulemaking since the purpose of this change involves only internal Agency management and publication for comment is not necessary.

The Catalog of Federal Domestic Assistance programs affected are:

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10.428 Economic Emergency Loans
10.429 Above Moderate Income Housing Loans
10.430 Energy Impacted Area Development Assistance Program
10.431 Technical and Supervisory Assistance Grants
10.432 Biomass Energy and Alcohol Fuels Loans and Guarantees

This document has been reviewed in accordance with 7 CFR Part 1901, Subpart G, "Environmental Impact Statements." FmHA has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment and, in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required. Appeal procedures under this regulation are governed by USDA's Board of Contract Appeals Proceedings. These proceedings were recently amended and published in the **Federal Register**. Since USDA's Board of Contract Appeals Proceedings are currently contained in 7 CFR Part 24, republication of these proceedings as Exhibit A to Subpart E of Part 1924 of Chapter XVIII is not necessary.

List of Subjects in 7 CFR Part 1924

Construction and repair, Government contracts, Suspension and debarment procedures.

PART 1924—CONSTRUCTION AND REPAIR

Therefore, Subpart E of Part 1924, Chapter XVIII, Title 7, Code of Federal Regulations is amended as follows:

§ 1924.216 [Amended]

1. Section 1924.216(e)(3)(vi) is amended by removing the parenthetical statement at the end of the paragraph.

Exhibit A to Subpart E [Removed]

2. Exhibit A to Subpart E is removed.

(7 U.S.C. 1989; 42 U.S.C. 1480; 42 U.S.C. 2942; 5 U.S.C. 301; Sec 10, Pub. L. 93–357, 88 Stat 392; 7 CFR 2.23; 7 CFR 2.70; 29 FR 14764, 33 FR 9850)

Dated: May 20, 1983.

Charles W. Shuman,

Administrator Farmers Home Administration.

[FR Doc. 83-14328 Filed 5-27-83; 8:45 am]

BILLING CODE 3410-07-M

DEPARTMENT OF THE TREASURY

Comptroller of the Currency

12 CFR Part 4

[Docket No. 83–22]

Description of Office, Procedures, Public Information

AGENCY: Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency (Office) is amending 12 CFR Part 4 to update addresses at which the public may obtain certain information from the Office, to correct typographical errors in certain cross-references to statutes and regulations, to make other technical corrections in the language of the regulation, and to eliminate certain outdated lists from the regulation. The document also amends the schedule of fees imposed in connection with Freedom of Information Act ("FOIA") requests. This last action brings the fees listed in Part 4 into uniformity with those adopted by the Department of the Treasury. It will assure that the Office is appropriately compensated for expenses incurred in connection with FOIA requests and will resolve any ambiguity which might arise as a result of the new fee schedule adopted by the Department of the Treasury.

EFFECTIVE DATE: May 31, 1983.

FOR FURTHER INFORMATION CONTACT: Jerome L. Edelstein, Attorney, Legal Advisory Services Division, 202/447–

1880, Office of the Comptroller of the Currency, Washington, D.C. 20219.

SUPPLEMENTARY INFORMATION: This rulemaking makes certain technical corrections to 12 CFR Part 4, which, among other things, advises the public as to where certain information may be obtained from the Office, and sets forth the schedule of fees charged in connection with the processing of requests for documents sought under the Freedom of Information Act.

Office divisions from which information is available and the officials from whom it is available are being updated to reflect current Office procedures.

Additionally, the lists of forms and publications available from the Office are being deleted. These lists are constantly changing and their presence in the Code of Federal Regulations may be misleading because the information becomes outdated so frequently. In their place the Office has substituted organizational units which are to be contacted to obtain information about forms and lists of publications and copies of current forms and publications.

Title 12 CFR 4.16(b), which delineates exceptions to the disclosure requirements of FOIA, is being amended to more fully reflect one of the statutory exceptions. The proviso to exception 3, as set out in 12 U.S.C. 552(b)(3) was inadvertently omitted from the regulation. It is now included.

Title 12 CFR 4.17(d) is being amended to update the list of reports from banks and to provide accurate information on how to obtain information concerning these reports.

Title 12 CFR 4.17(h) is being revised to update the fees charged in connection with the processing of FOIA requests. On March 24, 1983 the Department of the Treasury published final regulations revising as of April 25, 1983, its schedule of fees charged in connection with the processing of FOIA requests (48 FR 12350). Consequently, the Office is revising its regulation to resolve any ambiguity about fees charged in connection with FOIA requests made to this Office. The revised fee schedule was published by Treasury in order to more clearly reflect the actual cost of answering requests for information. This included increases in the hourly charge and the copying charge, and a statement that charges for a computer search reflects the actual direct cost of the search.

The Office is also making technical changes to § 4.17a (4) and (5). These changes correct certain erroneous cross-references to statutes and regulations. No substantive effect is intended.

Special Studies

A Regulatory Flexibility Analysis for this rulemaking is not required by the Regulatory Flexibility Act.

A Regulatory Impact Analysis is not required because the Office has determined that the proposal is not a "major rule" as defined by Executive Order 12291. The proposal will not have an annual effect on the economy of $100 million or more, will not result in a major increase in costs or prices to consumers, individual industries, Federal, State, or local government agencies, or geographic regions, nor will it have significant adverse effects on competition, employment, investment productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises.

The Office has determined that notice and comment and a 30-day delay of implementation pursuant to the Administrative Procedure Act is not required because these amendments constitute technical changes in the wording of the regulation, provide updated information on the availability of material from the Office, and correct typographical errors in the regulation. The regulation also makes the schedule of fees, put forth in 12 CFR 4.17(h), for processing FOIA requests uniform with that established as of April 25, 1983, by the Department of the Treasury. The fees established by Treasury were published for comment on December 3, 1982 (47 FR 54475) and published in final form on March 24, 1983 (48 FR 12350).

This action eliminates ambiguity after April 25, 1983, concerning fees applicable to those filing FOIA requests with this Office.

List of Subjects in 12 CFR Part 4

National banks, Organization and functions, Freedom of information, Official forms.

PART 4—[AMENDED]

For the reasons set out in the preamble, Part 4 of Title 12 of the Code of Federal Regulations is amended as shown.

1. The authority citation for Part 4 is:

Authority: 12 U.S.C. 1 *et seq.*, 5 U.S.C. 552, unless otherwise noted.

2. The cross-reference citation for Part 4 is amended to read as follows:

Cross Reference: See 31 CFR Part 1, Subtitle A.

3. Section 4.13 is revised to read as follows:

§ 4.13 Forms and Instructions.

(a) Information about forms utilized by the Office of the Comptroller of the Currency, other than those applicable to corporate activities, is available from:

(1) *Mailing Address.* Associate Director For Information Resources Management (Administrative Services Division), Comptroller of the Currency, Washington, D.C. 20219.

(2) *Location.* Sixth Floor, 490 L'Enfant Plaza East SW., Washington, D.C.

(b) A list of forms utilized by the Office and forms and instructions are available by writing to: Communications Division, Comptroller of the Currency, Washington, D.C. 20219.

A charge may be assessed for certain forms or instructions or for any form or instruction requested in large quantities.

4. Section 4.14 is amended by revising paragraph (b) to read as follows:

§ 4.14 Publications available to public.

* * * * *

(b) *Other Publications.* In addition to the above, the Comptroller makes other publications available to the public. For information about, or a list of, those publications or to purchase or otherwise obtain a copy of publications or to arrange to inspect such publications, write to: Publications Control Office, Comptroller of the Currency, Washington, D.C. 20219.

5. Section 4.15 is amended by revising paragraph (b) to read as follows:

§ 4.15 Orders, opinions, etc. available to public.

* * * * *

(b) The Comptroller maintains and makes available to the public for inspection and copying a current index identifying the documents referred to in paragraph (a) of this section (other than paragraphs (5), (6), (7), (8), and (9) thereof), issued, adopted, or promulgated after July 4, 1967. Such index is located in the Communications Division, Comptroller of the Currency, 3rd floor, 490 L'Enfant Plaza East SW., Washington, D.C. 20219.

* * * * *

6. Section 4.16 is amended by revising pargaraph (b)(3) to read as follows:

§ 4.16 Other records available to public; exceptions.

* * * * *

(b) * * *

(3) A record, or portion thereof, specifically exempted from disclosure by statute (other than section 552b of Title 12 of the United States Code), provided that such statute requires that the matters be withheld from the public in such a manner as to leave no

discretion on the issue, or establishes particular criteria for withholding or refers to particular types of matters to be withheld.

* * * * *

7. Section 4.17 is amended by revising paragraphs (d)(1) and (h) to read as follows:

§ 4.17 Location of public reading rooms, requests for identifiable records; and service of process.

* * * * *

(d) *Information concerning records.—Information concerning:*

(i) Consolidated Reports of Condition (domestic);

(ii) Consolidated Reports of Condition (foreign and domestic);

(iii) Consolidated Large Bank Supplements;

(iv) Special Reports;

(v) Past Due, Nonaccrual and Renegotiated Loans and Lease Financing Receivables may be obtained from:

(A) *Mailing Address.* Manager, Statistical Branch, Data Processing, Comptroller of the Currency, Washington, D.C. 20219.

(B) *Location.* Sixth Floor, 490 L'Enfant Plaza East SW., Washington, D.C.

(vi) Annual Report of Trust Assets may be obtained from:

(A) *Mailing Address.* Trust Examinations Division, Comptroller of the Currency, Washington, D.C. 20219.

(B) *Location.* Sixth Floor, 490 L'Enfant Plaza East SW., Washington, D.C. 20219.

* * * * *

(h) *Fees.* (1) Unless performed without charge, waived or reduced, fees shall be charged in accordance with this paragraph for services rendered in responding to requests for records.

(2) The Office of the Comptroller of the Currency may request prepayment before releasing documents. If fees for previous requests have not been paid, documents will not be released without prepayment.

(3) A person requesting access to a record of the Comptroller of the Currency shall pay the following:

(i) $.15 per copy of each page, up to 8½" X 14", made by photocopy or similar process;

(ii) Photographs, films, and other materials—actual cost of reproduction;

(iii) Records may be released to a private contractor for copying and the requester will be charged the actual cost of duplication charged by the private contractor;

(iv) Searches other than for computerized records—$10.00 for each hour or fraction thereof for time spent by each clerical, professional, and supervisor in finding the records and information within the scope of the request, and for transportation of personnel and records necessary to the search at actual cost;

(v) Searches for computerized records—Actual direct cost of the search. The fee for computer printouts will be actual costs; and

(vi) When other duplications not specifically identified above are requested and provided, their direct cost to the Office of the Comptroller of the Currency shall be charged. Other services and materials requested which are not covered by this part are chargeable at the actual cost to the Office.

8. Section 4.17a is amended by revising paragraphs (d)(4) and (d)(5) to read as follows:

§ 4.17a Request procedures.

* * * * *

(d) * * *

(4) *Time extension by agreement.* A requester may agree to an extension of the time limits specified in paragraph (d)(1) and (2) of this section. In event of such an agreement, the respective specified time limit shall not be considered as having expired until the period of the extension of time agreed to by the requester has expired.

(5) *Time extension by judicial action.* If a suit is properly instituted against the Comptroller of the Currency by a requester, the court may, pursuant to 5 U.S.C. 552(a)(6)(C), allow the Comptroller of the Currency additional time to complete the review of the records requested.

Dated: April 25, 1983.

C. T. Conover,

Comptroller of the Currency.

[FR Doc. 83-14448 Filed 5-27-83; 8:45 am]

BILLING CODE 4810-33-M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 307

Termination of Insured Status

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final rule.

SUMMARY: The Federal Deposit Insurance Corporation ("FDIC") is amending Part 307 of its regulations. The amendment removes the 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. The amendment also removes the purpose and scope section of Part 307 and changes the Part and section headings. The amendment is being made to bring the FDIC's regulations into conformity with the Federal Deposit Insurance Act ("FDI Act") as amended by the Garn-St Germain Depository Institutions Act of 1982.

EFFECTIVE DATE: May 31, 1983.

FOR FURTHER INFORMATION CONTACT: MaryBeth Triano, Attorney, Legal Division, Federal Deposit Insurance Corporation, 550—17th Street, NW., Washington, D.C. 20429 (202) 389-4151.

SUPPLEMENTARY INFORMATION: On October 15, 1982, the Garn-St Germain Depository Institutions Act of 1982 became effective. In pertinent part, section 433 of the Garn-St Germain Depository Institutions Act deleted from section 8(q) of the FDI Act the requirement that an insured bank which has assumed the liabilities of another insured bank give notice of the assumption to the depositors of the bank whose liabilities have been assumed. This deleted provision had provided the primary authority for Part 307 of the FDIC's Regulations.

Part 307 governs the notice procedures to be followed by a bank whose insured status has been terminated other than by an action of the FDIC Board of Directors. Due to the revocation of the primary authority for Part 307 and the correspondent Congressional mandate that an assuming or resulting bank no longer be required to notify depositors of the assumption, the regulations requiring that notice of an assumption be sent to depositors are being removed.

The removal of these regulations is consistent with the FDIC's policy of periodically reviewing its regulations to determine whether the regulations should be continued, revised or eliminated. Among the factors to be considered are: (1) The continued need for the regulation; (2) alternative methods of accomplishing the purpose of the regulation; and (3) the need to minimize the burden imposed on those affected by the regulation, especially small banks.

First, because Congress has determined that notice is no longer required, there is no longer a need for a regulation requiring notice. Second, although a public benefit is served by the regulation, alternative methods of notice are available to depositors and the public. These alternative methods included newspaper accounts of the assumption, public announcements and advertisements made by the assuming or resulting bank or institution and physical changes to or on the premises

of the assumed bank. Finally, the elimination of the notice requirement would lessen the burden imposed on those affected by the regulation, especially small banks. In view of these factors and the requirement that the FDIC conform its regulation to congressional mandates, the notice procedures imposed on assuming or resulting banks and institutions are being removed.

Due to the changes required by the adoption of the Garn-St Germain Depository Institutions Act, the purpose and scope of Part 307 has been changed. As a result, the purpose and scope section of Part 307 is being removed and the Part and section headings are being changed. These changes are technical in nature and are being made to more accurately reflect the contents of Part 307.

Regulatory Factors

No regulatory flexibility analysis as set out in the Regulatory Flexibility Act (5 U.S.C. 601–612) will be undertaken since the amendment is not a "rule" as that term is defined in the Regulatory Flexibility Act (5 U.S.C. 601(2)).

The Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) is also inapplicable here. The amendment does not entail any new reporting or recordkeeping requirements.

Public notice and procedure are impracticable and unnecessary. The elimination of the regulations requiring that notice of assumptions be given to depositors is necessary to bring the FDIC's regulations into conformity with the FDI Act as amended by the Garn-St Germain Depository Institutions Act. The change in headings and the removal of the purpose and scope section of Part 307 are technical in nature. Therefore, in accordance with the Administrative Procedure Act (5 U.S.C. 553), this amendment is effective upon publication.

List of Subjects in 12 CFR Part 307

Bank deposit insurance, Banks, Banking.

For the reasons set forth in the preamble, 12 CFR Part 307 is revised to read as follows:

PART 307—NOTIFICATION OF CHANGES OF INSURED STATUS

Sec.

307.1 Certification of assumption of deposit liabilities.

307.2 Notice to be given when deposit liabilities are not assumed.

Authority: Sec. 2, Pub. L. 797, 64 Stat. 879, 880 as amended by secs. 202, 204, Pub. L. 89–694, 80 Stat. 1046, 1054, and sec. 6(c)(14), Pub. L. 95–369, 92 Stat. 618 (12 U.S.C. 1818(a), 1818(o)); Sec. 304, Pub. L. 95–630, 92 Stat. 3676 (12 U.S.C. 1818(q); Sec. 9, Pub. L. 797, 64 Stat. 881 (12 U.S.C. 1819).

§ 307.1 Certification of assumption of deposit liabilities.

Whenever the deposit liabilities of an insured bank or insured branch of a foreign bank are assumed by another insured bank (whether by merger, consolidation, or other statutory assumption, or by contract), the assuming or resulting bank shall certify to the FDIC that it has agreed to assume the deposit liabilities of the bank whose deposits were assumed. The certification shall be made within 30 days after the assumption takes effect and shall state the date the assumption took effect. This certification shall be considered satisfactory evidence of the assumption.

§ 307.2 Notice to be given when deposit liabilities are not assumed.

Any insured bank or insured branch of a foreign bank whose insured status is voluntarily terminated, but whose deposit liabilities are not assumed shall give notice to each of its depositors of the date of the termination of its insured status under the Federal Deposit Insurance Act. The notice to depositors shall be given in a form, in a manner and at a time approved by the appropriate FDIC Regional Director. The FDIC may require the bank to take other steps that it considers necessary for the protection of depositors.

By Order of the Board of Directors, May 23, 1983.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 83-14430 Filed 5-27-83; 8:45 am]

BILLING CODE 6714-01-M

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12 CFR Part 309

Disclosure of Information

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final rule.

SUMMARY: The Federal Deposit Insurance Corporation ("FDIC") is amending its regulations on disclosure of information. The amendment removes restrictions placed on the disclosure of financial records and information to Federal financial institutions supervisory agencies. This change is necessitated by Federal legislation dealing with the disclosure of financial records.

EFFECTIVE DATE: May 31, 1983.

FOR FURTHER INFORMATION CONTACT: MaryBeth Triano, Attorney, Legal Division, (202) 389–4151, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, D.C. 20429.

SUPPLEMENTARY INFORMATION: Section 309.6 of the rules and regulations of the FDIC provides the procedures for discretionary disclosure of FDIC records and information. The amendment removes some of the restrictions placed on the disclosure of reports of examination and other exempt records to the five member supervisory agencies of the Federal Financial Institutions Examination Council. This revision is being made to bring the FDIC's regulations into conformity with the Right to Financial Privacy Act of 1978 (Pub. L. 95–630; 12 U.S.C. 3401 *et seq.*). On October 15, 1982 Congress passed the Garn-St Germain Depository Institutions Act of 1982 (Pub. L. 97–320) which amended the Right to Financial Privacy Act to clarify that the exchange of records and information regarding financial institutions is permitted between the Federal financial institutions supervisory agencies. The restrictions on disclosures to the Federal financial institutions supervisory agencies, previously thought to be required by the Right to Financial Privacy Act of 1978, have therefore been removed.

Regulatory Factors

No regulatory flexibility analysis as set out in the Regulatory Flexibility Act (5 U.S.C. 601–612) will be undertaken since the amendment is not a "rule" as that term is defined in the Regulatory Flexibility Act (5 U.S.C. 601(2)).

The Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) is also inapplicable because the amendment does not entail any new reporting or recordkeeping requirements.

Public notice and procedures are impracticable and unnecessary. The elimination of the restrictions on disclosure between Federal financial institutions supervisory agencies is technical in nature and is being made to bring the FDIC's regulations into conformity with the Right to Financial Privacy Act as amended by the Garn-St Germain Depository Institutions Act. Therefore, in accordance with the Administrative Procedure Act (5 U.S.C.

553), this amendment is effective upon publication.

List of Subjects in 12 CFR Part 309

Authority delegations, Disclosure requirements, Freedom of information, Privacy.

For the reasons set forth in the preamble, 12 CFR Part 309 is amended as follows:

PART 309—DISCLOSURE OF INFORMATION

1. The authority citation for Part 309 reads as follows:

Authority: Sec. 2(9 "Seventh" and "Tenth"), Pub. L. No. 797, 64 Stat. 881, as amended by title III, sec. 309, Pub. L. No. 95-630, 92 Stat. 3677 (12 U.S.C. 1819 "Seventh" and "Tenth"); 5 U.S.C. 552.

2. Section 309.6 is amended by revising paragraph (c)(3) to read as follows:

§ 309.6 Disclosure of exempt records by FDIC personnel.

* * * * *

(c) * * *

(3) *Reports of examination and other exempt records—disclosure to Federal financial institutions supervisory agencies.* The Director of the FDIC's Division of Bank Supervision, or anyone designated by him in writing, may disclose to any officer or employee of the Comptroller of the Currency, the Board of Governors of the Federal Reserved System, any Federal Reserve Bank, the Federal Home Loan Bank Board, any Federal Home Loan Bank, and the National Credit Union Administration any report of examination of a bank or any other exempt records. Before information is released to any employees of the above listed Federal financial institutions supervisory agencies, it is the responsibility of the Corporation employee authorized to disclose the information to make an affirmative determination that the requestor is authorized to request the record on behalf of the agency and that the records are requested for a legitimate bank supervisory or regulatory purpose.

* * * * *

By Order of the Board of Directors, May 23, 1983.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 83-14431 Filed 5-27-83; 8:45 am]

BILLING CODE 6714-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 83-ASO-20]

Designation of Federal Airways, Area Low Routes, Controlled Airspace, and Reporting Points; Alteration of Control Zone, Sarasota, Florida

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment alters the Sarasota, Florida, control zone by revising the coordinates of Sarasota-Bradenton Airport and reducing the size of a control zone arrival extension. The geographical coordinates of the airport are improperly listed and this action will correct the deficiency. The control zone arrival extension established southeast of the airport is larger than required and will be reduced in width from ten to six miles.

DATES: Effective Date: 0901 G.m.t., August 4, 1983. Comments must be received on or before July 3, 1983.

ADDRESSES: Send comments on the rule in triplicate to: Federal Aviation Administration, Manager, Airspace and Procedures Branch, ASO-530, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, telephone: (404) 763-7646.

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

SUPPLEMENTARY INFORMATION:

Request for Comments on the Rule

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

The Rule

The purpose of this amendment to § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is to alter the Sarasota, Florida, control zone by revising the geographical coordinates of the airport and reducing the size of an arrival extension. This action will raise the floor of controlled airspace in two areas southeast of the airport from the surface to 700 feet. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in Advisory Circular AC 70-3A dated January 3, 1983. Under the circumstances presented, the FAA concludes that there is a need to alter the control zone by listing the proper coordinates of the airport and reducing the width of an arrival extension so that it is not in excess of needs. The changes are so minor and nonsubstantive I find that notice or public procedure under 5 U.S.C. 553(b) is unnecessary.

List of Subjects in 14 CFR Part 71

Aviation safety, Airspace, Control zone.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) (as amended) is further amended, effective 0901 G.m.t., August 4, 1983, as follows:

Sarasota, FL [Revised]

Within a 5-mile radius of Sarasota-Bradenton Airport (lat. 27°23'42"N., long. 82°33'15" W.); within 3 miles each side of Sarasota VORTAC 050°, 142° and 302° radials, extending from the 5-mile radius zone to 8.5 miles northeast, southeast and northwest of the VORTAC. This control zone is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

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

Note.—The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) Is not a "major rule" under Executive

Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in East Point, Georgia, on May 17, 1983.

George R. LaCaille,

Acting Director, Southern Region.

[FR Doc. 83-14420 Filed 5-27-83; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 83-ASO-13]

Designation of Federal Airways, Area Low Routes, Controlled Airspace, and Reporting Points; Alteration of Transition Area, Liberty, North Carolina

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment increases the size of the Liberty, North Carolina, transition area to accommodate Instrument Flight Rule (IFR) operations at May Airport. This action will lower the base of controlled airspace from 1,200 to 700 feet above the surface. An instrument approach procedure, based on the Liberty VORTAC facility, is being developed to serve the airport and this additional controlled airspace is required to protect IFR operations.

EFFECTIVE DATE: 0901 G.m.t., August 4, 1983.

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

SUPPLEMENTARY INFORMATION:

History

On Thursday, April 14, 1983, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by increasing the size of the Liberty, No. th Carolina, transition area to provide additional controlled airspace for containment of aeronautical operations in the vicinity of May Airport. An instrument approach procedure, predicated on the Liberty VORTAC facility, is being developed to serve the airport and this action will provide the necessary controlled airspace for containment of IFR operations (48 FR 16065). The operating status of May Airport is changed from VFR to IFR. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments were received in response to circularization. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Advisory Circular AC 70-3A dated January 3, 1983.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations increases the size of the Liberty, North Carolina, transition area to accommodate IFR aeronautical activities at May Airport.

List of Subjects in 14 CFR Part 71

Aviation safety, Airspace, Transition area.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) (as amended) is further amended, effective 0901 G.m.t., August 4, 1983, as follows:

Liberty, NC [Revised]

That airspace extending upward from 700 feet above the surface within a 5-mile radius of Causey Airport (lat. 35°54'50" N., long. 79°37'03" W.); within 2 miles each side of Liberty VORTAC 358° radial, extending from the 5-mile radius area to the VORTAC; within a 6-mile radius of May Airport (lat. 35°59'55" N., long 79°41'20" W.).

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.89)

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

Issued in East Point Georgia, on May 17, 1983.

George R. LaCaille,

Acting Director, Southern Region.

[FR Doc. 83-14421 Filed 5-27-83; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 83-ASO-21]

Designation of Federal Airways, Area Low Routes, Controlled Airspace, and Reporting Points; Alteration of Control Zone, Wilmington, North Carolina

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment alters the Wilmington, North Carolina, control zone by revising the geographical coordinates of New Hanover County Airport. The coordinates are improperly listed in the description and this amendment will correct the deficiency so that the description is technically correct. No change in airspace is intended by this action.

DATES: Effective Date: 0901 G.m.t., August 4, 1983. Comments must be received on or before July 3, 1983.

ADDRESSES: Send comments on the rule in triplicate to: Federal Aviation Administration, Manager, Airspace and Procedures Branch, ASO-530, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, telephone: (404) 763-7646.

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

SUPPLEMENTARY INFORMATION:

Request for Comments on the Rule

Although this action is in the form of a final rule, which involves technical correction to the description of the control zone and was not preceded by notice and public procedure, comments are invited on the rule. When the comment period ends, the FAA will use the comments submitted, together with other available information, to review the regulation. After the review, if the FAA finds that changes are appropriate, it will initiate rulemaking proceedings to amend the regulation. Comments that

provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule and determining whether additional rulemaking is needed. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the rule that might suggest the need to modify the rule.

The Rule

The purpose of this amendment to § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is to revise the geographical coordinates of New Hanover County Airport as the coordinates contained in the description are not correct. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in Advisory Circular AC 70-3A dated January 3, 1983. Under the circumstances presented, the FAA concludes that there is a need to list the proper coordinates of the airport so that the description of the control zone will be technically correct. The changes are so minor and nonsubstantive I find that notice or public procedure under 5 U.S.C. 553(b) is unnecessary.

List of Subjects in 14 CFR Part 71

Aviation safety, Airspace, Control zone.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) (as amended) is further amended, effective 0901 G.m.t., August 4, 1983, as follows:

Wilmington, NC [Revised]

Within a 5-mile radius of New Hanover County Airport (lat. 34°16'14" N., long. 77°54'10" W.).

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

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

Issued in East Point, Georgia, on May 17, 1983.

George R. LaCaille,

Acting Director, Southern Region.

[FR Doc. 83-14419 Filed 5-27-83; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 83-ASO-12]

Designation of Federal Airways, Area Low Routes, Controlled Airspace, and Reporting Points; Designation of Control Zone, Naples, Florida

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment designates a control zone in the vicinity of Naples Municipal Airport, Naples, Florida, which will lower the base of controlled airspace in the vicinity of the airport from 700 feet above the surface to the surface. This will provide controlled airspace protection for aircraft operating to and from the airport during Instrument Flight Rule weather conditions.

EFFECTIVE DATE: 0901 G.m.t., August 4, 1983.

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

SUPPLEMENTARY INFORMATION:

History

On Thursday, March 10, 1983, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by designating a control zone at Naples, Florida, to provide controlled airspace for aeronautical operations in the vicinity of Naples Municipal Airport (48 FR 10072). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments were received in response to publication. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in Advisory Circular AC 70-3A dated January 3, 1983.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations designates the Naples, Florida, control zone to accommodate aeronautical activities at Naples Municipal Airport.

List of Subjects in 14 CFR Part 71

Aviation safety, Airspace, Control zone.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) (as amended) is further amended, effective 0901 G.m.t., August 4, 1983, as follows:

Naples Municipal Airport, FL [New]

Within a 5-mile radius of Naples Municipal Airport (lat. 26°09'08" N., long. 81°46'32" W.); within 3.5 miles each side of Collier County VOR/DME 052° and 218° radials, extending from the 5-mile radius area to 8.5 miles northeast and southwest of the VOR/DME; excluding that airspace within a one-mile radius of Wing South Airpark (lat. 26°06'59" N., long. 81°42'12" W.). This control zone is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and time will thereafter be continuously published in the Airport/Facility Directory.

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

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

Issued in East Point, Georgia, on May 17, 1983.

George R. LaCaille,

Acting Director, Southern Region.

[FR Doc. 83-14422 Filed 5-27-83; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 82-AGL-31]

Alteration of Control Zone

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction to final rule.

SUMMARY: A portion of the Williston, North Dakota, control zone description was omitted upon publication. This correction indicates the accurate description.

EFFECTIVE DATE: August 4, 1983.

FOR FURTHER INFORMATION CONTACT: Edward R. Heaps, Airspace, Procedures, and Automation Branch, Air Traffic Division, AGL-530, FAA, Great Lakes Region, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7360.

SUPPLEMENTARY INFORMATION: On page 17060 of the **Federal Register** dated April 21, 1983, a final rule was published to alter the Williston, North Dakota, control zone. A portion of the description was inadvertently omitted. This correction redescribes the control zone to include the portion omitted.

SUPPLEMENTARY INFORMATION: Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.171 of Part 71 of the Federal Aviation Regulations was published in Advisory Circular AC 70-3A dated January 3, 1983.

List of Subjects in 14 CFR Part 71

Control zones, Aviation safety.

Adoption of the amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, effective 0901 G.m.t. August 4, 1983, as follows:

Williston, ND

Within a 5-mile radius of the Sloulin International Airport (latitude 48°10'37"N., longitude 103°38'18"W.); within 1.5 miles each side of the Williston VORTAC 136° radial, extending from the 5-mile radius area to 1.5 miles southeast of the Williston VORTAC, and within 2 miles north and 3 miles south of the 126° bearing from the Sloulin International Airport, extending from the 5-mile radius area to 10 miles southeast of the airport.

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

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

Issued In Des Plaines, Illinois, on May 16, 1983.

Monte R. Belger,

Acting Director, Great Lakes Region.

[FR Doc. 83-14506 Filed 5-27-83; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 83-AGL-1]

Alteration of Transition Area and Control Zone

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this Federal action is to alter the Yankton, South Dakota, control zone and transition area descriptions to accommodate two new instrument approach procedures to Chan Gurney Municipal Airport, i.e., an NDB Runway 31 and an ILS Runway 31 procedure, and to revise/reduce the airspace designated for the transition area.

The intended effect of this action is to ensure segregation of the aircraft using these approach procedures in instrument weather conditions from other aircraft operating under visual weather conditions in controlled airspace.

EFFECTIVE DATE: August 4, 1983.

FOR FURTHER INFORMATION CONTACT: Edward R. Heaps, Airspace, Procedures, and Automation Branch, Air Traffic Division, AGL-530, FAA, Great Lakes Region, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7360.

SUPPLEMENTARY INFORMATION: The current transition area charted for Yankton, South Dakota, does not accurately depict the description as published in Advisory Circular 70-3A, Compilation of Regulations. This action revises the description of the transition area as well as the description of the Yankton control zone to accommodate both the existing airspace requirements and the future airspace requirements for two new instrument approach procedures at Chan Gurney Municipal Airport, i.e., a Runway 31 Non-directional Radio Beacon (NDB) procedure and a Runway 31 Instrument Landing System (ILS) procedure. The control zone will be extended an additional 1½ miles northwest to accommodate existing procedures. The control zone will also be extended to the southeast from the 5-mile radius to the 8½-mile radius of the Yankton very high frequency omni-directional range (VOR) with an extension width of approximately 7 miles to accommodate the two new procedures. The transition area will now be described referencing only that airspace extending upward from 700 feet above the surface within a 9-mile radius of the Chan Gurney Municipal Airport, although minimum descent altitudes for these procedures may be established below the floor of the 700-foot controlled airspace. Any reference to airspace extending from 1200 feet above the surface has been determined no longer necessary and has been deleted.

Aeronautical maps and charts will reflect the defined areas which will enable other aircraft to circumnavigate the area in order to comply with applicable visual flight rule requirements.

History

On page 10693 of the **Federal Register** dated March 14, 1983, the FAA proposed to amend §§ 71.171 and 71.181 of the Federal Aviation Regulations (14 CFR Part 71) so as to alter the control zone and transition area airspace near Yankton, South Dakota. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No objections were received as a result of the Notice of Proposed Rulemaking.

Except for editorial changes, this amendment is the same as that proposed in the notice. Sections 71.171 and 71.181 of Part 71 of the Federal Aviation Regulations were published in Advisory Circular AC 70-3A dated January 3, 1983.

List of Subjects in 14 CFR Part 71

Control zones, Transition areas, Aviation safety.

Adoption of the Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, §§ 71.171 and 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) are amended, effective 0901 GMT, August 4, 1983, as follows:

Yankton, SD

Within a 5-mile radius of the Chan Gurney Municipal Airport (latitude 42°55'01"N., longitude 97°23'11"W.); within 2¾ miles each side of the Yankton VOR 321° radial extending from the 5-mile radius to 8½ miles northwest of the VOR; within 2¾ miles southwest of the Yankton 140° radial and 3¼ miles northeast of the Yankton 140° radial extending from the 5-mile radius to 8½ miles southeast of the VOR.

Yankton, SD

That airspace extending upward from 700 feet above the surface within a 9-mile radius of the Chan Gurney Municipal Airport (latitude 42°55'01"N., longitude 97°23'11"W.).

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

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

Issued in Des Plaines, Illinois, on May 11, 1983.

Kenneth C. Patterson,

Acting Director, Great Lakes Region.

[FR Doc. 83-14508 Filed 5-27-83; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 82-AGL-28]

Alteration of Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Circleville, Ohio, transition area description by deleting the Lockborne AFB exclusion currently contained in the published description.

The intended effect of this action is to insure segregation of the aircraft using approach procedures in instrument weather conditions from other aircraft operating under visual weather conditions in controlled airspace.

EFFECTIVE DATE: August 4, 1983.

FOR FURTHER INFORMATION CONTACT: Edward R. Heaps, Airspace, Procedures, and Automation Branch, Air Traffic Division, AGL-530, FAA, Great Lakes Region, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7360.

SUPPLEMENTARY INFORMATION: This action amends the Circleville, Ohio, transition area description by deleting all reference to Lockborne AFB as currently referenced in the published Circleville, Ohio, description. The exclusion is no longer necessary. The Lockborne AFB has been renamed Rickenbacker AFB and airspace associated with Rickenbacker AFB will be contained in a later docket in connection with a revised Columbus, Ohio, transition area description. (The Columbus, Ohio, description also references Lockborne AFB and also requires revision.) This action amends only the Circleville, Ohio, transition area description.

Aeronautical maps and charts will reflect the defined areas which will enable other aircraft to circumnavigate the area in order to comply with applicable visual flight rule requirements.

History

On page 9022 of the **Federal Register** dated March 3, 1983, the FAA proposed to amend § 71.181 of the Federal Aviation Regulations (14 CFR Part 71) so as to alter the transition area airspace near Circleville, Ohio. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No objections were received as a result of the Notice of Proposed Rulemaking.

Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was published in Advisory Circular AC 70-3A dated January 3, 1983.

List of Subjects in 14 CFR Part 71

Transition areas, Aviation safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, effective 0901 G.m.t., August 4, 1983, as follows:

Circleville, Ohio

That airspace extending upward from 700 feet above the surface within a 12-mile radius of the Pickaway County Memorial Airport (latitude 39°31'00"N., longitude 82°58'55"W.).

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

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

Issued in Des Plaines, Illinois, on May 16, 1983.

Monte R. Belger,

Acting Director, Great Lakes Region.

[FR Doc. 83-14507 Filed 5-27-83; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 97

[Docket No. 23646; Amdt. No. 1243]

Air Traffic and General Operating Rules; Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commission of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATE: An effective date for each SIAP is specified in the amendatory provisions.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, D.C. 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Field Office which originated the SIAP.

For Purchase

Individual SIAP copies may be obtained from: 1. FAA Public Information Center (APA-430), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, D.C. 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

FOR FURTHER INFORMATION CONTACT: Donald K. Funai, Flight Procedures and Airspace Branch (AFO-730), Aircraft Programs Division, Office of Flight Operations, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 426-8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 97 of the Federal Aviation Regulations (14 CFR Part 97) prescribes new, amended, suspended, or revoked Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR Part 51, and § 97.20 of the Federal Aviation Regulations (FARs). The applicable FAA Forms are identified as FAA Forms 8260-3, 8260-4 and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to Part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airman (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instruments Approach Procedures (TERPs). In developing these SIAPs, the TERPs criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs is unnecessary, impracticable, or contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

List of Subjects in 14 CFR Part 97

Approaches, Standard instrument.

Adoption of the Amendment

PART 97—[AMENDED]

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR Part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 G.m.t. on the dates specified, as follows:

1. By amending § 97.23 VOR-VOR/DME SIAPs identified as follows:

Effective August 4, 1983

Harrison, AR—Boone County, VOR-A, Amdt. 9
Los Angeles, CA—Los Angeles Int'l., VOR or TACAN Rwy 7L, Amdt. 16
Los Angeles, CA—Los Angeles Int'l., VOR or TACAN Rwy 25R, Amdt. 12
Kenosha, WI—Kenosha Muni, VOR Rwy 14, Amdt. 5

Effective July 7, 1983

DeQuincy, LA—DeQuincy Industrial Airpark, VOR/DME-A, Amdt. 3, cancelled
DeQuincy, LA—DeQuincy Industrial Airpark, VOR/DME Rwy, 33, Original
College Park, MD—College Park, VOR/DME-A, Original, cancelled
Trenton, NJ—Mercer County, VOR Rwy 24, Amdt. 3
Quarryville, PA—Tanglewood, VOR/DME-A, Amdt. 1
Alice, TX—Alice Intl, VOR Rwy 31, Amdt. 8
Alice, TX—Alice Intl, VOR-A, Amdt. 10
Austine, TX—Robert Mueller Muni, VOR/DME or TACAN Rwy 13R, Amdt. 7
Del Rio, TX—Del Rio Intl, VOR-A, Amdt. 9
Del Rio, TX—Del Rio Intl, VOR/DME-B, Amdt. 2
San Angelo, TX—Mathis Field, VOR Rwy 21, Amdt. 13

Effective May 12, 1983

Washington, PA—Washington County, VOR-A, Amdt. 3
Washington, PA—Washington County, VOR-B, Amdt. 3

Effective May 5, 1983

Knoxville, TN—Mc Ghee Tyson, VOR Rwy 23L, Amdt. 4
Knoxville, TN—Mc Ghee Tyson, VOR Rwy 23R, Amdt. 6
Knoxville, TN—Mc Ghee Tyson, VOR/DME Rwy 5R, Amdt. 4

Note.—The FAA published an amendment in Docket No. 23630, Amdt. No. 1242 to Part 97 of the Federal Aviation Regulations (Vol 48 FR No. 95 page 21897; dated May 16, 1983) under § 97.23 effective June 23, 1983, which is hereby amended as follows:

Columbia, MO—Columbia Regional, VOR Rwy 20, Amdt. 8, Change effective date to June 9, 1983.

2. By amending § 97.25 SDF-LOC-LDA SIAPs identified as follows:

Effective August 4, 1983

Harrison, AR—Boone County, LOC Rwy 36, Amdt. 2

Effective July 7, 1983

Alice, TX—Alice Intl, LOC Rwy 31, Amdt. 1
Del Rio, TX—Del Rio Intl, LOC Rwy 13, Amdt. 1
San Angelo, TX—Mathis Field, LOC BC Rwy 21, Amdt. 10

Effective June 9, 1983

Denver, CO—Stapleton Intl, LDA/DME Rwy 35R, Original

Effective May 16, 1983

Milwaukee, WI—Lawrence J. Timmerman, LOC Rwy 15L, Amdt. 1

3. By amending Part 97.27 NDB/ADF SIAPs identified as follows:

Effective August 4, 1983

Harrison, AR—Boone County, NDB Rwy 18, Amdt. 2
Harrison, AR—Boone County, NDB Rwy 36, Amdt. 2
Kenosha, WI—Kenosha Muni, NDB Rwy 14, Amdt. 8

Effective July 7, 1983

DeQuincy, LA—DeQuincy Industrial Airpark, NDB Rwy 15, Amdt. 1
Toledo, OH—Toledo Express, NDB Rwy 7, Amdt. 19
San Angelo, TX—Mathis Field, NDB Rwy 3, Amdt. 12
Del Rio, TX—Del Rio Intl, NDB Rwy 13, Amdt. 1
Denton, TX—Denton Muni, NDB Rwy 17, Amdt. 3
Greer, SC—Greenville-Spartanburg, NDB Rwy 3, Amdt. 12
North Myrtle Beach, SC—Grand Strand, NDB Rwy 23, Amdt. 7

Effective May 5, 1983

Knoxville, TN—Mc Ghee Tyson, NDB Rwy 5L, Amdt. 3

Knoxville, TN—Mc Ghee Tyson, NDB Rwy 5R, Amdt. 3

4. By amending § 97.29 ILS-MLS SIAPs identified as follows:

Effective August 4, 1983

Hot Springs, AR—Memorial Field, ILS Rwy 5, Amdt. 8
Los Angeles, CA—Los Angeles Int'l, ILS Rwy 7L, Amdt. 1
Los Angeles, CA—Los Angeles Int'l, ILS Rwy 7R, Amdt. 2, cancelled
Los Angeles, CA—Los Angeles Int'l, ILS Rwy 24L, Amdt. 17
Los Angeles, CA—Los Angeles Int'l, ILS Rwy 25L, Amdt. 16, cancelled
Los Angeles, CA—Los Angeles Int'l, ILS Rwy 24R, Amdt. 18
Los Angeles, CA—Los Angeles Int'l, ILS Rwy 25R, Amdt. 2

Effective July 7, 1983

Toledo, OH—Toledo Express, ILS Rwy 7, Amdt. 19
Greer, SC—Greenville-Spartanburg, ILS Rwy 3, Amdt. 15
Greer, SC—Greenville-Spartanburg, ILS Rwy 21, Amdt. 1
North Myrtle Beach, SC—Grand Strand, ILS Rwy 23, Amdt. 5
Denton, TX—Denton Muni, ILS Rwy 17, Amdt. 3
San Angelo, TX—Mathis Field, ILS Rwy 3, Amdt. 17

Effective May 19, 1983

Lawrence, MA—Lawrence Muni, ILS Rwy 5, Amdt. 1

Effective May 5, 1983

Knoxville, TN—McGhee Tyson, ILS Rwy 5L, Amdt. 6
Knoxville, TN—McGhee Tyson, ILS Rwy 23R, Amdt. 8

5. By amending § 97.31 RADAR SIAPs identified as follows:

Effective July 7, 1983

Eliot, ME—Littlebrook Air Park, RADAR-1, Original

Effective May 5, 1983

Knoxville, TN—McGhee Tyson, RADAR-1, Amdt. 21

6. By amending § 97.33 RNAV SIAPs identified as follows:

Effective July 7, 1983

Greer, SC—Greenville-Spartanburg, RNAV Rwy 21, Amdt. 4
San Angelo, TX—Mathis Field, RNAV Rwy 18, Amdt. 3
San Angelo, TX—Mathis Field, RNAV Rwy 36, Amdt. 3

(Secs. 307, 313(a), 601, and 1110, Federal Aviation Act of 1958 (49 U.S.C. 1348, 1354(a), 1421, and 1510); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.49(b)(3))

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

Note.—The incorporation by reference in the preceding document was approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

Issued in Washington, D.C. on May 27, 1983.

John M. Howard,

Manager, Aircraft Programs Division.

[FR Doc. 83-14505 Filed 5-27-83; 8:45 am]

BILLING CODE 4910-13-M

CIVIL AERONAUTICS BOARD

14 CFR Parts 207 and 208

[Order 83-5-114]

Charter Trips and Special Services; Terms, Conditions and Limitations of Certificates To Engage in Charter Air Transportation

AGENCY: Civil Aeronautics Board.

ACTION: Order granting blanket waiver.

SUMMARY: The CAB has granted all U.S. certificated air carriers a blanket waiver to permit the operation of charter flights to and/or from the 1984 Democratic and Republican National Conventions carrying state and national delegates and alternates, party officials, and other person participating in the convention and their immediate families, as well as members of the press.

EFFECTIVE DATE: May 20, 1983.

FOR FURTHER INFORMATION CONTACT: Patricia T. Szrom, Chief, Special Authorities Division, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428, (202) 673-5088.

SUPPLEMENTARY INFORMATION:

Order Granting Waivers

On May 10, 1983, United Air Lines, Inc., requested a waiver of the provisions of Parts 207 and 208 of the Board's Economic Regulations to the extent necessary to enable it and other U.S. certificated carriers to carry members, delegates and officials of the Democratic and Republican parties, as well as representatives of the press, on charter flights to and from the 1984 political conventions. In support of its request, United States that a waiver is necessary at this time since plans are already being formulated by the political parties for the 1984 conventions. In addition, since these flights would not conform completely to any of the Board's charter rules, carriers would either have to request individual flight waivers or impose conditions on the charters in an attempt to bring them into conformance with the Board's charter rules [1] which would not be in the public interest. Furthermore, United States that the Board granted a similar waiver to all U.S. certificated carriers in 1980 (Order 80-3-4, March 3, 1980) to permit them to perform charter trips to/and or from the 1980 political conventions.

The 1984 Presidential campaign is now underway and the Democratic and Republican National Conventions will once again be the focal point of political activity next summer.[2] As we did in 1980, and also in 1976, we will waive the requirements of §§ 207.11 and 208.6 of the Board's Economic Regulations to the extent necessary to permit U.S. certificated air carriers to operate charters to and/or from the 1984 Democratic and Republican National Conventions carrying state and national delegates and alternates, party officials, and other persons participating in the conventions and their immediate families. Authority will be granted also to permit members of the press to accompany the delegates on these charters.

The grant of this waiver will facilitate attendance by the delegates at these events and will permit the news media to give the public the broadest range of coverage of the conventions. We therefore believe that there are special and unusual circumstances warranting waiver of §§ 207.11 and 208.6 of the Board's Economic Regulations, and that such waiver is in the public interest.

List of Subjects in 14 CFR Parts 207 and 208

Charter flights, Consumer protection, Insurance, Reporting requirements, Surety bonds, Travel agents.

Accordingly, acting under authority delegated by the Board in its Regulations, 14 CFR 385.13:

1. We waive the requirements of §§ 207.11 and 208.6 of the Board's Economic Regulations to the extent necessary to permit U.S. certificated air carriers to operate charters to and/or from the 1984 Democratic and Repubican National Conventions carrying state and national delegates

[1] Such as precluding members of the press from participating on the flights.

[2] The Democratic National Convention will be held in San Francisco July 16-20, 1984 and the Republican National Convention will be held in Dallas, August 20-23, 1984.

and alternates, party officials, and other persons participating in the conventions and their immediate families, and members of the press; and

2. This order shall be served on all U.S. certificated air carriers; and

3. The Board may amend or revoke this order at any time in its discretion without hearing.

Persons entitled to petition the Board for review of this order under the Board's Regulations, 14 CFR 385.50, may file their petitions within 10 days after the date of service of this order.

This order shall be effective and become the action of the Civil Aeronautics Board upon expiration of the above period unless within such period a petition for review is filed, or the Board gives notice that it will review this order on its own motion.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 83-14496 Filed 5-27-83; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 903

Public Information

Correction

In FR Doc. 83-12174, beginning on page 20688, in the issue of Monday, May 9, 1983, make the following correction.

On page 20689, Column 1, paragraph (b)(10) of § 903.1, "of Civil Rights;" should read "for Civil Rights;".

BILLING CODE 1505-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 154 and 271

[Docket No. RM80-47-002, et al.; Order No. 94-C]

Regulations Implementing Section 110 of the Natural Gas Policy Act of 1978 and Establishing Policy Under the Natural Gas Act

Issued May 24, 1983.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule and order denying rehearing and denying petitions for stay of, or further comment on, final rule.

SUMMARY: On January 24, 1983, the Federal Energy Regulatory Commission (Commission) issued Order No. 94-A, a Final Rule and Order on Rehearing of Order No. 94 (48 FR 5152 (1983)). Order No. 94-A amended the Commission's interim regulations to provide new rules under section 110 of the Natural Gas Policy Act of 1978 (NGPA, 15 U.S.C. 3301-3432) for first sellers who incur production-related costs.

This Order No. 94-C is a companion to Order No. 94-D (Order on Rehearing of Order No. 94-B) which provides special rules for NGPA sections 105 and 106(b) first sellers. Order No. 94-C denies all petitions for rehearing with one exception. This exception permits recovery of direct taxes in the methodology for determining treating and conditioning allowances under § 271.1104(d)(3)(A) of the Commission's regulations.

EFFECTIVE DATE: The amendments to §§ 154.94(k)(2) and 154.94(k)(4) of the Commission's regulations will be effective June 30, 1983. The amendment to § 271.1104(d)(3)(A) will be effective on May 31, 1983.

FOR FURTHER INFORMATION CONTACT: Albert J. Francese, Office of the General Counsel, Rulemaking and Legislative Analysis Division, Federal Energy Regulatory Commission, 825 North Capitol Street, Washington, D.C. 20426, (202) 357-8033.

SUPPLEMENTARY INFORMATION:

I. Introduction

On January 24, 1983, the Commission, by Order No. 94-A [1] issued final regulations to implement section 110 of the Natural Gas Policy Act of 1978 (NGPA) for production-related costs. Order No. 94-A establishes the requirements that a first seller must satisfy to collect an allowance in excess of an applicable maximum lawful price to recover production-related costs under section 110 of the NGPA.[2]

In issuing its final rule, the Commission has continued the basic cost-recovery objective of section 110 of the NGPA and the Commission's regulations implementing that section. At the same time, the Commission has refined the procedures necessary to collect allowances, reduced the administrative burdens and costs on those subject to the regulations, and developed rules that will recognize changes in industry practices without interfering with those practices.

The Commission first issued rules to recover production-related costs under section 110 in its interim regulations of December 1, 1978.[3] After public comment, these regulations were amended in Order No. 94 [4] and, following additional opportunity for public comment, were further amended and issued as final rules in Order Nos. 94-A and 94-B.[5]

Order No. 94-B generally extended to first sellers of gas under sections 105 and 106(b) the same opportunity to collect adjustments as those selling gas priced under other sections of the NGPA for production-related costs. The regulations for such first sellers of gas differ in three respects from the regulations that apply to those selling gas under all other NGPA pricing sections. First, an area rate clause does not constitute evidence that the purchaser specifically provided that an express amount be paid to the sections 105 and 106(b) seller for the delivery of gas. Second, such first sellers may not collect a generic allowance for old delivery systems. Third, the final rule does not permit such first sellers to collect amounts for delivering and compressing gas prior to the effective date of the rule.

The Commission has received several petitions for rehearing with respect to Order No. 94-A. With one exception, this order denies all petitions for rehearing for the reasons set forth in Part II.[6] In addition, Part III of this order

[1] Order No. 94-A, Final Rule and Order on Rehearing of Order No. 94, "Regulations Implementing Section 110 of the Natural Gas Policy Act of 1978 and Establishing Policy Under the Natural Gas Act" Docket No. RM80-47-002 (issued January 24, 1983), 48 FR at 5152 (February 3, 1983), III FERC Stats. and Regs. ¶ 30,419.

Order No. 94-A amended the following sections of the Commission's regulations: 18 CFR 154.94, 270.102(b), 271.1100, 271.1103, 271.1104, 271.1105, and 271.1106.

[2] Apart from rules for production-related costs, Order No. 94-A amended 18 CFR 2.102, the Policy Statement for interstate pipelines performing production-related services.

[3] "Natural Gas Policy Act of 1978: Interim Regulations," Docket No. RM79-3 (issued December 1, 1978), 43 FR at 56448 (December 1, 1978), FERC Stats. and Regs., Preambles ¶ 30,026 (1977-1981).

[4] Order No. 94, "Order Amending Interim Regulations Under the Natural Gas Policy Act of 1978 and Establishing Policy Under the Natural Gas Act," Docket No. RM80-47 (issued July 25, 1980), 45 FR at 53099 (August 11, 1980), FERC Stats. and Regs., Preambles ¶ 30,178 (1977-1981).

[5] Order No. 94-B dealt with particular rules implementing section 110 with respect to the first sale of sections 105 and 106(b) gas. *See* Order No. 94-B, "Order Amending Regulations in Subpart B of Part 270 and Subparts E, F, and K of Part 271, and Affirming Certain Final Regulations issued in Order No. 68," Docket No. RM80-47-003 (issued January 24, 1983) 48 FR at 5190 (February 3, 1983), III FERC Stats. and Regs. ¶ 30,421.

[6] This order on rehearing does not consider the issues raised by petitioners concerning the Commission's interim rules, issued January 24, 1983, for delivery and compression allowances (Docket Nos. RM80-73 and RM80-74, 48 FR at 5180, February 3, 1983, III FERC Stats. and Regs. ¶30,420) or the interim rules implementing refund procedures (Docket No. RM83-6, 48 FR at 5197, Feb. 3, 1983, III FERC Stats. and Regs. ¶30,422). Petitioners'

addresses petitions for reconsideration and clarification also submitted in response to order No. 94–A. The Commission clarifies Part 154 of the final rule in two respects. This order and companion Order No. 94–D [7] constitute the Commission's actions on rehearing of Order Nos. 94–A and 94–B, respectively.

II. Discussion of Petitions for Rehearing, Stay, and Further Comment

The final rules of Order No. 94–A were issued on the basis of extensive Commission consideration and an exhaustive public record spanning a four year period. Following issuance of the final rule, two producers, one producer group, two resellers, one pipeline, two local distributors, one distributor trade association, and one state utility commission filed petitions to rehear, reconsider, or clarify Order No. 94–A.[8]

Many of the allegations of error relate to issues which were fully discussed in Order No. 94–A, and the Commission denies these allegations for the reasons stated in that order and in Order No. 94–C. New issues require a more detailed response on rehearing. However, the Commission finds no convincing reason to modity its final rule except for technical revisions.

Petitioners allege that the Commission abused its direction in the following respects: Eliminating the quality standards and the consequent provision allowing for the recovery of costs to treat and condition natural gas to any quality standard; failing to include an adjustment for the production-related allowances to account for inflation; establishing rules under section 110 which petitioners believe may result in a double recovery of costs incurred to perform production-related services; substituting a self-implementing regulatory system for an application procedure; and not making the final rules retroactive.

Petitioners also request rehearing on other aspects of the final rules. These include questions concerning the propriety of the following: the rules requiring cost allocation; the methodology for the allocation of costs to handle crude oil, liquids, or liquefiables; the exclusion of processing from the definition of production-related costs; and the special provision allowing an area rate clause as authority in some defined circumstances for collecting delivery costs. In that regard, producers allege that the Commission unduly restricted the exercise of area rate clauses by permitting them to trigger only delivery allowances, while distributors argue that the Commission abdicated its responsibility by permitting area rate clauses to trigger delivery allowances.

As a related issue, some petitioners allege that the requirement in the rule for express contractual authorization to collect allowances is arbitrary, capricious, and not supported by substantial evidence, unduly interferes with private contracting practices, and constitutes contract interpretation. Those petitioners further allege that the requirement of express contractual authorization to collect interest for past delivery and compression allowances is unfair.

Further, some petitioners criticize the methodology which defines allowances for treating or conditioning costs from two perspectives. One group alleges that in establishing the methodology, the Commission was remiss in not providing adequate prior notice and opportunity for public comment. Another group alleges that the methodology does not go far enough and should be expanded to include direct taxes as well as a portion of general and administrative expenses. Finally, some petitioners allege that the Commission did not consider the objectives of the NGPA or the consequences of the final rule on consumers of natural gas and the environment.

A. Elimination of Generic Quality Standards

Order No. 94–A modified the Commission's section 110 program by substituting the standards established in individual gas sales contracts for generic quality standards. Some petitioners allege that as a result of this action the Commission abused its discretion by reversing Order No. 94 and ignoring the legislative history of the NGPA which they read to preclude the Commission from allowing more costs to provide quality gas than allowed under practices as they existed when the NGPA was enacted. Some petitioners also argue that the Commission has not offered an adequate explanation of the problems which the Commission sought to avoid or of the benefits to be gained by eliminating generic quality standards.

The Commission believes that the reasons for making this change are fully explained in Order No. 94–A and warrant only a brief review here in response to petitioner's allegations. Although the generic quality standards were discussed by nearly everyone who commented on, or filed petitions to rehear Order No. 94, only one commenter supported the use of the standards.[9] On reviewing these comments and petitions, the Commission determined that the use of generic quality standards posed problems for the future that could be avoided by relying directly on the standards set forth in individual gas sales contracts. The primary problem posed for the future by the generic standards is that, even though the generic standards reasonably reflected industry practice at the time the standards were established, they did not provide adequately for future changes in industry practice. Thus, in the future, the generic standards would have had a tendency to freeze rather than reflect industry practices. By replacing the generic standards with rules that refer directly to the terms of the individual contracts, the final regulations provide significantly more flexibility and accuracy.

Petitioners who characterize this change as a reversal of Order No. 94 or prior Commission practice misunderstand the bases of Order No. 94 and prior Commission practice. As discussed in detail in Order No. 94–A,[10] the Commission has looked to contracting practices in determining quality adjustments, beginning with

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arguments with respect to delivery and compression allowances and refund procedures will be addressed in those dockets.

[7] Order No. 94–D, "Order denying Rehearing and Denying Stay of Order No. 94–B, "Docket No. RM80–003, *et al.* (issued May 24, 1983). Order No. 94–D addresses petitioners' contentions which exclusively apply to Order No. 94–B. Order No. 94–C addresses those issues which apply to Order No. 94–A only and those which could apply to both Order Nos. 94–A and 94–B.

[8] The Commission received timely petitions for rehearing of the final rules in Order No. 94–A from the following petitioners: Southern California Gas Company and Pacific Lighting Gas Supply Company (Docket No. RM80–47–003); Indicated Producers [Shell Oil, *et al.*) (Docket No. RM80–47–005); Gulf Oil Corporation (Docket No. RM80–47–006); UGI Corporation (Docket No. RM80–47–007); Public Service Commission of the State of New York (Docket No. RM80–47–008); and Associated Gas Distributors (Docket No. RM80–47–009).

The Commission also has received a late-filed Petition for Clarification and Application for Rehearing filed by Southern Union Gathering Company (Docket No. RM80–47–010), an Application for Reconsideration filed by Samson Resources Company (Docket No. RM80–47–011), and a Petition for Clarification filed by Transcontinental Pipeline Corporation (Docket No. RM80–47–012).

Requests for clarification are mentioned at this time because certain petitioners styled the same contentions alternatively as bases for requests for clarification or rehearing and because late filed applications for rehearing are treated as applications for reconsideration or clarification.

[9] *See* Order No. 94–A, 48 FR 5152, 5157 (February 3, 1983), III FERC Stats. and Regs. ¶ 30,419 at 30,350.

[10] *Id.*, 48 FR at 5153–55 (February 3, 1983), III FERC Stats. and Regs. ¶ 30,419 at 30,345–48.

individual producer rate cases and continuing through the area rate opinions, the national rate opinions, Order No. 94 and Order No. 94–A. Therefore, the regulations established in Order No. 94–A are consistent with, not a reversal of, prior Commission practice.

One petitioner asserts that replacing the generic quality standards in Order No. 94 with direct reference to contracts in Order No. 94–A in order to more accurately reflect changing industry practice is inconsistent with section 110.[11] That petitioner argues that section 110 was not intended to reflect changing industry practices, but rather was intended to permit production-related allowances only in accordance with industry practice at the date of enactment of the NGPA. In support of that argument, the petitioner cites a statement by Congressman Dingell, the House Floor Manager of the NGPA, when introducing the NGPA. In pertinent part, the statement is as follows:

> Thus, if the function performed is not usually performed by the producer without provision being made for compensation mover and above the amount paid for the gas, prevailing industry practice may guide FERC to approve ceiling price adjustments which the Commission determines appropriate and consistent with the purposes of the legislation. * * * [12]

The Commission disagrees with the petitioner's argument for several reasons. First, section 110 on its face contains no such limitation. Second, the legislative history cited in support of the position does not indicate that prevailing industry practice was to be fixed at any particular point in time. Third, such an interpretation does not comport with the importance of private contractual arrangements under the NGPA.[13] Accordingly, the Commission believes that the final regulations issued in Order No. 94–A are consistent with the intent of section 110.

B. Elimination of the Application Procedure

The final rule requires a first seller of gas subject to the Commission's Natural Gas Act jurisdiction to file a blanket affidavit under section 154.94(k) of the final rule in order to collect production-related cost allowances.[14] The final rule also provides that a first seller of natural gas not subject to the Commission's Natural Gas Act jurisdiction may collect production-related allowances without application to the Commission if he meets the other requirements of the rule. In taking these actions, the Commission eliminated unnecessarily burdensome application procedures of the interim regulations and related requirements for supporting data.

Petitioners argue that the Commission has not proven that the application procedure is burdensome, that the application process is needed to ensure compliance with the requirements of the final rule, and that elimination of the application requirement leaves purchasers without regulatory protection.

The Commission disagrees with petitioners' contentions. The final rule is burden reduction initiative which will avoid regulatory delay that would otherwise result from processing a seller's application. If the Commission were to continue to rely on an application mechanism to approve production-related cost adjustments, it would be faced with a burden of reviewing in a timely fashion every gas sales contract submitted through a formal filing in order to avoid delays in the collection of allowances.[15] First sellers also would be burdened with the need to submit detailed applications. Further, the Commission considered the difficulty of determining appropriate and representative costs for compression and delivery on an individual basis. The difficulty would only be compounded if the Commission were required to approve each request for an allowance on a case-by-case application basis. These consequences are inconsistent with the Commission's overall objective to improve the effectiveness of the section 110 program.

Staff's assessment of the anticipated burden reduction indicates that those who are subject to the final rule will be relieved of a significant paperwork burden. The potential number of applicants consists of approximately 200 large producers and 8,000 small producers. These producers will be relieved of the burden of filing with the Commission several thousands of applications to recover production-related costs.

Contrary to petitioners' arguments, the application process is not the exclusive means by which the Commission can prevent abuse of the final rule. The final rule itself contains safeguards to prevent abuse. First, although first sellers no longer need to file applications with the Commission, § 271.1103(b) of the final rule establishes a general record retention requirement on sellers collecting allowances to preserve such records as may be necessary to identify the amount collected and demonstrate the basis for the collection. A first seller is required to retain the same types of information he otherwise would have to submit to the Commission with an application, and he must make this information available at such time as a field audit is conducted. Second, the final rule also requires sellers to provide gas purchasers with a description of charges a reasonable time before charging for the production-related services.[16] Therefore, purchasers have the opportunity to determine whether these charges are consistent with the Commission's rules and are contractually authorized. These safeguards, coupled with the Commission's power to order refunds, conduct field audits, and initiate enforcement actions under the NGPA, will protect purchasers from pricing violations. Moreover, the Production-Related Costs Board ("Board") established by the interim rule on refund procedures (Docket No. RM83–6)[17] affords purchasers a mechanism for obtaining refunds in the event the Board determines that a first seller has collected an amount for production-related costs in excess of the otherwise applicable maximum lawful price.

C. NGPA Objectives and Economic and Environmental Impact

Some petitioners allege that the Commission's regulations are not consistent with what they claim to be the NGPA objectives to secure an orderly and gradual decontrol of wellhead prices and enhance available gas supplies through incentives for increased exploration and development. Petitioners appear to complain that the Congress, in enacting section 110, intended the Commission to implement that section only if the burner tip price of natural gas were less than the comparable price of oil. Petitioners argue that because pricing parity exists in industrial markets in 1983 rather than 1985, when Congress anticipated that parity would occur, Congress did not

[11] Application for Rehearing of Order No. 94—A by the Public Service Commission of the State of New York, Docket No. RM80–47–008, February 23, 1983, at 2.

[12] 124 *Cong. Rec.* at H. 13118 (daily ed. October 11, 1978) (Statement of Congressman Dingell), cited in full at III FERC Stats. and Regs. ¶30,419 at 30,349.

[13] *See*, section 101(b)(9) of the NGPA. The Court in *Pennzoil I* noted that NGPA section 101(b)(9) is "Congress' express and specific intent not to preempt the ability of private persons to contractually govern their relationship." Pennzoil Co. v. FERC, 645 F. 2d 360, 375, (5th Cir. 1981), *cert. denied*, 454 U.S. 1142 (1982) ("*Pennzoil I*").

[14] First sellers making certain sales under the NGPA are subject to the Commission's Natural Gas Act jurisdiction for purposes of sections 4, 5, and 7 of that Act. *See*, NGPA section 601(a).

[15] Order No. 94–A, 48 FR at 5159–60 (Feb. 3, 1983), III FERC Stats. and Regs. ¶30,419 at 30,353–54.

[16] 18 CFR 271.1104(f).

[17] *See*, n.8, *supra*.

intend the Commission to implement the final rule at the present time.

Petitioners do not cite any statutory provisions or legislative history to support their assertion that Congress did not intend the Commission to implement section 110 should natural gas prices reach parity with oil prices. To the contrary, the legislative history suggests the Commission's refusal to allow appropriate allowances under section 110 would be an abuse of discretion.[18]

In addition, petitioners' assertion appears to be based on the contention that section 110 is an incentive pricing section, to be implemented only if the price of natural gas is less than the price of alternative fuels. To the contrary, section 110 is a cost recovery, rather than an incentive pricing section. Although Congress sought to provide incentive prices in certain NGPA Title I sections[19] to, among other things, encourage new gas supplies, the plain meaning of section 110 illustrates that Congress intended that section to serve a different purpose, *i.e.*, to permit a first seller to recover appropriate production-related costs. Thus, the Commission's section 110 jurisdiction is not a solution to petitioners' complaint which relates to the operation of NGPA incentive pricing sections in the marketplace.

In a related issue, some petitioners allege that the Commission abused its discretion by issuing the final rules without first providing a detailed assessment of the effect of the rules on gas prices, markets, supplies, and consumers. In support of their view as to the adverse effects of the rules, petitioners submit affidavits of gas industry executives concerned with anticipated loss of load, increases in gas prices above market clearing levels, unemployment, and regional economic decline as a result of the rules.[20]

To the extent that petitioners' expectations of adverse market impacts are based primarily on the fact that the Commission's final rules allow, under certain conditions, first sellers to recover production-related costs in addition to the applicable maximum lawful price, the Commission reiterates that Congress has made the determination that some such allowances are to be permitted. In enacting the NGPA, Congress, therefore, must have considered the effects on consumers of permitting recovery of production-related costs. The legislative history of the NGPA indicates Congress' efforts to balance and accommodate the conflicting needs of the diverse interest groups affected by the pending legislation.[21] Section 110 reflects a Congressional decision to allow a seller to collect allowances in excess of the maximum lawful price.

To the extent that petitioners' expectations of adverse market impact are based upon the Commission's method of implementing the Congressional scheme, we believe that petitioners' misunderstand how the regulations work and are incorrect in their estimates of market inpact. The Commission's section 110 rules do not mandate that first sellers collect allowances for purchasers for production-related services. Instead, they allow a seller and purchaser to negotiate as to what allowances, if any, the producer may charge in return for privding the services, as long as the negotiated allowance is no greater than the cost-based allowance deteremined in accordance with the rules.[22] If allowances would increase the price of gas beyond its marketability, then it is in the interest of the buyer and seller to reach an agreement which does not jeopardize that marketability.[23]

The final rule, therefore, protects consumers from unnecessarily high prices, and resultant market impact, in two ways. First, by requiring that the allowances be contractually authorized, the rule provides purchasers with the ability to refuse to contract to pay any unnecessary or excessive allowances.[24] Second, in no case may the allowance exceed the amount calculated in accordance with the rule, which the Commission has determined to be cost-based and no more than necessary.[25]

In a related matter, some petitioners assert that the National Enviromental Policy Act of 1969 ("NEPA") and the Commission's regulations implementing NEPA, require that the Commission prepare an assessment of the impact of a Commission action which will or may have a significant effect on the quality of the human environment.[26] Petitioners offer the affidavits discussed above to show that the rules will result in increasingly higher gas prices, which they argue will cause fuel-switching and a concomitant increase in pollution.

The Commission disagrees with petitioners that NEPA requires the performance of an environmental assessment or other NEPA review of this rule. Analysis of federal actions is premised upon the existence of a direct connection between the federal action and an environmental effect. This rule has no such direct connection, both because of the nature of the rule and because of the rule's relationship to the natural gas marketplace.

With respect to the nature of the rule, the rule does no more than satisfy the Commission's statutory responsibility to allow cost-recovery for activities that generally must be performed prior to transportation of natural gas by pipeline. The rule does not impose any obligation on any person to perform these production-related activities, which would be performed without the rule. It does not require or authorize any person to construct facilities for such services. It is not an incentive rule to encourage exploration, development or production-related activities. Thus, the rule by itself does not directly cause any activities having environmental effects.

With respect to the rule's relationship to the natural gas marketplace, the rule is coincident to a variety of economic conditions and activities which themselves may independently have environmental and economic impacts. These intervening conditions and activities include the terms of existing and future natural gas contracts, patterns of industrial, commercial and residential gas consumption, the level of industrial activity, general economic conditions, the price of alternative fuels, the marketability of gas, fuel-switching in relation to conversion costs, and gas conservation efforts. This is not simply a matter of intervening factors obscuring the relationship between the Commission's rules and effects on the environment. It is rather that the rule

[18] *See*, n.12, *supra*.

[19] *See, e.g.*, NGPA sections 102, 103, 107 and 108.

[20] Petitioners also request a stay of the effectiveness of the Commission's Order pending rehearing and further market analysis and opportunity for further comment on the effect of Order No. 94–A on gas markets. In view of the Commission's denial of rehearing and determination that no further market analysis and comment is necessary, the requests for stay are denied.

[21] *See, e.g.*, H.R. Rep. No. 496, pt. IV, 95th Cong., 1st Sess. 101, 110–21 (1977), H.R. Rep. No. 1752, 95th Cong., 2d Sess. 110–11 (1978), and Conference Report, I FERC Stats. and Regs. ¶ 3,101; *See also*, Pennzoil, 645 F.2d at 371, n.37 (5th Cir. 1981), *cert. denied*, 454 U.S. 1142 (1982).

[22] Order No. 94–A, 48 FR 5162 (February 3, 1983), III FERC Stats. and Regs. ¶ 30,419 at 30,357.

[23] See Order No. 94–B, 48 FR at 5195 (February 3, 1983), III FERC Stats. and Regs. ¶ 30,421 at 30,413, where the Commission noted that the "extent to which sellers and purchasers will amend their contracts so as to collect higher delivery allowances after the effective date of this order will be limited by the inability of producers to sell gas at a price which the pipelines consider unmarketable."

[24] Order No. 94–A, 48 FR at 5155 (February 3, 1983), III FERC Stats. and Regs. ¶ 30,419 at 30,348.

[25] 18 CFR 271.1104(d), II FERC Stats. and Regs. ¶ 24,214 at 14,375–78.

[26] *See* "Request of Associated Gas Distributors for Rehearing of Order Nos. 94–A and 94–B," (Docket No. RM80–47–009) filed Feb. 23, 1983, at 20. Petitioners request a stay of the effectiveness of the Commission's rule pending rehearing and an environmental assessment. In view of the Commission's denial of rehearing and determination that an environmental assessment is not necessary, the petitioner's request for stay is denied.

cannot be said to have any direct environmental effect whatsoever in light of these intervening considerations. In this connection, petitioners' argument, that this rule will affect the environment adversely due to fuel-switching that results from higher gas prices, is inaccurate because it fails to account for the marketability of the gas, the price of alternative fuels, and other intervening conditions that will restrain purchasers from agreeing to unnecessarily high production-related allowances.

For the Commission to undertake a NEPA review in light of these diverse considerations would be an exercise in sheer conjecture. The Commission has long maintained that activities of the kind at issue here do not necessitate environmental review under NEPA in those instances when the number of variables involved render any environmental consequences unforeseeable.[27] The Commission believes in the continued validity of this approach. NEPA does not require agencies to engage in environmental review, particularly environmental impact statements, when the causal relationship between a federal action and certain environmental effects is remote and conjectural.[28] We believe that this principle applies in this case. There is no direct connection between the rule and any changed patterns of consumption or other market effects, much less the environmental effects of any such actions, that would warrant examination of the issue beyond the economic considerations that the Commission has already taken into account.[29]

D. Contractual Authority and Area Rate Clauses

The final rule establishes the requirements that a first seller must satisfy in order to collect production-related allowances, one of which is that the seller be "expressly authorized" to be compensated for bearing that production-related cost. Section 271.1104(c)(4) establishes a two-part test for determining "expressly authorized." First, the seller must agree to provide a specified production-related service. Second, the purchaser must agree to compensate the seller for that service. The rule also requires that the purchaser's obligation to pay a production-related cost allowance be evidenced by a contract provision expressing a purchaser's obligation to pay an amount separate from the cost of gas or by an area rate clause as defined in § 154.93(b–1) only for delivery costs.

Some petitioners argue that § 271.1104(c)(4) of the final rule, defining the types of express contractual provisions which constitute adequate authority to collect section 110 allowances, is arbitrary, capricious, an abuse of discretion and not based on substantial evidence in the record. Citing *Pennzoil Co.* v. *FERC ("Pennzoil I")*,[30] these petitioners also argue that the final rule constitutes undue interference with private contracting practices and is an effort by the Commission to interpret contracts over which it has no Natural Gas Act jurisdiction.

The Commission disagrees with petitioners' allegations and believes that under any standard of review the Commission's actions concerning express contractual authorization are supported by an extensive public record and Commission expertise and experience from individual producer cases and area and national rate opinions.[31]

The requirement of the final rule for express contractual authorization is not new. The new rule continues the emphasis which the interim rules placed on the individual gas sales contract as the instrument for determining whether adequate contractual authority exists to permit the collection of allowances. The final rule defines the kind of contractual authority required to collect production-related costs on the basis of consistent prior Commission practice.

In Natural Gas Act proceedings, the Federal Power Commission (FPC) found that area clauses constituted adequate contractual authority to collect base national rates and gathering and delivery allowances. The FPC did not establish or recognize allowances for recovery of compression, treating or conditioning costs in national rate proceedings;[32] however, the FPC did recognize that the base national rate was a ceiling rate which could be exceeded by an adjustment for gathering, delivery, and other recognized adjustments. Pre-NGPA practice considered treating and conditioning as "other quality adjustments" to be made in accordance with the provisions of particular gas sales contracts.[33] The Federal Power Commission, therefore, did not permit interstate sellers to use an area rate clause as authority to collect adjustments for treating, conditioning, or compression.

The final rule is consistent with pre-NGPA practice by precluding an interstate seller from using area rate clauses as authority to collect non-delivery allowances. Because of the use of area rate clauses in Natural Gas Act practice as discussed above, the final rule requires a contractual provision providing for payment of a separate amount for non-delivery allowances as requisite authority to collect such allowances. The line which the Commission drew in the final rule with respect to the use of area rate clauses and separate contractual provisions mirrors longstanding Commission practice in implementing the Natural Gas Act concerning producer rates and its deference to the intent of the parties to gas sales contracts that were made under that practice.

These considerations guided the Commission's implementation of its statutory authority under section 110 which, in turn, lead to the requirement of express contractual authorization in the final rule. The basis and purpose of the Commission's actions are adequately supported by the record.

The Commission also disagrees with petitioners' contention that the final rule

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[27] *See* Opinion No. 770, "National rates for Jurisdictional Sales of Natural Gas," RM75–14, issued July 27, 1976, 56 F.P.C. 509 at 596, *reh. denied*, Opinion No. 770–A, 56 F.P.C. 2698 (1976), *aff'd*, American Public Gas Ass'n. v. FPC, 567 F. 2d 1016 (D.C. Cir. 1977), *cert. denied*, 435 U.S. 907 (1978). Opinion No. 770 was the last national rate case prior to enactment of the NGPA. In that opinion, the FPC noted that the existence of numerous market variables made any predictions of the environmental impact of the order on the various energy markets extremely difficult.

[28] *See e.g.*, Sierra Club v. Hodel, 544 F.2d 1036, 1039 (9th Cir. 1976); Save the Bay v. United States, 610 F.2d 322, 326 (5th Cir. 1980). In addition, the regulations of the Council on Environmental Quality, the agency responsible for administering NEPA, also recognizes that there are some federal actions which, by their nature, do not raise the kind of environmental concerns against which NEPA is intended to guard. These are described as actions which do not individually or cumulatively have a significant effect on the human environment. Neither an environmental assessment not an environmental impact statement is required for such actions. *See* 40 CFR 1507.4 (1982).

[29] Petitioners' allegation that the Commission has violated its own regulations by not performing NEPA review is incorrect. The Commission's regulations require the preparation of an environmental impact statement when the Commission determines that the contemplated activity is a "major federal action significantly affecting the quality of the human environment." The regulations do not address the situation at issue in this rule where the Commission believes that no NEPA review is required. *See* 18 CFR 2.80–2.82 (1982).

[30] *See*, Pennzoil, 645 F.2d 380, *cert. denied*, 454 U.S. 1142 (1982).

[31] In issuing rules, an agency may look to other proceedings before it, Moss v. FPC, 502 F.2d 481, 485 (D.C. Cir. 1974), *cert. denied*, 422 U.S. 1020 (1975); or look beyond the record and draw upon its own expertise and experience, General Telephone Co. of Southwest v. United States, 449 F.2d 846, 862 (5th Cir. 1971).

[32] Order No. 94–A 48 FR at 5,104 (February 3, 1983), III FERC Stats. and Regs. ¶ 30,419 at 30,360.

[33] Order No. 94–A, III FERC Stats. and Regs. ¶ 30,419 at 30,348; *see*, also, FPC national rate regulations, I FERC Stats. and Regs. ¶¶ 10,456A and 10,456B.

is inconsistent with *Pennzoil I*. The court in *Pennzoil I* noted that NGPA Section 101(b)(9) allows the contract to operate in the marketplace so long as the contract price for the sale of natural gas under certain NGPA pricing sections is less than the maximum lawful price.[34] Section 271.1104(d) of the final rule incorporates the logic of section 101(b)(9).

Section 271.1104(d) of the final rule authorizes the seller to collect the lesser of an amount expressly authorized under the contract or the generic allowance as the amount necessary to recover production-related costs borne by the seller. The Commission intends that § 271.1104(d) comport with the emphasis which NGPA section 101(b)(9) places on the contract. In so doing, § 271.1104(d) references the requirement of § 271.1104(c)(4) that the gas sales contract expressly authorize collection of production-related allowances by a separate contract provision or by an area rate clause only for delivery allowances. Therefore, the final rule incorporates but does not displace private contractual arrangements.

Section 271.1104(c)(4) of the final rule is consistent with the emphasis which *Pennzoil I* places on the operation of the individual gas sales contract in the marketplace. The requirement for express contractual authorization does not interfere with private contractual practices because the Commission is not requiring parties to amend their contracts or to draft new contracts to conform to the regulations. The final rule encourages private contractual arrangements in a manner consistent with the interpretation of section 101(b)(9) in *Pennzoil I*.

Pennzoil I discussed, among other things, the Commission's authorities with respect to the interpretation of gas sales contracts under pricing sections 102 through 109. That particular aspect of the *Pennzoil I* decision does not have any bearing upon the final rule which does not, either by intent or effect, constitute contract interpretation. The final rule identifies qualifying first sellers on the basis of eligibility criteria which tie the availability of section 110 allowances to the presence of specific contractual provisions governing the purchase and sale of gas and production-related costs. By defining eligibility by reference to the terms of the contracts governing the sale of gas, the final rule establishes criteria which the seller must meet in order to collect allowances under the rule.

[34] Pennzoil, 645 F.2d at 372–76, *cert. denied*, 454 U.S. 1142 (1982).

The requirement of the final rule for express contractual authorization is similar to the requirement of eligibility, through a negotiated contract price requirement, of those tight formations of natural gas which qualify for incentive prices under NGPA section 107(c)(5). Section 107(c)(5) provides, in part, for incentive prices "to the extent that such special price is necessary to provide reasonable incentives for the production of such high-cost gas." In upholding the Commission's use of the negotiated contract price requirement, the Former Fifth Circuit noted that "advertence to the terms of private contracts in delineation of eligibility for price categories is not novel."[35]

E. Retroactivity and Interest

Consistent with basic principles of administrative law, the final rule operates prospectively only.[36] In making the rule prospective, the Commission sought to avoid the substantial burden and inequity that may result by reopening past transactions that developed under the interim rules. Moreover, a retroactive application of the final rule would require a change in practice established under the interim rules without notice in the interim rules of that possibility.

Some petitioners argue that the NGPA requires that the allowances of the final rule should be made retroactively effective to December 1, 1978 because that is the date section 110 became effective. Petitioners also argue that some producers have been harmed by the delay in the Commission's implementation of section 110 because they have invested capital in reliance on the Commission's complete implementation of section 110 on December 1, 1978. They further allege that the Commission has no record to support its view that the class of persons possibly directly harmed by prospective application of the final rule is small.

Contrary to petitioner's contentions on rehearing, neither the legislative history nor section 110 on its face requires that the Commission's final implementing regulations be effective December 1, 1978. The legislative history precludes the denial of appropriate allowances. The Commission's interim and final regulations do not deny appropriate allowances. They establish a method of recovering certain production-related costs consistent with the legislative history.

Some petitioners incorrectly argue that the Commission delayed its implementation of section 110. These petitioners overlook the interim rules in effect since December 1, 1978, and the amendments made to those rules after that date. In essence, petitioners would have the Commission invalidate the rules that have been effective since enactment of the NGPA by applying new rules to old transactions. This we decline to do for the reasons stated in Order No. 94–A and herein.

Some petitioners argue that they have invested capital in reliance on a retroactive application of the final rule. This argument is difficult to follow since sellers had no way of knowing the configuration of the final rules on December 1, 1978, or at any time before issuance of the final rule. Any capital investments made before January 24, 1983 must have been based on the then existing rules. There was no other reference point available. If the final rules result in any hardship, inequity, or an unfair distribution of burdens, a first seller may file for relief under section 502(c) of the NGPA.

In a separate but related issue, § 271.1104(e)(2) of the final rule permits a first seller to collect interest on past costs incurred to deliver or compress natural gas if expressly authorized under the terms of the contract. Petitioners argue that the Commission should not require contractual authorization to collect interest because the Commission is responsible for the delay in issuing rules providing for generic allowances.

There are several difficulties with petitioners' contention that the Commission should permit a charge for interest in the absence of contractual

[35] Pennzoil Co. V. FERC, 671 F.2d 119, 126 (Former 5th Cir. 1982) ("*Pennzoil II*"). The Court affirmed the Commission's Order No. 99, Final Rule High-Cost Natural Gas Produced from Tight Formations, Docket No. RM79–76, (issued Aug. 15, 1980), and Order No. 99–A, Order Denying Rehearing and Clarifying Order No. 99, Docket No. RM79–76 (issued Oct. 21, 1980). Section 271.702(a)(1) of the final rule restricted entitlement of an NGPA section 107 price to a "contract which either specifically references the incentive pricing authority of the Commission under section 107 of the NGPA or contains a fixed rate or a fixed escalator clause. * * *"

[36] Order No. 94–A, 48 FR at 5161 (February 3, 1983), III FERC Stats. and Regs. ¶ 30,419 at 30,355–56.

Order No. 94–A contains a special rule in § 271.1104(e)(1) which permits collections of delivery and compression allowances to the earlier date of an application, or July 25, 1980, the date Order No. 94 was issued. Petitioners argue that this treatment permits first sellers to collect delivery and compression allowances retroactively. To the contrary, Order No. 94 itself suspended applications and stated that the Commission would permit the collection of such generic allowances to the earlier of the dates mentioned when the Commission established such allowances. *See* Order No. 94, FERC Stats. and Regs., Preamble ¶ 30,178 at 31,218 (1977–1981); Order No. 94–A, 48 FR at 5168 (February 3, 1983), III FERC Stats. and Regs. ¶ 30,419 at 30,367.

authorization. First, the requirement of express contractual authorization is a safeguard of the rule to prevent sellers from making unjustified charges, and elimination of that safeguard would expose purchasers to a claim not in the contemplation of the parties. Second, it is logically compelling to conclude that because collection of past costs to deliver and compress gas must be expressly contractually authorized, the collection of interest on such amounts also must be so authorized.

Third, Order No. 94 gave clear notice that the Commission was temporarily suspending applications for compression and delivery allowances pending development of generic allowances.[37] First sellers were, therefore, aware that there would be a delay in the development of generic allowances. Having such notice, the parties could have agreed to provide for the payment of interest under the terms of their gas sales contract. It is inappropriate for the Commission to renegotiate contracts on behalf of sellers who failed to provide for the collection of interest.[38]

F. Inflation Recovery

The final rule establishes defined limits concerning the recovery of allowances for necessary production-related costs. These limits are expressed through a methodology for treating and conditioning which accounts for costs over the next two years and through generic limits in the case of delivery and compression. Petitioners contend these limits should escalate by the annual inflation adjustment factor defined in NGPA section 101(a). In support of this view, they seem to argue that inflation adjustments apply to prices and that allowances under section 110 are prices.

Petitioners confuse the pricing objectives of NGPA sections 102 through 109, which expressly require application of section 101(a) inflation adjustments, with the cost recovery objectives of section 110. Section 110 does not establish a maximum lawful price, but rather authorizes the Commission to permit allowances for recovery of necessary costs. Unlike sections 102 through 109, section 110 does not expressly require application of the annual inflation adjustment factor to production-related allowances.

Petitioners also fail to recognize that the limits of the rule are cost-based and take into account the effect of inflation up to 1985. The methodology for treating and conditioning recognizes anticipated operating and maintenance expenses for 1983 and 1984 on the basis of specific costs. Moreover, the generic allowances for delivery and compression facilities are representative of costs through January 1, 1985 when the Commission may revisit the issue of recovery of the costs of inflation. To the extent these allowances result in special hardship, inequity, or an unfair distribution of burdens, a first seller may file an application for relief under NGPA section 502(c).[39]

G. Double Recovery

Some petitioners are concerned that the NGPA Title I price for section 104 gas already includes compensation for production-related costs and that double recovery would result if the Commission were to permit section 110 allowances to apply to first sales of gas under this section. Petitioners also request that the Commission nullify contractual provisions which result in the collection of costs already recovered in NGPA maximum lawful prices.

Section 110 of Title I provides that a first sale price shall not be considered to exceed the maximum lawful price if such first sale price exceeds the maximum lawful price to the entent necessary to recover production-related costs. In explaining section 110, the Conference Report specifically provides that "all ceiling prices under the Act are are exclusive of state severance taxes borne by the seller and any adjustment which may be allowed by the Commission for specified production-related costs."[40] Neither section 110 nor the Conference Report contains any exception in the case of first sales made under section 104 to preclude the addition of production-related allowances to first sale prices made under that section. Accordingly, petitioners' reliance on earlier phases of the legislative history is misplaced in light of section 110 and the above-cited Conference Report language that NGPA maximum lawful prices are exclusive of Commission-approved allowances under section 110.[41]

Sections 102 through 109 of Title I establish maximum lawful prices for first sales of raw gas at the wellhead or of gas at any other point downstream before commingling in a pipeline's system supply. The fact that the maximum lawful price applies at the wellhead indicates a Congressional intent that the maximum lawful price does not include production-related costs. Congress intended that the maximum lawful price apply to a first sale even if no production-related services are performed. If such costs are incurred, then the first sale price may be exceeded by the amount of the production-related allowance.

Petitioners also cite another section of the NGPA Conference Report explaining section 110 that "in certain cases, the just and reasonable rates under the Natural Gas Act include an allowance for production-related costs. The Conference Report is not intended to alter or change that practice."[42] Contrary to petitioners' contention, the Commission interprets this statement to mean that the Commission in implementing section 110 may continue its prior practice under the Natural Gas Act to recognize adjustments to the national base rate.[43] The final rule continues that practice by recognizing adjustments to the maximum lawful price.

NGPA section 104 incorporates as maximum lawful prices the unadjusted base national rate which the Commission determined to be just and reasonable under the Natural Gas Act. Section 104 escalates the unadjusted base national rate for inflation. In Opinion No. 90, the Commission indicates that the NGPA section 104 maximum lawful price is the base national rate without recognized Natural

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[37] *See* n. 36, *supra*, for a related discussion in the final rule and Order No. 94.

[38] The Application of Indicated Producers filed February 22, 1982, Docket No. RM80-47-005, at 21, comments that "The Commission has set a rate of interest generally applicable to payments or refunds which it prescribes." The Application for Rehearing of Gulf Oil Corp., filed February 23, 1983 (Docket No. RM80-47-006) at 3 disagrees with Producers' comment "to the extent that their statement could be interpreted as on statement that the Commission's generally applicable interest rates apply to all payments or refunds." Because it is unclear what Indicated Producer's point is, the Commission is unable to clarify Gulf's concern with producers' comment.

The Commission only intends that the interest rate formula stipulated in 18 CFR 154.102 for producer refunds of excessive rates be applicable to determine the rate of interest for allowances for past costs incurred to deliver and compress gas, if the collection of interest was expressly authorized in the gas sales contract.

[39] The Commission's interim rules for delivery and compression acknowledge that inflation has been taken into account in developing the five cents delivery allowance for old delivery systems at least to 1985. The Commission indicated that it may reevaluate the effect of inflation, after 1985, on allowances for gas which is still regulated. 48 FR 5184 (February 3, 1983), III FERC Stats. and Regs. ¶30.420 at 30,395.

[40] Conference Report, I FERC Stats. and Regs. ¶ 3.101 at 3,098.

[41] The "Application for Rehearing of Order No. 94-A by the Public Service Commission of the State of New York," filed Feb. 23, 1983, Docket No. RM80-47-008, at 4, cites H. Rept. No. 94-543, Vol. II, 95th Cong., 1st Sess. at 399.

[42] *Id.* I FERC Stats. and Regs. ¶ 3.101 at 3,095.

[43] *See* FPC national rate regulations, I FERC Stats. And Regs. ¶ 10,456A and 10,456B (18 CFR 2.56, 2.56(a) (1982)).

Gas Act adjustments. Opinion No. 90 [44] observed that:

> In our regulations implementing Sections 104 and 106(a) of the NGPA (the provisions of the NGPA covering natural gas which is subject to our area and national rate opinions), the Commission indicated that the base area and national rates, not the adjusted area and national rates, were the rates which should be escalated for inflation in accordance with the provisions of Section 104 and Section 106(a).[7] * * *
>
> [7] The one exception was the Permian area rate which included serverance taxes."

In light of the Conference Report and the language of section 110, the Commission is not persuaded that there is any convincing reason to invalidate provisions of contracts made before the NGPA or to preclude contract amendments in order to avoid alleged double recovery. The solution which petitioners offer is unnecessary.

Petitioner's line of argument would have the Commission examine each gas sales contract to determine what amounts, if any, were actually being collected under various quality adjustment and other production-related cost provisions pursuant to contracts as of April 1977. The petitioner seems to suggest that this procedure is necessary to avoid double recovery of costs to bring gas to minimum quality standards and to determine pre-NGPA industry practices.

The Commission is not persuaded that this suggestion has any merit. First, inquiring into the terms of individual gas sales contracts would be an extremely burdensome and administratively time-consuming effort producing no benefits at the conclusion of the process. Second, inquiry into contracts relating to first sales which took place six or more years ago would be a futile venture into stale transactions and would have remote relationship to current industry practice which is the basis of the final rule. Nothing in the NGPA warrants this type of administratively burdensome investigation.

H. Issues Related to Allowances for Treating and Conditioning

1. *Notice and Comment.* Some petitioners allege that they did not have adequate public notice and opportunity to comment on the cost-of-service methodology for computing the limits of necessary costs to treat and condition gas.

The Commission believes these petitioners are in error if their claim is that notice of every item of the final regulations is required. Notice is adequate when it provides a description of the subjects or issues being considered by the Commission.[45] 5 U.S.C. 553. This the Commission has done.

Concerning the specific issue raised by the commenters, *i.e.*, the methodology for determining allowances for production-related services like treating and conditioning, it is true that no methodology was specifically proposed by the Commission prior to the issuance of Order No. 94–A. However, the issue of the appropriate level of cost recovery has been an issue since the beginning of this proceeding. Throughout the proceeding, many commenters maintained that the Commission should allow recovery of all costs set out in section 110, not merely those costs to exceed minimum quality standards, plus a return on equity.[46] Other commenters echoed this claim urging the Commission to allow the recovery of out-of-pocket costs plus a return on investment.[47]

After considering these comments which fairly discussed the issue of the appropriate level of cost recovery, the Commission adopted a methodology which provides for recovery of no more than an amount necessary to recover production-related costs, *i.e.*, the costs urged by certain commenters.

The methodology set out in Order No. 94–A provides a mechanism which is responsive to the comments regarding recovery of costs to perform production-related services like treating and conditioning. Moreover, it is a methodology which follows very closely the Commission's experience in setting an amount that allows cost recovery plus a reasonable return under the Federal Power Act and the Natural Gas Act. Thus, the methodology is in no way unusual or unique. Because the methodology is based on accepted rate setting principles and responds to comments, we believe that all commenters were on notice that a cost recovery methodology like, or very similar to the one set out in Order No. 94–A could be adopted. We do not believe the Commission is required to provide additional notice and comment when it, in essence, adopts a proposal urged by a commenter.

2. *Direct Taxes and General and Administrative Expenses.* The Commission's regulations include operation and maintenance expenses in the cost-of-service methodology for treating and conditioning without defining the nature of those expenses. The preamble to the regulations explains the Commission's intent to include federal income taxes in the cost of service methodology and to exclude general and administrative expenses allocated to treating and conditioning.[48] petitioners seek clarification of or rehearing on the Commission's treatment of direct taxes which are not specifically discussed in the preamble or the regulations and reconsideration of its treatment of general and administrative expenses under its cost of service methodology for treating and conditioning allowances.

The Commission believes that direct taxes are a legitimate cost of doing business and, therefore, the Commission intends direct taxes to be included in the cost of service methodology. To accomplish this objective, the Commission is designating direct taxes as "taxes other than income taxes". This treatment is consistent with the treatment of direct taxes under the Commission's Uniform System of Accounts for natural gas companies.[49] Section 271.1104(d)(3)(A) is amended, therefore, to clarify that intention by adding a new subsection (5) to include taxes other than income taxes developed for each of the years 1983 and 1984 on the basis of actual taxes paid in 1981 and 1982, as available, and estimates of future taxes. Because this is a clarification of the intent in the final rule, the Commission believes that there is good cause to make the amendment effective on publication in the **Federal Register.**

The Commission properly excluded general and administrative expenses allocated to treating and conditioning because this type of cost typically represents a relatively small part of a company's total costs and because of the difficulty involved in making cost allocations of such expenses. Petitioners have offered no evidence that such expenses constitute a large cost item or that their allocation would not be difficult. Accordingly, administrative and general expenses are excluded from the Commission's cost-of-service

[44] Phillips Petroleum Co., Docket No. CI77–412, Opinion and Order Granting Rehearing in Part and Denying Rehearing in Part (issued July 25, 1980) 12 FERC ¶ 61,080 at 61,151.

[45] For cases discussing the requirement of the Administrative Procedure Act that an agency give fair notice of proposed actions, *see* Pennzoil Co. v. FERC, 645 F.2d 360, 371–72 (5th Cir. 1981), *cert. denied*, 454 U.S. 1142 (1982); Missouri v. Block, 690 F.2d 139, 143 (8th Cir. 1983); and BASF Wyandotte Corp. v. Costle, 598 F.2d 638, 641 (1st Cir. 1979).

[46] *See* Order No. 94, FERC Stats. and Regs., Preambles ¶ 30,178 at 31,219 (1977–1981); *see also*, NGPA Interim Rules, FERC Stats. and Regs., Preambles ¶ 30,028 at 30,183 (1977–1981).

[47] Order No. 94, FERC Stat. and Regs., Preambles ¶ 30,178 at 31,222 (1977–1981).

[48] Order No. 94–A, 48 FR at 5167 (Feb. 3, 1983), III FERC Stats. and Regs. ¶ 30,419 at 30,365.

[49] See II FERC Stats. and Regs. ¶ 20,408 at 13,218 and Account 408.1 which is "taxes other than income taxes, utility operating income."

methodology for treating and conditioning allowances. The Commission, however, is aware that some smaller compaines may have substantial treating and conditioning operations. Where exclusion of general and administrative expenses imposes a special hardship, inequity, or an unfair distribution of burdens, a person may seek an adjustment under NGPA section 502(c).

3. *Allocation of treating and conditioning costs when crude oil, liquids or liquefiables are part of the gas stream.* Section 271.1104(d)(3) of the Commission's regulations requires an allocation of treating and conditioning costs when crude oil, liquids, or liquefiables are a part of the gas stream. The regulations provide for the so-called "straight Btu method" of cost allocation.[50] The regulations further provide that this method is to be used only when another method has not already been determined by the Commission as the appropriate method for the particular situation involved or when the Commission has not expressly prohibited the Btu method for the particular services involved.

Some petitioners argue that the Commission has permitted allowances for the costs of treating and conditioning the gas stream before removal of crude oil, liquids, or liquefiables without requiring an allocation of costs. Other petitioners argue that the Mcf basis for allocation is more appropriate than the Btu method because that method reflects the way costs are incurred.

With respect to the first contention, petitioners ignore the fact that the regulations require an allocation of treating and conditioning costs incurred prior to removal of crude oil, liquids or liquefiables from the gas stream. The Commission believes that gas customers should not be charged an allowance for production-related costs associated with crude oil, liquids, or liquefiables unless such costs were incurred to benefit gas customers. The Btu method allocates cost responsibilities in recognition of the possible benefit of the service to gas customers.[51]

With respect to the second contention, the Commission in its discretion decided that section 110 should be implemented using a heating value allocation method which relates the relative cost responsibilities to the various constituents and products based on their respective energy content. The Commission believes that the Btu method makes the difficult process of cost allocation simplier and administratively more manageable. The Commission's regulations do not preclude other approved methodologies, including the Mcf method, with respect to a particular service and seller, as appropriate.

Some petitioners cite the Administrative Law Judge's *Initial Decision on Liquids/Liquefiables Issue, Southern Natural Gas Co.*, Docket Nos. RP80-102-006, *et al.*,[52] as support for the proposition that the Mcf method of allocation is appropriate for purposes of allocating the costs of treating and conditioning the gas stream under section 110 of the NGPA prior to the removal of crude oil, liquids, or liquefiables.

Although that decision did conclude that a volumetric allocation methodology was appropriate for the purpose of allocating costs to liquefiable hydrocarbons,[53] that decision is an initial decision of an Administrative Law Judge and is pending on review before the Commission. Consequently, it is unclear at this time what the outcome of the issues raised will be. Moreover, even if the Commission were to affirm that decision, the decision would have no bearing on the final rule because the relevant issue in *Southern Natural Gas Co.* is the appropriate methodology to allocate transmission costs to liquids and liquefiables in the context of a particular pipeline rate case. The decision does not deal with the allocation of treating and conditioning costs when crude oil, liquids, or liquefiables, are a part of the gas stream.

I. Processing.

Section 271.1104(c)(7) of the final regulations removes "processing"[54] from the list of activities included within the definition of production-related costs. Certain petitioners argue that the Commission erred in removing the term "processing" or at least should clarify its intent to permit an allowance for processing in appropriate circumstances. In support of their position, they point to the language of NGPA section 110 which includes processing as one of the activities for which "production-related costs" can be allowed and to certain situations in which consumers are benefited as a result of removal of high valued products regardless of the technical definition of the removal procedure.

These petitioners overlook the broad discretion which Congress gave the Commission to implement section 110. The Commission has exercised its discretion to preclude collection of allowances for processing because of its conclusion that processing costs generally are not incurred for the benefit of gas customers. Indeed, the revenues from the sale of these products accrue to the owners of the products.[55] Because processing generally does not confer a benefit on gas customers, gas customers should not be responsible for paying for this activity. However, the adjustment procedure of § 271.1106 applies to processing costs in the event of special hardship, inequity, or unfair distribution of burdens.[56]

III. Requests for Clarification of Order No. 94-A

Petitioners have requested clarification of §§ 271.1104(c)(4), 271.1104(f)(1), and 271.1104(g) of the final rules in various respects.[57] The discussion below considers each request for clarification by reference to the related section of the final rule. The following discussion also clarifies the Natural Gas Act filing requirements in § 154.94(k)

A. Effect of Contract Amendments (§ 271.1104(c)(4))

Indicated Producers ("Producers") ask the Commission to clarify the regulations to provide that contracts may be amended prospectively without a seller's being held to have waived any claim that the original contract language was sufficient to authorize collection of the allowances.

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[50] Order No. 94-A, 48 FR. At 5165 (Febuary 3, 1983), III FERC Stats. and Regs. ¶ 30,419 at 30,362; 18 CFR 271.1104(c)(7)(ii), II FERC Stats. and Regs. ¶ 24,214 at 14,375.

[51] *Id.*, 48 FR at 5165 (February 3, 1983), III FERC Stats. and Regs. ¶ 30,419 at 30,363. The amended definition of "production-related costs" recognizes the point made by commenters and petitioners that the "mere fact that a particular cost is incurred to handle liquids or liquefiable hydrocarbons does not mean that gas customers derive no benefit from the activity that engendered that cost." The first seller and purchaser must be prepared to demonstrate that benefit.

[52] Initial Decision on Liquids/Liquefiables Issue, Southern Natural Gas Co., Docket Nos. RP80-102-006, 22 FERC ¶ 63,026 (issued January 27, 1983).

[53] *Id.*, 22 FERC ¶ 63,026 at 65,118.

[54] Processing refers to the extraction of high-valued natural gas liquids or liquefiable hydrocarbons, including ethane, propane, butane, natural gasoline other hydrocarbon constituents, and non-hydrocarbon products of value such as helium. Usually, their removal is not necessary for safe and efficient handling and transportation of natural gas. Rather, these constituents have a commodity value of their own to the owner of the constituents, independent of the natural gas stream from which they are extracted. See Order No. 94-A, 48 FR at 5153, 5165 (February 3, 1983), III FERC Stats. and Regs., ¶ 30,419 at 30,345 and 30,363.

[55] *Id.*, 48 FR 5165-66 (February 3, 1983), III FERC Stats. and Regs. ¶ 30,419 at 30,363.

[56] *Id.*

[57] Petitions for clarification and reconsideration are listed at n.8, *supra*.

The final rule permits a seller and purchaser of gas to amend their contract to expressly authorize the collection of production-related allowances. Typically, a gas sales contract would be amended to reflect the intent of the parties concerning production-related costs and services. For example, because an area rate clause would not suffice, a contract would have to be amended to expressly authorize treating and conditioning allowances, unless there is express authorization in the contract. In this example, a seller could gain no advantage in relying on the authority of the existing contract.

However, in cases where there is a question whether the existing contract meets the requirements of the rule, producers would have the Commission preserve their rights as first sellers under the existing contract while they seek to amend their contract to meet the requirements of the rule. If the parties determine that an amendment is necessary to provide adequate authority to charge for an allowance, neither the purchaser nor the seller should be permitted by rule to select the most favorable contractual provisions for the payment of production-related services. The parties are bound by their own agreement which reflects their intent as to the authority and applicability of contract provisions. The parties will typically include a provision in the contract concerning the effect of an amendment on existing contract language. If the parties do not provide for this contigency, a court may be asked to decide whether the amendment supersedes the language of the existing contract or precludes reliance on it. The Commission is not convinced that it is appropriate to amend its regulations as petitioners request because such an amendment may modify a purchaser's legal defenses in a way that is inconsistent with the intent of the parties.

B. Conflict Between an Area Rate Clause and a Specific Contract Provision (§ 271.1104(c)(4))

The preamble of the final rule provides that a specific contractual provision expressly authorizing a delivery allowance prevails over an area rate clause unless both clauses operate in the alternative in which case the parties must mutually agree which should control.[58]

Petitioners contend that by virtue of this statement the Commission is requiring additional contract authority for collection of allowances. To the contrary, the Commission is merely referencing a rule of contract construction which it believes reflects reasonable commercial practice. It is expected that if a gas sales contract were amended to add an area rate clause, the parties at that time would have included a provision in their contract expressing their intent as to the applicability of the area rate clause and the specific contract provision. If the parties have not covered this contingency in their agreement, a specific contract clause specifying a delivery allowance prevails over an area rate clause unless the provisions are phrased in the alternative.

C. Side Agreements (§ 271.1104(c)(4))

The final rule is premised on the written gas sales contract and requires that the parties include provisions for express contractual authorization to collect production-related allowances in the gas sales contract.[59] One petitioner complains that the Commission cannot disregard the validity of written side agreements providing for production-related services or a gas sales contract which has no specific contractual provisions with respect to production-related allowances but where it was the intent of the parties to perform and pay for such services.

The Commission has identified the gas sales contract as a commercially practicable, simple, and administratively manageable means to determine whether or not a first seller can collect production-related allowances. As a result of this requirement, a first seller is precluded from collecting such allowances if he has used "side agreements" which by definition are separate and apart from the gas sales contract.[60] If the Commission were to recognize side agreements as express contractual authorization for purposes of section 110, the Commission and purchasers would be unable to monitor compliance with the rules which must be determined by reference to area rate clauses and separate provisions dealing with payment for production-related services. The gas sales contract typically includes such provisions, and it is appropriate to require the parties to place these related clauses together in a single gas sales contract.

Further, the requirement in the final rule for express contractual authorization would be nullified if the Commission were to permit subjective understandings to be the equivalent of express contractual authorization. If there are no corroborative provisions indicating express contractual authorization in the gas sales contract, oral agreements or trade usage do not by themselves meet the requirements of the rule.

D. Seller Sample Contract Provisions (§ 271.1104(c)(4))

The general rule of § 271.1104(a) requires a first seller to be expressly authorized to be compensated for bearing a production-related cost. Section 271.1104(c)(4) of the Commission's regulations defines the term "expressly authorized". First, under the express provisions of the gas sales contract, the seller must agree to provide a specified production-related service. Second, the purchaser must agree to compensate the seller for providing that specified service and pay an amount separate from the amount paid for the gas. Indicated Producers ask the Commission whether certain hypothetical situations encompassed in a contract between a first seller and purchaser reference adequate contractual authority to qualify for collection of production-related allowances under Order No. 94–A.[61]

In summary, the specific situations cited by petitioners provide that if a contract requires that gas be delivered subject to quality standards, or to a delivery point at a specified pressure, or to some point other than a wellhead or lease separator, then the seller is

[58] Order No. 94–A, 48 FR 5164, III FERC Stats. and Regs. ¶ 30,419 at 30,360.

[59] *Id.*, 48 FR 5162, III FERC Stats. and Regs. ¶ 30,419 at 30,358.

[60] *Id.*, 48 FR 5163, III FERC Stats. and Regs. ¶ 30,419 at 30,359.

[61] *See* pages 5 and 6 of Indicated Producers' application for rehearing of Order No. 94–A [RM80–47–005). The relevant text is as follows:

A. A contract between a producer and a pipeline which requires gas to be delivered subject to quality standards which specify the maximum amounts of water vapor, hydrogen sulphide, total sulphur, carbon dioxide, or other impurities which may be contained in the stream delivered to the pipeline, is a specific requirement that the producer install whatever facilities may be needed to treat and condition the gas produced at the wellhead so that it meets with the quality specifications contained in the contract.

B. A contract between a producer and a pipeline which requires the producer to deliver gas at a delivery point at a pressure sufficient to permit the gas to enter buyer's facilities at that point, sets a maximum pressure at which buyer's facilities may be operated at that point, or provides that either party may, but neither is required to, install compression to deliver or receive the gas is a specific provision requiring the producer to install compression which will entitle the producer to the production-related cost allowance for compression, if the producer installs the compression.

C. A contract between a producer and a pipeline which provides that the producer will deliver the gas to the pipeline at some point other than the wellhead or lease separator is a specific requirement that the producer construct the necessary gathering system to deliver the gas to the delivery point.

thereby required to construct the relevant type of production-related facility. Although the submitted factual situations illustrate an agreement to perform a production-related service, they do not illustrate a purchaser's agreement to pay an amount for the service performed separate from the amount paid for the gas. Because the discussed situations do not satisfy both requirements of § 271.1104(c)(4), a first seller would not be entitled to collect production-related allowances.

It is difficult, however, to express a judgment in the abstract without further elaboration of the factual context of the hypothetical situations. An interpretation of the General Counsel under Rule 1901 of the Commission's Rules of Practice and Procedure may be requested to provide further guidance.

E. Description of Charges (§ 271.1104(f))

One petitioner expresses concern that a seller may accrue allowances from the effective date of the final rule, March 7, 1983, and give the purchaser notice at some future date of an intent to collect retroactive to that date for services performed.

The final rule contemplates that a typical transaction under the rule will consist of: the parties' determination of express contractual authorization, performance of the service, submission of a description of charges, billing for the charges, and collection of payment. The final rule provides that as of March 7, 1983 a first seller may charge generic allowances for those production-related services which are contractually authorized. The Commission's regulations also require a seller to notify a purchaser before a seller may charge contractually-authorized production-related allowances to the maximum lawful price. The seller must submit a description of charges to the purchaser a reasonable time prior to the charge. It is implicit in the final rule that the description of charges must be received prior to a seller's collection of allowances because collection would be made after a seller charges or bills for services performed and after a purchaser's receipt of the description of charges.

Current regulations do not preclude a seller's performing production-related services on or after March 7, 1983 and before the description is submitted to the purchaser. This situation may well be a typical one. Because the purchaser would have expressly agreed in the gas sales contract that the seller could perform the service under those circumstances, purchaser's receipt of the description of charges should not take him by surprise.[63] If the purchaser disputes the charges, he may ask the seller to validate the proposed charges before making payment.

In a related matter, Southern Union Gathering Co.[64] recommends that the rule be changed to guarantee a first seller a minimum of 120 days after this order to provide the purchaser with a description of charges applicable to delivery services beginning March 7, 1983.

Order No. 94–A requires first sellers to provide a description of charges a "reasonable time" prior to charging the purchaser for the allowance. The Commission expects a reasonable start-up period during the implementation process. Because of the complexity and diversity of corporate operations, it is not realistic to establish a specific time requirement. The regulations, therefore, contemplate that the parties will agree on a "reasonable" time.

F. Procedures to Contest the Allowance (§ 271.1104(f))

Some petitioners request that the regulations be amended to provide a clearer procedure which will allow purchasers to evaluate the correctnes of the claimed allowance and to contest the amount of the allowance or seller's eligibility to collect the allowance. Specifically, petitioners, citing separate Docket No. RM 83–6,[64] recommend that the Production-Related Costs Board provide expedited review of these issues prior to the time the purchaser begins to pay allowances.

The Commission will consider petitioners' suggestion in connection with Docket No. RM 83–6. The Commission's regulations contemplate, however, that private party disputes concerning the seller's authority to collect an allowance following receipt of a description of charges will be resolved by resort to federal or state courts or third party arbitration rather than by the Commission. Any person can file a complaint with the Commission under Rule No. 206 of the Commission's Rules of Practice and Procedure if he believes that the allowances claimed in the description of charges violate the final rule.

Petitioners express the view that the Commission should amend its interstate pipeline PGA regulations to require all pipelines to identify separately their section 110 allowances paid as part of PGA filings with the Commission. While the Commission recognizes that third parties may wish to identify certain section 110 collections in PGA cases, the Commission also recognizes that not all requests will seek access to the same types of information. Nevertheless, interstate pipelines are required to maintain section 110 information as part of their PGA workpapers which should be sufficient to provide the data needed by petitioners.[65]

One petitioner requests that § 271.1104(f) of the regulations be amended to provide the purchaser with the information necessary to verify the accuracy of a seller's anticipated charges prior to the time the purchaser is billed for the allowances and pays the bill.

The Commission is of the view that an interstate pipeline must be able to explain and justify its section 110 payments. The Commission is also of the opinion that inclusion in the description of charges of the amount per MMBtu to be charged, the specified service for which the charge is to be made, and the contractual provisions expressly authorizing the charges should give the purchaser sufficient information to review the anticipated charge. Should the purchaser need additional data or computations from the seller to justify the charges, the purchaser may request such information from the seller before paying any bill or provide for the right to such information in the gas sales contract. The Commission believes that this approach is less burdensome on both purchasers and sellers than requiring a seller to submit the information in instances when the purchaser does not request it.

[63] If, however, the parties have agreed that no services should be performed until after the description is provided, then allowances may accrue only from and after the date of such description.

[64] Southern Union Gathering Company's "Petition for Clarification and Application for Rehearing" (Docket No. RM80–47–010) was recorded as received in the Secretary's office on February 24, 1983 at 8:57 a.m., the day following the deadline for filing petitions for rehearing. On April 29, 1983, petitioner filed a letter with the Commission arguing that its Application for Rehearing was timely filed because it was delivered to the Commission on February 23 shortly after the Secretary's office had closed at 5:00 p.m. Petitioner requests a waiver of 18 CFR 375.101(c) (1982) establishing the office hours of the Commission between 8:30 a.m. and 5:00 p.m. so that its application for rehearing may be treated as timely filed. The Commission rejects these connentions on the authority of Rule of Practice 2001(a)(2) (18 CFR 385.2001(a)(2) (1982)) which provides that "Any document is considered filed on the date stamped by the Secretary. . . . . Any document received after regular business hours is considered filed on the next regular business day." Because petitioner's application was received after regular business hours on the 30th day, the petition is late-filed. However, Southern Union's application will be treated as a request for clarification and is considered in this Order and Order No. 94–D.

[64] *See*, n.6, *supra*.

[65] Order No. 94–A, 48 FR. at 5169 (February 3, 1983), III FERC Stats. and Regs. ¶ 30,419 at 30,369.

The Commission, however, wishes to clarify that § 271.1104(f) requires first sellers to provide a separate description of charges for each type of production-related service from a single well or completion location. No amendment to the rule is necessary because the rule already requires "a" description of charges for each well or completion location for the specified production-related service for which the charge is to be made.

G. Scope of 18 CFR 271.1104(g)

The Commission added paragraph (g) to § 271.1104 of the final regulations to provide an alternative procedure for those first sellers offering unique services not represented by paragrphs (b) through (e) of § 271.1104. Paragaraph (g) provides, among other things, relief to first sellers transporting natural gas through delivery systems where the gas physically flows for distances greater than 20 miles and where construction of the facilities commenced on or after November 9, 1978.

Southern Union Gathering Co. seeks clarification and/or rehearing with respect to the scope of § 271.1104(g) and requests that § 271.1104 be explicitly applicable to it and all similarly situated sellers to permit recovery of delivery allowances by application.

The Commission does not intend that paragraph (g) apply, in general, to delivery systems where construction commenced prior to November 9, 1978 because such systems are addressed in paragraphs (b) through (e) of § 271.1104 and will be adequately compensated by the 5 cent per MMBtu delivery allowances applicable to such pre-NGPA systems.

However, the Commission does intend paragraph (g) to be applicable to first sellers even where construction of the seller's system commenced prior to November 9, 1978, if such first sellers demonstrate that their systems provide services which are not represented by paragraphs (b) through (e) of § 271.1104. This would include systems that the Commission previously has afforded special regulatory treatment. Accordingly, the Commission intends paragraph (g) to apply to petitioner, Southern Union Gathering Company, which company has historically been afforded cost-of-service treatment and would otherwise have been limited to the generic gathering allowance provided other producer-gatherers. The Commission will consider the applicability of subparagraph (g) to other companies on a case-by-case basis.

H. Clarification of Natural Gas Act Filing Requirements (§ 154.94(k))

In Order No. 94–A, the Commission amended 18 CFR 154.94 by introducing a new paragraph (k) requiring that sellers file an affidavit to collect production-related cost allowances for gas still subject to the Commission's Natural Gas Act jurisdiction. [66] The Commission believes that certain conforming changes are necessary to portions of 18 CFR 154.94 (k) to better reflect the Commission's intent in promulgating these rules. First, the Commission amends 18 CFR 154.94(k)(2) to reflect the Commission's intent that sellers must amend the affidavit to reflect any changes in eligibilty to recover production-related costs under new or old contracts. [67] This rule change comports with related language in the preamble of Order No. 94–A. Second, the Commission amends 18 CFR 154.94(k)(4) to eliminate two inaccuracies of the final rule. The final rule provides that an affidavit filed on or after March 7, 1983 and through and including May 6, 1983, shall be effective for deliveries beginning on March 7, 1983. The rule also provides that an affidavit filed after May 6, 1983, is effective on the date of filing, but the final rule does not refer to deliveries under the affidavit filed after May 6, 1983 even though the preamble does. The Commission amends 18 CFR 154.94(k)(4) to clarify that an affidavit filed after May 6, 1983 is to be effective on the date of filing with respect to deliveries beginning on and after the date of filing. In addition, the Commission wishes to delete the duplicative words "becomes effective" from § 154.94(k)(4).

These amendments shall become effective thirty days after publication in the **Federal Register.**

IV. Conclusion

The Petitions for Rehearing, Clarification, and Reconsideration are denied except as explained below in the ordering paragraphs. In denying these petitions, with the one exception noted, the Commission is affirming the final rule concerning the Commission's implementation of NGPA section 110. The final rule relies on the individual gas sales contract to determine quality standards and recoverable costs for treating and conditioning gas and requires express contractual authorization for a first seller to charge for production-related costs. The final rule improves the operation of the interim rules by eliminating a burdensome application process and inflexible generic minimum quality standards.

The Commission Orders that:

(1) For the reasons stated in Order No. 94–A and herein, that the Petitions and Applications for Rehearing, Clarification, and Reconsideration of Order No. 94–A are hereby denied except to the extent that suggestions and clarifications are incorporated into this order and to the extent the Commission hereby grants the Applications for Rehearing of Order No. 94–A of Indicated Producers and Gulf Oil Corp. to amend 18 CFR 271.1104(d)(3)(A) as set forth below; and

(2) For the reasons stated herein, the Commission hereby amends 18 CFR 154.94(k)(2), 154.94(k)(4), and § 271.1104(d)(3)(A), as set forth below; and

(3) For good cause shown in this Order, the requests of UGI Corporation and Associated Gas Distributors for a stay of the final rule are also hereby denied; and

(4) For good cause shown in this Order, the requests of Southern California Gas Company and Pacific Lighting Gas Supply Company for further comment are denied.

(Natural Gas Act, as amended, 15 U.S.C. 717, *et. seq.*; Department of Energy Organization Act, 42 U.S.C. 7101–7352; E.O. 12009, 42 FR 46267; Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432)

List of Subjects

18 CFR Part 154

Natural gas.

18 CFR Part 271

Natural gas, High-cost gas, Tight formations.

In consideration of the foregoing, Parts 154 and 271 of Title 18, Code of Federal Regulations, are amended as set forth below; amendments to Part 154 are to become effective thirty days after publication in the **Federal Register**, and the amendment to Part 271 is to become effective on publication in the **Federal Register.**

By the Commission.

Kenneth F. Plumb,

Secretary.

PART 154—[AMENDED]

1. Section 154.94 is amended by revising paragraphs (k)(2) and (k)(4) to read as follows:

[66] Order No. 94–A, 48 FR at 5170–71, 5178 (February 3, 1983), III FERC Stats. and Regs. ¶ 30,419 at 30,370–71.

[67] *Id.*

§ 154.94 Changes in rate schedules.

* * * * *

(k) * * *

(2) *Amendments.* The affidavit filed under subparagraph (1) of this paragraph shall be amended to reflect any changes in eligibility to recover production-related costs under new or old contracts.

* * * * *

(4) *Effective date of coverage under affidavit.* An affidavit filed under this paragraph by May 6, 1983, shall become effective with respect to deliveries beginning on March 7, 1983; an affidavit filed under this paragaph after May 6, 1983, shall become effective on the date of filing with respect to deliveries beginning on and after the date of filing. Any amendment filed under paragraph (k)(2) of this section will be subject to the notice requirements of § 154.22 of this chapter.

* * * * *

PART 271—[AMENDED]

2. Section 271.1104(d)(3)(A) is amended by removing the word "and" after the semicolon in paragraph (*3*), changing the period to a semicolon and inserting the word "and" after the semicolon at the end of paragraph (*4*), and adding a new paragraph (*5*), to read as follows:

§ 271.1104 Production-related costs.

* * * * *

(d) * * *

(3) * * *

(A) * * *

(*5*) Taxes other than income taxes for each of the years 1983 and 1984 on the basis of actual taxes paid in 1981 and 1982, as available, and estimates of future taxes.

* * * * *

[FR Doc. 83-14417 Filed 5-27-83; 8:45 am]

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18 CFR Parts 270 and 271

[Docket No. RM80-47-003, et al.; Order No. 94-D]

Regulations Implementing Section 110 of the Natural Gas Policy Act of 1978 and Establishing Policy Under the Natural Gas Act

Issued: May 24, 1983.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order denying rehearing and denying stay of Order No. 94-B.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is denying four petitions for rehearing of Order No. 94-B (48 FR 5190 (1983)). Order No. 94-B is a final rule that amended the regulations, effective March 7, 1983, to allow recovery of production-related costs under section 110 of the Natural Gas Policy Act of 1978 (NGPA, 15 U.S.C. 3301-3432) by sellers of gas sold pursuant to intrastate contracts subject to section 105 or 106(b) of the NGPA.

Order No. 94-D clarifies that a seller may recoup costs incurred in delivering section 105 or 106(b) gas by collecting section 110 allowances in reliance on an FPC clause in an intrastate contract if he and the purchaser amend their contract to state their mutual agreement that the FPC clause expressly authorizes, as defined in § 271.1104(c)(4), the collection of section 110 delivery allowances or the seller obtains a judicial determination that the FPC clause constitutes such authority. In either case, the seller may collect for deliveries on or after March 7, 1983, the effective date of Order No. 94-B.

The Commission is also responding to a request for clarification as to whether sellers of sections 105 and 106(b) gas may still apply to the Commission under § 271.1105 for recovery under § 271.505(c) and § 271.1104(b)(1) of production-related costs with respect to gas delivered prior to March 7, 1983. Those regulations were eliminated, effective March 7, 1983, by Order Nos. 94-A and 94-B. Accordingly, the Commission will consider an application under those regulations only if it was submitted to the Commission prior to March 7, 1983.

FOR FURTHER INFORMATION CONTACT: Jack Kendall, Office of the General Counsel, Rulemaking and Legislative Analysis Division, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426 (202) 357-8033.

SUPPLEMENTARY INFORMATION:

I. Introduction

In this order, the Federal Energy Regulatory Commission (Commission) is denying four petitions for rehearing or clarification of Order No. 94-B.[1] Order No. 94-B is a final rule that amended 18 CFR 271.1104, effective March 7, 1983, to allow recovery of production-related costs under section 110 of the Natural Gas Policy Act of 1978 (NGPA)[2] by sellers of gas sold pursuant to intrastate contracts subject to section 105 or 106(b) of the NGPA. Order No. 94-B also removed the general prohibition against shifting production-related costs to purchasers (the "no cost-shift rule") by eliminating 18 CFR 271.505 and 271.604.

II. Discussion of Petitions for Rehearing or Clarification

The Commission has received several applications for rehearing or clarification of Order No. 94-B. Those applications were filed by Exxon Company, U.S.A., on behalf of Producers [3] (Docket No. RM80-47-004), by UGI Corporation (UGI) (Docket No. RM80-47-007), Associated Gas Distributors (AGD) (Docket No. RM80-47-009), and Southern Union Gathering Company (Southern Union) (Docket No. RM80-47-010).[4]

The petitions for rehearing and clarification of Order No. 94-B raise several substantive issues. In general, these issues relate to whether the Commission has, in Order Nos. 94-A [5] and 94-B, erroneously permitted allowances for sellers of sections 105 and 106(b) gas or, to the contrary, discriminated against these sellers by imposing certain limitations upon them that were not imposed on sellers of other gas.

Some of the diverse issues raised in the petitions received by the Commission with respect to Order No. 94-A are also relevant to Order No. 94-B. Most of these issues relate to the scope of the Commission's discretion to implement NGPA section 110 and have been considered previously by the Commission. They concern the elimination of minimum quality standards and the application process, section 110 allowances for treating and conditioning costs and the allocation of these costs, the collection of section 110 allowances for prior periods, an annual inflation adjustment factor for computing allowances, and alleged

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[1] Order Amending Regulations in Subpart B of Part 270 and Subparts E, F, and K of Part 271 and Affirming Certain Final Regulations Issued in Order No. 66 [hereinafter cited as Order No. 94-B], 48 FR 5190 (1983).

[2] 15 U.S.C. 3301-3432 (Supp. IV 1980).

[3] "Producers" are the undersigned producers in "Aplication of Producers for Rehearing of Order No. 94-B" [hereinafter cited as Producers' Application], as well as Gulf Oil Corporation which both joined in Producers' comments and individually submitted an "Application for Rehearing of Gulf Oil Corporation of Order No. 94-A."

[4] In order to have sufficient time to consider the applications for rehearing, the Commission granted, by order issued March 11, 1983, rehearing of the regulations solely for purposes of further consideration. That Commission order stated that the Commission would consider the issues raised by the petitioners' requests for reconsideration or clarification at the same time.

[5] Regulations Implementing Section 110 of the Natural Gas Policy Act of 1978, and Establishing Policy Under the Natural Gas Act, Final Rule and Order on Rehearing of Order No. 94 [hereinafter cited as Order No. 94-A], 48 FR 5152 (1983)

double recovery in collecting section 110 allowances in addition to NGPA maximum lawful prices.

The petitions addressing Order No. 94–A also raise several issues for the first time on rehearing that relate to Order No. 94–B. These new issues include allegations that the Commission did not adequately consider the consequences of its section 110 regulations on NGPA objectives, consumers of natural gas, and the environment. Petitioners also complained that the Commission did not provide adequate opportunity for public comment on the cost of service methodology for treating and conditioning natural gas. In addition, petitioners argue that the requirement for express contractual authorization to collect allowances unduly interferes with private contracting practices. Petitioners also raise matters relating to production-related allowances for processing costs, the recovery of direct taxes, and the allocation of general and administrative expenses for treating and conditioning gas. To the extent any of the issues raised in the petitions regarding Order No. 94–A are also relevant to Order No. 94–B, the Commission's reasons set forth in Order No. 94–C[6] for denying those petitions are incorporated by reference.

As indicated above, most of these issues were considered by the Commission prior to issuing Order Nos. 94–A and 94–B, as the regulatory changes effected by those final rules were made in light of an exhaustive public record spanning a four year period.[7] On December 1, 1978, the Commission issued interim regulations under the NGPA which established an application procedure for first sellers to request Commission approval to collect allowances in excess of the applicable maximum lawful prices to recover production-related costs.[8] Those interim regulations contained minimum quality standards for the total content of sulphur, hydrogen sulphide, water, carbon dioxide and other impurities. As a general matter, only sellers that were treating, conditioning or processing the natural gas stream to enable it to exceed the minimum quality standards were eligible to apply for price adjustments, and their applications were limited to only those costs incurred to exceed the standards.[9] Costs for production-related services to meet the minimum quality standards were excluded because, as a matter of prevailing industry practice as represented by gas contracts on file with the Commission, sellers regularly agreed to deliver gas which met the standards.[10]

Section 271.1105(b) of the interim regulations provided that no section 110 production-related cost allowance would be allowed for gas subject to an "existing intrastate contract,"[11] an "intrastate rollover contract,"[12] or a "successor to an existing intrastate contract."[13] This exclusion was deemed necessary because existing contract provisions "reflect the allocation of costs of production as they were contemplated by the parties at the time the contract was negotiated,"[14] and that any change in such provisions would change the "price" actually paid for the gas. These considerations also led to adoption of the "no cost-shift rule" set forth in §§ 271.505 and 271.604 of the interim regulations which prohibited contract amendments that allocated production-related costs to the purchaser in a manner that differed from that under the contract as it existed on November 9, 1978.[15]

In Order No. 94,[16] the Commission amended the interim regulations in significant respects. However, Order No. 94 continued the general exclusion of production-related costs incurred to meet minimum quality standards.[17] In addition, in Order No. 68,[18] which implemented final rules for sections 105 and 106(b), the Commission reaffirmed the "no cost-shift rule" by stating that the term "price", as used in sections 105 and 106(b), meant all proceeds of a sale. Further explanation of the basis for the "no cost-shift rule" was provided by the Commission in Order No. 68–A, in which the Commission stated its view that Congress intended "price" in sections 105 and 106 to have meaning only when related to a specific set of obligations allocated between the parties as of November 9, 1978, the date of enactment of the NGPA.[19] Under this view, the price received under the NGPA by a seller of intrastate gas should be no greater than the price it would have been entitled to receive on November 9, 1978, assuming the same contractual obligations and allocation thereof between the parties that existed on that date. Therefore, so long as the Commission did not permit parties to reallocate their contractual obligations under the contract as it existed on November 9, 1978, the sections 105 and 106(b) ceiling prices would provide, as the Commission concluded, reimbursement for the costs of those production-related services for which a seller was responsible under the terms of its contract that were in effect on November 9, 1978.[20]

In Order No. 68–A the Commission revised the regulations to provide for the first time that a seller of section 105 or 106(b) gas could apply for an allowance for a production-related cost that the seller was not obligated to incur under his "existing intrastate contract."[21] The reason for this change was that it was appropriate to permit allowances for costs of new or different services not bargained for in the contract in existence on the date of enactment of the NGPA. However, if a particular cost, such as that of gathering, was allocated to the seller under the terms of the existing contract (*i.e.*, the contract as it was in effect on November 9, 1978), the rule continued to be that the seller could neither amend the contract to shift that cost to the purchaser nor apply for a price increase under section 110 to recoup that cost.

The December 1978 interim regulations and Order No. 94 gave effect to what the Commission believed to be the prevailing industry practice. These regulations, as well as Order Nos. 68 and 68–A, also reflect the Commission's attempt to preserve the *status quo* on November 9, 1978 with respect to the obligations of the parties to all gas sales contracts by preserving the terms of interstate and intrastate contracts in

[6] "Order Denying Rehearing and Denying Petitions for Stay of, and Further Comment on, a Final Rule" [hereinafter cited as Order No. 94–C], Docket Nos. RM80–47–002 *et al.*, is being issued in conjunction with this order. Order No. 94–C addresses petitions that relate only to Order No. 94–A, *supra* note 5, or both Order No. 94–A and Order No. 94–B, *supra* note 1.

[7] Extensive background discussions relevant to this order and Order No. 94–C are provided in Order No. 94–B, *supra* note 1, at 5191–92, and Order No. 94–A, *supra* note 5, at 5152–57.

[8] Interim Regulations Implementing the Natural Gas Policy Act of 1978 [hereinafter cited as interim regulations], 43 FR 56448 (1978), at 56574–77.

[9] *Id.* at 56576.

[10] *See* Order No. 94–A, *supra* note 5, at 5157.

[11] NGPA section 2(13), 15 U.S.C. 3301(13) (Supp. IV 1980) and 18 CFR 270.102(b)(8).

[12] NGPA section 2(12), 15 U.S.C. 3301(12) (Supp. IV 1980) and 18 CFR 270.102(b)(11).

[13] NGPA section 2(14), 15 U.S.C. 3301(14) (Supp. IV 1980) and 18 CFR 270.102(b)(9).

[14] Interim regulations, *supra* note 8, at 56489.

[15] The no cost-shift rule never prevented a purchaser who performed a production-related activity from agreeing with the seller that the seller should perform that production-related activity. *See* Order No. 94–B, *supra* note 1, at 5191 n. 14.

[16] Regulations Implementing Section 110 of the Natural Gas Policy Act of 1978 and Establishing Policy Under the Natural Gas Act [hereinafter cited as Order No. 94], 45 FR 53099 (1980).

[17] *Id.* at 53108.

[18] Final Regulations Under Sections 105 and 106(b) of the Natural Gas Policy Act of 1978 [hereinafter cited as Order No. 68], 45 FR 5678 (1980).

[19] Order Clarifying Order No. 68, Granting in Part and Denying in Part Rehearing of Order No. 68, and Amending Regulations in Subparts E, F, and K of Part 271 [hereinafter cited as Order No. 68–A], 45 FR 76676 (1980), at 76677.

[20] *Id.*

[21] Order No. 94–B, *supra* note 1, at 5193.

effect on that date.[22] During the period that these regulations were in effect, the Commission believed such an approach would provide an appropriate means of implementing Congress' intention in the NGPA to minimize further increases in prices for flowing gas.[23] However, the regulations nevertheless had the effect of freezing industry practices at one point in time.[24] As a result, some sellers and purchasers may well have been forced into changing or continuing practices to conform to those prevailing in November 1978, even though market conditions may have changed so that those practices no longer represented an appropriate response to market conditions and could, therefore, actually have contributed to market distortions.[25]

On January 24, 1983, the Commission issued Order No. 94–A [26] which provides that the individual gas sales contract is to determine who is responsible for providing production-related services and whether sellers may collect allowances under section 110 for costs to perform those services. To that end, Order No. 94–A permits parties to amend their contracts to shift any production-related services and the costs thereof from sellers to purchasers.

The Commission's determination in Order No. 94–A that the individual gas sales contract would provide a better mechanism for allowing industry practice to operate was a general finding, applicable to both the interstate and intrastate markets.[27] Further, the Commission also determined that if it were to hold those sellers of sections 105 and 106(b) gas to pre-NGPA agreements respecting obligations to provide production-related services, while permitting those sellers of sections 104 and 106(a) gas to shift these obligations, the result would be to establish a wide variation in treatment between interstate and intrastate gas flowing at the time of enactment of the NGPA.[28]

The Commission, therefore, determined that preservation of the no cost-shift rule would exaggerate differences between interstate and intrastate gas, a problem which led to the passage of the NGPA. [29] In so doing, it would discriminate against the intrastate markets, and frustrate the purpose of the NGPA to eliminate the dual market that had arisen under the Natural Gas Act.[30]

In view of the above considerations, the Commission determined that an interpretation of sections 105 and 106(b) which continued the strict preservation of the specific set of obligations allocated between the parties to gas sales contracts as of November 9, 1978, was no longer viable.[31] Therefore, the Commission issued Order No. 94–B which eliminated the "no cost-shift rule" of §§ 271.505 and 271.604 which theretofore had precluded sellers of sections 105 and 106(b) gas from shifting any production-related costs to their purchasers.[32] For the same reasons, Order No. 94–B amended the regulations of § 271.1104, which had allowed sellers of sections 105 and 106(b) gas to collect an adjustment under section 110 only for costs not allocated to them on November 9, 1978, and then only upon application to the commission.

Thus, by Order No. 94–B, the Commission, with certain specific differences, extended to those selling gas priced under sections 105 and 106(b) the same opportunity to collect adjustments for production-related costs as those selling gas priced under other sections of the NGPA.[33] As a result, these sellers could collect an adjustment under section 110 for production-related costs if the gas sales contract expressly provided that the seller agreed to provide the services and the purchaser agreed to compensate the seller for the cost of providing the services.[34] In addition, these sellers now may prospectively modify their contracts to either collect an allowance for the production-related services or shift to the purchaser the responsibility of providing the services.

A. Petitions Opposing Section 110 Allowances for Sellers of Sections 105 and 106(b) Gas

Gas distributors generally express the view that the Commission erred in Order No. 94–B by permitting section 110 add-ons to the sections 105 and 106(b) ceiling prices without demonstrating a sufficient basis for reversing the previous exclusion of such additions under the December 1, 1978 interim regulations and Order Nos. 94, 68, and 68–A. Distributors generally believe that the Commission was correct in its earlier view that no section 110 add-ons were appropriate for sections 105 and 106(b) gas because, as stated in the preamble to the December 1978 regulations, "existing contract provisions reflect the allocation of production-related costs as they were contemplated by the parties at the time the contracts were negotiated."[35]

Distributors indicate that the Commission gave only one reason in Order No. 94–B for providing section 110 production-related cost allowances for sellers of sections 105 and 106(b) gas, *i.e.*, that it would be unfair not to do so in view of the Commission's decision in Order No. 94–A to eliminate minimum quality standards and replace them with a regulatory mechanism that makes contracts the determinant as to whether it is the seller or purchaser that is obligated to bear all or part of a particular production-related cost. Since distributors believe that the Commission erred in this decision, they assert that there is no justification for providing section 110 production-related cost add-ons for sections 105 and 106(b) gas.

Distributors are correct that an important reason for permitting sellers of sections 105 and 106(b) gas to amend their contracts to permit the seller to collect section 110 allowances was the Commission's action in Order No. 94–A to permit other sellers to amend their contracts to shift production-related obligations. The Commission determined that holding sellers of sections 105 and 106(b) gas to pre-NGPA agreements respecting obligations to provide production-related services while permitting sellers of sections 104 and 106(a) gas to amend their contracts to shift these obligations from sellers to purchasers would establish a wide variation in treatment between interstate and intrastate gas flowing at the time of enactment of the NGPA. However, distributors are incorrect in stating that this was the Commission's only reason for eliminating the no cost-shift rule. The Commission also stated that the individual gas sales contract provides an appropriate mechanism for allowing industry practices to develop.[36] This view was based on the Commission's recognition that changes in contractual provisions may become necessary to respond to changing market conditions. That is, the

[22] Order No. 94–B, *supra* note 1, at 5193.
[23] *Id.* at 5191 n.7 and accompanying text.
[24] *Id.* at 5193.
[25] *Cf.* Order No. 94–A, *supra* note 5, at 5158–59.
[26] Order No. 94–A, *supra* note 5.
[27] Order No. 94–B, *supra* note 1, at 5193.
[28] *Id.*
[29] *Id.* at 5,193 n.27 and accompanying text.
[30] *Id.* at 5,193–94.
[31] *Id.* at 5,194.
[32] The elimination of the no-cost shift rule required a conforming amendment to 18 CFR 270.205. In addition, the exception of §§ 271.505(b) and 271.604(b)(2) for new purchaser hook-ups was no longer necessary and, therefore, was deleted. *Id.* at n.28.
[33] These new regulations were set out in Order No. 94–A, *supra* note 5.
[34] *See* § 271.1104(c)(4) of the regulations issued in Order No. 94–A, *supra* note 5.
[35] "Request of Associated Gas Distributors for Rehearing of Order Nos. 94–A and 94–B," Docket No. RM80–47–009, at 13–14, *citing* interim regulations, *supra* note 8, at 56 489.
[36] *See* Order No. 94–A, *supra* note 5, at 5158–59; Order No. 94–B, *supra* note 1, at 5193.

Commission determined that industry should be allowed to determine what is "industry practice." This general finding is applicable to all gas contracts, not just those for interstate gas, and is in and of itself an important reason underlying the Commission's actions in Order No. 94–B.

Furthermore, even if distributors were correct in stating that the Commission's only reason for permitting intrastate gas sellers to amend their contracts was to provide them the same treatment as other sellers, the Commission would still disagree with their position that there is no justification for section 110 add-ons for sections 105 and 106(b) gas. Distributors' position is based on the premise that the Commission was not justified in Order No. 94–A in permitting interstate sellers to amend their contracts and making section 110 allowances more available generally. However, in Order No. 94–C, which the Commission is issuing today in conjunction with this order,[37] the Commission has affirmed its findings and regulations issued in Order No. 94–A. It remains the Commission's belief that the regulatory changes implemented by Order No. 94–A made it more imperative that the Commission eliminate the no cost-shift rule and permit contract amendments to provide section 110 allowances for sellers of sections 105 and 106(b) gas in order to prevent even greater differences between the interstate and intrastate markets than those that existed prior to issuance of Order No. 94–A.

As explained in Order No. 94–B,[38] in determining to issue Order Nos. 94–A and 94–B, the Commission first had to reevaluate the difficult issues that, due to lack of clarity in the NGPA, have confronted the Commission in its efforts to implement section 110 allowances. In Order No. 94–B, the Commission changed its position that a balanced weighing of NGPA objectives called for sellers of sections 105 and 106(b) gas to be precluded from recovering any production-related costs under section 110 of the NGPA. This original view was an inevitable outgrowth of the Commission's initial, closely related view that a prohibition against any shifting of production-related costs from producers to purchasers was appropriate in view of Congress' intention in the NGPA, as expressed by its establishment of ceiling rates, to minimize further increases in prices paid for flowing gas—particularly previously unregulated intrastate gas.[39] In Order No. 94–B, the Commission concluded that its initial view failed over time to give appropriate recognition to another major, competing objective of the NGPA—Congressional intent in the NGPA to eventually eliminate the distinctions between the intrastate and the interstate markets.[40] The Commission further concluded that, in view of its actions in Order No. 94–A to increase the availability of section 110 add-ons with respect to interstate gas, continuing to preclude sellers of sections 105 and 106(b) gas from collecting section 110 allowances would further dichotomize the interstate and intrastate gas markets.

B. Petitions Favoring Increased Section 110 Allowances for Sellers of Sections 105 and 106(b) Gas

Representatives of the producing segment of the natural gas industry basically approve of the direction taken in Order No. 94–B to permit first sellers of intrastate gas priced under sections 105 and 106(b) generally to collect section 110 adjustments in the same manner as other sellers. However, producers argued that in Order No. 94–B the Commission is, in certain respects, in contravention of the NGPA and acting arbitrarily and capriciously by discriminating against sellers of sections 105 and 106(b) gas. They urge the Commission to eliminate this alleged discrimination by (1) providing that an area rate clause in an intrastate contract constitutes contractual authority to collect section 110 delivery allowances; (2) making the generic delivery allowance available to intrastate sellers in sales where construction of the delivery system commenced prior to November 9, 1978 ("old" gathering system);[41] and (3) allowing sellers of sections 105 and 106(b) gas to retroactively collect amounts for delivering and compressing gas.[42] Finally, producers assert that the Commission erred in not allowing intrastate sellers to retroactively amend their contracts to recover all production-related costs.

1. *Area Rate or FPC Clause in Intrastate Contracts.* In Order No. 94–B the Commission determined that, with respect to sections 105 and 106(b) gas, an area rate clause shall not be considered to meet the "expressly authorized" contract requirement in § 271.1104(c)(4) for the collection of a section 110 delivery allowance, even though such a clause is deemed to constitute such express authorization in sales under all other maximum lawful prices. Producers argued that the Commission's decision in this regard is inconsistent with the Commission's administrative view expressed in Order No. 23[43] with respect to "FPC clauses," a type of area rate clause used in intrastate contracts. In Order No. 23, the Commission found that an FPC clause in an intrastate contract is "the functional equivalent" of an area rate clause in an interstate contract and, therefore, provided justification for permitting a seller of sections 105 and 106(b) gas to collect NGPA maximum lawful prices.

Producers stated that the purpose of FPC clauses was to ensure the seller a minimum sales price at least equal to the price it would get if it sold the gas in interstate commerce. That is, as indicated in producers' comments, parties included FPC clauses in their contracts in the expectation of receiving at least the same total contract price to which an interstate seller would be entitled under an area rate clause. Producers further argue that failure by the Commission to treat FPC clauses as area rate clauses for purposes of the section 110 rules amounts to an interpretation of FPC clauses in a manner inconsistent with its responsibilities and in excess of its authority under the NGPA.

As stated in Order No. 94–B, the Commission believes that an area rate clause does not constitute evidence that the purchaser specifically provided that an express amount be paid to the seller of sections 105 and 106(b) gas for the delivery of gas, even though such a clause is considered to have met the "expressly authorized" requirement applicable to other categories of gas sales. This decision was based on recognition that there is a long-standing Commission practice in setting and implementing Natural Gas Act producer rates to consider this type of clause as sufficient authority to permit interstate sellers to adjust their rates by adding on delivery allowances. Therefore, interstate producers and purchasers that included area rate clauses in their contracts reasonably had the expectation of receiving delivery allowances that the Commission

[37] Order No. 94–C, *supra* note 6.

[38] *See* Order No. 94–B, *supra* note 1, at 5 191.

[39] *Id.* at 5191 n.7 and accompanying text.

[40] *Id.* at 5193 n.27.

[41] Southern Union also requests that intrastate sellers be permitted the generic delivery allowance in sales where an old delivery system is used. *See* "Petition for Clarification and Application for Rehearing of Southern Union Gathering Company", Docket No. RM80–47–010, at 29.

[42] Southern Union requests clarification of the Commission's decision that intrastate sellers should not be permitted to collect delivery costs for any past periods. *Id.* at 22–23.

[43] Order Amending and Clarifying Regulations Under the Natural Gas Policy Act and the Natural Gas Act [hereinafter cited as Order No. 23], 44 FR 16,895 (1979).

allowed. On the other hand, it is the Commission's position that sellers of intrastate gas did not necessarily have this same expectation when they came under the Commission's jurisdiction.[44] There was no historical Commission practice with respect to permitting delivery allowances for sellers of intrastate gas, since the prices they collected for gas were not regulated by the Commission prior to enactment of the NGPA. As stated by producers, FPC clauses were used prior to enactment of the NGPA to ensure sellers minimum sales prices at least equal to the prices to which they would be entitled if their gas were sold in interstate commerce and, therefore, subject to Natural Gas Act area rates and, later, national rates. The Commission believes that this was the only significant purpose served by FPC clauses.

It is true that in Order No. 23 the Commission found that an FPC clause is the functional equivalent of an area rate clause for purposes of determining whether to permit an intrastate seller to collect Congressionally established NGPA maximum lawful prices. However, the Commission does not believe that the rationale underlying its finding in Order No. 23 affords any support for the proposition that area rate clauses provide an appropriate basis for finding "express authorization" for a seller of section 105 or 106(b) gas to collect Commission established section 110 add-ons.

In Order No. 23, the Commission found that escalation to NGPA ceiling prices in reliance on an area rate clause was not one of the four instances in which the NGPA specifically limits the operation of escalation clauses.[45] The Commission found further that a Congressionally approved rate must be deemed to be in the public interest.[46] In view of these findings, the Commission concluded that area rate clauses in intrastate contracts should be permitted to trigger NGPA prices.

In contrast to the issue in Order No. 23, Congress left determinations as to when allowances for production-related costs under section 110 should be permitted to the Commission's discretion.[47] Section 110 provides that no production-related costs can be recovered unless "allowed for, by rule or order, by the Commission." Therefore, it was Congress' intent that the Commission determine when a section 110 would be in the public interest, which is the "touchstone" for deciding whether an indefinite price escalator should be permitted effect.[48]

The Commission still believes, for the reasons discussed above, that prior to enactment of the NGPA parties to intrastate contracts could not have reasonably relied on any expectation that in the event they should come under the Commission's jurisdiction they, like sellers of interstate gas, would receive any delivery allowances that the Commission allowed. Furthermore, there has been no indication since enactment of the NGPA that the Commission would necessarily permit interstate gas sellers to add on any delivery allowance that it might establish for sellers of interstate gas. Indeed, the Commission's actions have been to the contrary. For example, the Commission's determinations in Order Nos. 68 and 68–A regarding Congress' intended meaning of the term "price" in sections 105 and 106(b) of the NGPA indicated that the Commission intended to continue to rely on intrastate contract provisions in effect on November 9, 1978, rather than Commission established allowances, to provide for recoupment of delivery costs by a seller of intrastate gas. Furthermore, when the Commission announced in Order No. 94 its intention to establish generic allowances for production-related costs to deliver natural gas,[49] it also stated that, when implemented, the generic adjustments could be recovered by interstate sellers.[50] At the time, sellers were precluded from collecting any section 110 allowances for sections 105 and 106(b) gas. The fact that the Commission did not state any intention to permit retroactive recovery by sellers of sections 105 and 106(b) gas reflected the Commission's continuing reliance on intrastate contract provisions in effect on November 9, 1978, to provide for recoupment of production-related costs by sellers to deliver intrastate gas.

As indicated by the above discussion, the Commission can find no basis in its own historical practices, in the reasonable expectations of parties to intrastate gas contracts, or under any other rationale for a determination that an FPC clause should be viewed as evidence that a purchaser specifically provided that an express amount be paid to sellers of sections 105 and 106(b) gas for delivery. Therefore, it remains the Commission's conclusion that an FPC clause should not be deemed to satisfy the "expressly authorized" requirement with respect to sellers that deliver sections 105 and 106(b) gas. The Commission does not agree with producers' assertion that this conclusion constitutes and inappropriate attempt by the Commission at interpreting the intent of parties to intrastrate contracts. Indeed, in the absence of any clear basis for any different conclusion, the Commission believes that it would be abusing its discretion if it were to find, as producers' would have the Commission, that FPC clauses constitute express authorization for sellers of sections 105 and 106(b) gas to collect section 110 delivery allowances.[51]

While the Commission cannot find a sufficient basis for determining that FPC clauses in intrastate contracts generally constitute express authorization for sellers to collect section 110 allowances, it recognizes there may be specific instances where the intent of the parties in including an FPC or other type of area rate clause in an intrastate gas contract did extend so far. The Commission contemplates that these buyers and sellers generally will take advantage of those provisions of Order No. 94–A that permit them to amend their contract for section 105 or 106(b) gas so that the seller may collect section 110 allowances. Such an amendment must expressly provide for the payment of an amount directly tied to the performance of the activity that results in the incurrence of the production-related cost. The amount itself need not be specified. It can, for example, be based on a reference to the Commission's regulations implementing section 110 or on a general reference, such as one to the effect that the seller may collect the "highest amount" permitted by the Commission for the activity concerned.[52]

The Commission understands that there may be instances where the parties have reason to frame an amendment to indicate that its purpose is to permit the collection of section 110 delivery allowances by the seller in reliance on contractual authority that the parties originally intended the seller to have and exercise under an FPC clause in the event federal regulatory impediments were removed. Furthermore, the Commission recognizes that there may be instances where the original intent of the parties in including an FPC clause in a contract for the sale of section 105 or 106(b) gas did

[44] *See* Order No. 94–A, *supra* note 5, at 5 164; Order No. 94–B, *supra* note 1, at 5 194.

[45] Order No. 23, *supra* note 43, at 16 900.

[46] *Id.*

[47] *See* Order No. 94–A, *supra* note 5, at 5 156 n.53 and accompanying text.

[48] *See* Pennzoil Company v. Federal Energy Regulatory Commission, 645 F.2d 360, 382 (1981), *cert. denied* 454 U.S. 1142 (1982).

[49] *See* Orders No. 94, *supra* note 16, at 53 107.

[50] *Id.* 53107 n.76 and accompanying text.

[51] *Cf.* Pennzoil Co. v. Federal Energy Regulatory Commission, 671 F.2d 119, 127 (1982).

[52] *See* Order No. 94–A, *supra* note 5, at 5163.

encompass the collection of section 110 delivery allowances by the seller but the purchaser now refutes any obligation to pay such costs.

It is still the Commission's position that it would be infeasible and inappropriate for it to undertake to determine whether an area rate clause in an intrastate contract constitutes express authorization for the collection of section 110 delivery allowances. However, in view of the above considerations, the Commission has determined that a seller may collect section 110 delivery allowances for delivering section 105 or 106(b) gas if (1) the seller and the purchaser amend their contract to state their mutual agreement that the FPC clause expressly authorizes, as defined in § 271.1104(c)(4), the collection of section 110 delivery allowances or (2) the seller obtains a judicial determination that the FPC clause expressly authorizes, as defined in § 271.1104(c)(4), the collection of section 110 delivery allowances. In either of these cases, it is the Commission's decision that the seller may collect section 110 delivery allowances for deliveries on or after March 7, 1983, the effective date of Order Nos. 94–A and 94–B. The Commission believes this decision is appropriate since those final rules generally removed regulatory prohibitions that theretofore had prevented sellers from fully exercising their contractual authority to collect section 110 allowances. Furthermore, this policy decision will result in more consistent treatment under the regulations of sellers and buyers of intrastate gas as compared with sellers and buyers of interstate gas. The Commission wishes to make clear, however, that this decision does not alter its determination in Order No. 94–A regarding contractual amendments that give sellers contractual authority to collect section 110 delivery allowances for delivering section 105 or 106(b) gas. Accordingly, if a contractual amendment merely provides that the seller may collect a section 110 delivery allowance, he may collect delivery allowances only for deliveries made after the date of execution of the amendment. In order to collect delivery allowances back to March 7, 1983, the amendment or judicial determination must state that the FPC clause expressly authorizes, as defined in § 271.1104(c)(4), the collection of section 110 delivery allowances.

2. *Generic Delivery Allowances for Old Intrastate Gathering Systems.* Under the Interim Rule issued by the Commission on January 24, 1983 [53] to establish generic allowances for delivering gas, there is a 5 cents per MMBtu limit for delivering gas by systems the construction of which commenced prior to November 9, 1978. However, the Commission did not extend this generic delivery allowance to sections 105 and 106(b) gas that is delivered by means of old delivery systems, *i.e.*, delivery systems for which construction commenced prior to November 9, 1978. The Commission determined that it could not establish such a generic allowance because, due to its lack of jurisdiction over these types of sales prior to passage of the NGPA, it did not have sufficient data indicating precisely how gathering allowances were established in the intrastate market.

In lieu of a specific allowance, and in light of the determination in Order No. 94–A that the contract is the best mechanism for determining who, as between the seller and purchaser, is to provide production-related services and incur the resulting costs, the Commission provided in § 271.1104(d)(2) that those selling gas under NGPA sections 105 and 106(b) may amend their contract prospectively for the recovery of delivery costs so long as the amended contract expressly authorizes the seller to make such recovery and the amount does not exceed an amount "reasonably comparable" to amounts collected under section 110 for gas delivery by similarly situated sellers. In the absence of such an amendment to the contract, the amount that an intrastate seller may recover with respect to production-related costs for delivering natural gas through an old delivery system may not exceed the amount that the seller is expressly authorized to collect under the existing terms of the contract.

Producers assert that the Commission erred in failing to set a generic delivery allowance for sections 105 and 106(b) gas delivered by old delivery systems. Producers argued that this omission constitutes an abuse of discretion. In support of this contention, these petitioners argued that there is no indication in the NGPA or its legislative history that section 110 is not applicable to old intrastate gathering systems. They further argued that, to the contrary, the best expression of Congressional intent clearly indicates that existing intrastate contracts are to be eligible for section 110 relief, and that no distinction was intended between old intrastate and old interstate gas gathering systems. The purported support for producers' position is a statement in the Joint Explanatory Statement of the Committee on Conference:

> The Conference Agreement provides authority for the Commission by rule or order, to make adjustments in ceiling prices for production-related costs which include the cost of compressing, gathering, processing, treating, liquefying or transporting natural gas. *The authority is available for making adjustments to all ceiling prices.*" [54]

The Commission believes this Conference Report language indicates only that the Commission has the authority to establish a generic section 110 delivery allowance for old intrastate gas gathering systems. However, the reason the Commission did not extend the generic delivery allowance to pre-NGPA intrastate delivery systems was a lack of sufficient data to support providing sellers of sections 105 and 106(b) gas with the 5 cents per MMBtu delivery allowance.[55]

The Commission stated that its lack of data concerning old intrastate delivery systems and knowledge as to how delivery allowances were established in the intrastate market were due to the Commission's lack of jurisdiction over intrastate sales prior to enactment of the NGPA. Producers argued that the Commission's lack of jurisdiction over intrastate sales in the past is irrelevant to whether it should set a generic allowance after the effective date of the NGPA. However, even if producers' contention were correct, the comments and other information submitted by that group do not provide a sufficient basis or adequate record for extending the generic 5 cents per MMBtu delivery allowance to sales of sections 105 and 106(b) gas which use old intrastate delivery systems. Moreover, even if the Commission had been able to collect the necessary data, there is no certainty that the data would support the establishment of a generic delivery allowance for old intrastate gathering systems.

Although the Commission was not able to set a generic delivery allowance for old intrastate delivery systems, it believes the regulations it adopted in Order No. 94–B to permit sellers to collect a delivery allowance for such systems are appropriate. Section

[53] Delivery Allowances Under Section 110 of the Natural Gas Policy Act of 1978 and Compression Allowances Under Section 110 of the Natural Gas Policy Act of 1978 [hereinafter cited as Interim Rule], 48 FR 5180 (1983).

[54] Producers' Application, *supra* note 3, at 12, *citing* Joint Explanatory Statement of the Committee on Conference, H.R. Rep. No. 1752, 95th Cong., 2d Sess. 91 (1978) (emphasis added in Producers' Application).

[55] Order No. 94–B, *supra* note 1, at 5 194–95.

271.1104(d)(2) provides that the amount collected by a seller of sections 105 and 106(b) gas to recover a production-related cost for delivering gas through an old delivery system shall not exceed the amount that the seller is expressly authorized to collect under the terms of his contract, unless the seller and purchaser agree to amend the terms of the contract. If there is an amendment, the amount still may not exceed an amount "reasonably comparable" to amounts collected under section 110 for gas delivery by similarly situated sellers. In determining its "reasonably comparable" delivery allowance, a seller certainly may find the 5 cents per MMBtu generic allowance to be a useful guideline, since it was chosen by the Commission because it believed that such an amount was representative of delivery costs.

3. *The Reasonably Comparable Delivery Allowance for Sales of Intrastate Gas by Old Delivery Systems.* Southern Union seeks rehearing as to the "reasonably comparable" test applicable under § 271.1104(d)(2) to sellers of sections 105 and 106(b) gas. Southern Union argues that the Commission has not given any guidance as to the appropriate accounting procedures for determining such a cost of service and that an intrastate first seller does not have a readily available means of determining whether such cost of service is "reasonably comparable" to the section 110 allowance for such delivery costs collected by similarly situated intrastate sellers. Consequently, Southern Union stated, first sellers entitled to recover production-related costs under § 271.1104(d)(2) are subjected to substantial uncertainty and being second guessed when audited by the Commission. Moreover, Southern Union does not believe that the Commission has articulated a reason for imposing a "reasonably comparable" test on sellers of sections 105 and 106(b) gas or that there are any reasons that justify such a limitation. In view of these considerations, Southern Union requested that the Commission amend § 271.1104(d) to extend to sellers of sections 105 and 106(b) gas the 5 cents per MMBtu generic delivery allowance currently available under that section to sellers of other NGPA categories of gas with respect to sales by means of old delivery systems.

For the above-stated reasons given in response to the same request by producers, the Commission must also deny Southern Union's request. The reasons discussed above also explain what we believe to be an adequate basis for requiring that intrastate sellers determine "reasonably comparable" delivery allowances for themselves with respect to similarly situated sellers.[56] Furthermore, the Commission cannot accept the proposition that an intrastate seller cannot without undue burden determine its "reasonably comparable" rate, when the Commission has explained that it should be an amount necessary to recover costs borne by the seller, which includes a reasonable profit level.[57]

4. *Costs Incurred Prior to the Effective Date of Order No. 94–B.* Producers allege that the Commission's decision not to permit allowances for delivering and compressing sections 105 and 106(b) gas for periods prior to March 7, 1983, the effective date of Order No. 94–B, is discriminatory. Sellers of gas other than sections 105 and 106(b) gas may collect delivery and compression allowances from the earlier of the date on which an application was filed with the Commission on July 25, 1980, the effective date of Order No. 94.[58] Producers advanced the proposition that delivery and compression allowances for all sellers should be effective December 1, 1978, the effective date of the NGPA, but in any event the same for all sellers. Producers asserted that the regulations in effect prior to the effective date of Order Nos. 94–A and 94–B unlawfully denied "retroactive" collection of contractually authorized compression and delivery allowances. They claimed that this failure on the Commission's part has created the need for retroactive collection of these costs.

Generally, an agency has broad discretion to deny retroactive effect to its rules. That general rule is of particular importance in the implementation of any section 110 rule that relies on the Commission's discretion. The Commission has the requisite discretion under section 110(a)(2) to make a determination that retroactive application of the new regulations implementing section 110 would not be appropriate and reasonable. In Order Nos. 94–A and 94–B, the Commission made such a determination and, therefore, generally declined to give retroactive effect to the regulations implemented by those final rules.[59]

The elimination of the no cost-shift rule and our decision to permit sellers of sections 105 and 106(b) gas to collect section 110 allowances are changes from Commission-established rules in place from December 1, 1978, until the effective date of Order Nos. 94–A and 94–B. As discussed above, sellers of intrastate gas had no justifiable expectation that they would be permitted section 110 add-ons for services that they were obligated to perform under the terms of their contracts in existence on November 9, 1978. Therefore, a decision to permit the sellers to collect section 110 allowances for delivery and compression with respect to periods prior to the effective date of Order No. 94–B would be contrary to purchasers' reasonable expectations and cause market disruption. Because the Commission seeks to minimize such impacts, it believes it would be ill-advised to make these amendments retroactively effective. In view of these considerations, we repeat here our finding in Order No. 94–B that good reasons exist not to permit retroactively effective contract amendments or any retroactive collections.[60]

In Order No. 94–A, the Commission generally did not allow section 110 allowances to be collected retroactively either. The only exception is for delivery and compression allowances collected by sellers of gas other than sections 105 and 106(b) gas. In Order No. 94, when the Commission announced its intention to establish generic allowances for production-related costs to deliver and compress natural gas, it suspended applications for these types of allowances for sellers of interstate gas during the development of the generic allowances. In doing so, the Commission stated that, when implemented, the generic adjustments could be incurred from the earlier of the date of an application or July 25, 1980, the effective date of Order No. 94.[61] Moreover, it is our continued belief that the burden of a retroactive order in this instance could be substantial, especially since it might lead to or necessitate a recomputation of maximum lawful prices in some cases.[62]

5. *Request for Clarification Regarding Retroactive Collection of Delivery and Compression Costs.* Southern Union requests clarification with respect to

[56] *Id.*

[57] *Id.* at 5 195.

[58] *See* Order No. 94–A, *supra* note 5, at 5168.

[59] *See* Order No. 94–B, *supra* note 1, at 5195.

[60] *Id.* at 5.195. As stated in Order No. 94–B, *Id.* n. 38, in those instances when sellers of sections 105 and 106(b) gas relied on the Commission's rules in Order No. 68–A and submitted an application to the Commission under § 271.1105 to recover production-related costs not allocated to them in the contract as in effect on November 9, 1978, the Commission will permit collection of the appropriate section 110 allowance from the later of the date such application was filed with the Commission or the date on which service from the production-related facility commenced.

[61] *Id.* at 5196. *See also,* Order No. 94, *supra* note 16, at 53107 n. 76; Order No. 94–A, *supra* note 5, at 5168.

[62] Order No. 94–B, *supra* note 1, at 5196.

sellers of intrastate gas retroactively collecting delivery and compression charges for periods prior to the effective date of Order No. 94–B. Southern Union makes first sales pursuant to several intrastate contracts which were in effect on November 9, 1978. These contracts specifically provide for the payment by the purchaser of gathering charges in addition to the wellhead costs of gas delivered. Since passage of the NGPA, these rates, and in some instances the method of calculating such rates, have been modified in order to reflect changes in the service being provided to the purchaser by Southern Union. In Order No. 68–A the Commission revised § 271.505(c) and § 271.1104(b)(1) of the regulations to permit sellers of sections 105 and 106(b) gas to apply under § 271.1105 for recovery of production-related costs which were not allocated to the seller under existing intrastate contracts in effect on November 9, 1978 ("Order No. 68–A regulations").[63]

Southern Union did not make an application under the Order No. 68–A regulations while they were in effect to recover any production-related expenses. Southern Union states that it has been precluded from increasing certain gathering charges except through relief granted by the Commission under section 502(c) of the NGPA. Southern Union believes, however, that under the provisions of Order Nos. 94–A and 94–B it may be entitled to recover certain previously denied production-related expenses for past delivery periods which exceed the amounts allowed in its prior adjustment proceedings. Southern Union requests a determination as to whether it may recover such previously incurred production-related costs under its existing intrastate contracts which provide for the recovery of such costs by the seller. If not, Southern Union seeks clarification as to whether it may still apply to the Commission under the Order No. 68–A regulations to recover such costs.

While the Commission has generally affirmed those regulations established pursuant to Order No. 68–A,[64] those regulations regarding sellers of sections 105 and 106(b) gas were amended by Order No. 94–B to the extent they involved adjustments for production-related costs. Therefore, Southern Union cannot now apply under those regulatory provisions for recovery of its production-related costs. Furthermore, since Southern Union never applied under the Order No. 68–A regulations while they were in effect, it does not come within the narrow exception from the general prohibition of Order Nos. 94–A and 94–B that applies only to sellers of sections 105 and 106(b) gas who relied on the Order No. 68–A regulations and submitted an application to the Commission to recover production-related costs not allocated to them in the contract as in effect on November 9, 1978.[65]

In view of the general prohibition of Order Nos. 94–A and 94–B against collecting amounts for delivering and compressing sections 105 and 106(b) gas prior to the effective date of those rules, Southern Union's express contractual authority to collect those costs is not relevant. Southern Union's only avenue for relief is to submit an application under section 502(c) of the NGPA. However, it does not appear from Southern Union's petition that it would have been eligible to recover its production-related costs under the Order No. 68–A regulations even if it had applied for recovery while those regulations were still in effect. The Commission is unlikely to allow a seller to recover costs with respect to a past period if the seller had no basis for recovery at that time.

6. *Retroactive Amendments to Intrastate Contracts.* Except for the retroactive recovery of generic delivery and compression allowances by interstate sellers with express contractual authorization, in Order Nos. 94–A and 94–B the Commission followed the basic principle of administrative procedure that rules should operate prospectively only. Furthermore, as stated by the Commission in Order No. 94–B, even with respect to that one exception,

> [p]arties may not, however, execute retroactively effective contract amendments and thereby collect a section 110 allowance for a period in which the contract did not, at that time, authorize collection of such an amount. The Commission believes this is consistent with the general view developed under the Natural Gas Act in Opinion No. 135, Transcontinental Gas Pipe Line Corporation, * * * 17 FERC ¶ 61,232 * * *.[66]

Producers argue that during the period between enactment of the NGPA and issuance of Order No. 94, the Commission acted arbitrarily and capriciously and, therefore, unlawfully in not giving intrastate sellers at least as much oppurtunity as interstate sellers had to obtain section 110 allowances under the regulations in effect during that period.

The Commission believes that its rationale supports these regulations and is consistent with the Commission's legal obligations. As discussed above, the December 1978 interim NGPA regulations excluded sellers of sections 105 and 106(b) gas from the provisions permitting interstate sellers to apply for section 110 production-related cost allowances.[67] This exclusion with respect to intrastate gas was reinforced by the no cost-shift rule of §§ 271.505 and 271.604 which generally prohibited contract amendments allocating production-related costs from the seller to the purchaser in a manner that differed from the contract as it existed on November 9, 1978. This exclusion, as well as the no cost-shift rule, was justified on the basis that existing provisions in contracts reflect the allocation of costs as they were contemplated by the parties at the time the contract was negotiated,[68] and that any change in such provisions would change the "price" actually paid for the gas. At that time, the Commission believed it would be contrary to the intent of Congress to permit a change in such prices and terms if that change would have the effect of increasing the total costs the purchaser paid for acquiring the very same commodity he was acquiring at a lower price before the date of enactment.[69]

On November 10, 1980, the Commission issued Order No. 68–A, in which it concluded that the sections 105 and 106(b) ceiling prices "provide reimbursement for production-related costs borne by the seller according to the terms of contracts."[70] In addition, the Commission concluded that the term "price" when used in the context of "contract price" should be interpreted to mean all the money paid for the gas, even amounts labeled as severance tax reimbursement, gathering allowances, and so forth. These conclusions led to reaffirmance by the Commission of the no cost-shift rule of §§ 271.505 and 271.604 as well as the rules implementing section 110 for production-related costs borne be sellers of sections 105 and 106(b) gas.

However, in Order No. 68–A, the Commission did revise § 271.1104(b)(1) to provide, for the first time, that a seller of sections 105 and 106(b) gas could apply for a production-related cost allowance if the seller was not obligated to incur the cost under his existing contract.[71] The reason for this change

[63] Order 68–A, *supra* note 19, at 76678.
[64] *See* Order 94–B, *supra* note 1, at 5196.
[65] *Id.* at 5196.
[66] *Id.* at 5 195 n. 35 and accompanying text.
[67] Interim regulations, note 8, *supra.*
[68] See Order No. 94–B, *supra* note 1, at 5191.
[69] *Id.*
[70] *Id.* at 5192.
[71] Order No. 68–A, *supra* note 19, at 76679.

was that allowances for costs of new or different services not bargained for in the contract in existence on the date of enactment of the NGPA were appropriate.

The Commission's views as to how to best implement section 110 in light of the NGPA's competing objectives have changed since those regulations were adopted. This does not make the regulations issued prior to Order No. 94–B unlawful, even if it is recognized in hindsight that different policy decisions were possible.

Since the Commission does not accept producers' initial premise that the regulations in effect prior to Order No. 94–B were arbitrary and capricious, neither do we find any merit to producers' further argument built upon that premise—*i.e.*, that Order No. 94–B is also arbitrary and capricious (and therefore unlawful) because it fails to permit retroactively effective contract amendments for recovery of section 110 allowances that were withheld from intrastate sellers by the Commission in past periods.

Producers discussed Opinion No. 135 [12] in support of their position. In Opinion No. 135, which was issued after enactment of the NGPA, the Commission refused to approve retroactively effective contract modifications designed to permit sellers to collect NGPA prices for gas subject to the Natural Gas Act for periods before the requisite contractual authority existed. One of the Commission's reasons for this decision, as noted by the petitioners, was the filed rate doctrine which is a bar under the Natural Gas Act to retroactive, as opposed to prospective, price changes. Producers stated the filed rate doctrine is inapplicable to gas subject to sections 105 and 106(b) because such gas was never subject to the Commission's Natural Gas Act jurisdiction. Accordingly, the petitioners argued, there is no bar to retroactive price changes for sections 105 and 106(b) gas.

In their analysis of Opinion No. 135, the petitioners failed to note that the Commission also gave as a reason for that decision the view that public policy considerations generally mitigate against giving retroactive effect to contract amendments.[13] Indeed, the public policy considerations against retroactively effective contract amendments, although arising under the NGA, should apply to intrastate sellers even if the filed rate doctrine itself may not. In view of these considerations, producers' attempt to limit the policy enunciated in Opinion No. 135 only to gas subject to the Commission's Natural Gas Act jurisdiction is rejected.

In regard to permitting intrastate sellers to recover section 110 allowances for prior periods, we would like to reemphasize that, while Order Nos. 94–A and 94–B reflect our efforts to give effect to the NGPA objective of eliminating regulatory-created distinctions between the intrastate and interstate markets, the Commission has not abandoned its responsibility with respect to the sometimes conflicting NGPA policy to minimize further price increases in gas sold in the previously unregulated intrastate market. It is our belief that an appropriate balancing of the objectives is found in our decision that intrastate sellers be permitted section 110 allowances, but only on a prospective basis.

III. Petitions for Further Economic and Environmental Analysis and Stay of Order No. 94–B.

Several petitioners allege the Commission failed to adequately assess and consider the potential economic and enviromental impacts of Order Nos. 94–A and 94–B as part of its decisionmaking process in determining to issue those orders. These petitioners requested that the effectiveness of those orders be stayed to permit further consideration of matters relating to the economic and environmental effects of the orders and other matters raised in their petitions. These requests for further consideration and stay pending rehearing, as well as any such requests that have been raised specifically only with respect to Order No. 94–A but which may relate to Order No. 94–B, are denied with respect to Order No. 94–B for the same reasons stated by the Commission in Order No. 94–C.[14]

For the foregoing reasons, the Commission orders that:

(A) The Petitions for Rehearing in Docket Nos. RM80–47–003, RM80–47–004, RM80–47–007, RM80–47–009, and RM80–47–010 are hereby denied; and

(B) The requests for a stay of the final rule are also hereby denied.

List of Subjects

18 CFR Part 270

Natural gas, Wage and price controls.

18 CFR Part 271

Natural gas, High-cost gas, Tight formations.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83–14418 Filed 5–27–83; 8:45 am]

BILLING CODE 6717–01–M

[12] Opinon No. 135, Opinion and Order Remanding for Limited Purposes [hereinafter cited as Opinion No. 135], Docket No. GP80–24 (issued Dec. 11, 1981) 17 FERC ¶ 61,231.

[13] *Id.* at 61453.

[14] Order No. 94–C, *supra* note 6.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 81

[Docket No. 76N–0366]

Provisional Listing of D&C Red No. 33; Postponement of Closing Date

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is postponing the closing date for the provisional listing of D&C Red No. 33 for use as a color additive in drugs and cosmetics. The new closing date will be July 29, 1983. This brief postponement will provide time for the agency to complete its review and to consider the scientific and legal aspects of the results of the toxicological studies submitted by several petitioners. Additionally, during this brief postponement, the agency will prepare the appropriate **Federal Register** document(s) upon completion of its review.

DATES: Effective May 31, 1983, the new closing date for D&C Red No. 33 will be July 29, 1983.

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

SUPPLEMENTARY INFORMATION: FDA established the current closing date of May 31, 1983, by a rule published in the **Federal Register** of April 1, 1983 (48 FR 13975). The agency extended the closing date to provide time for the agency to complete its review and to consider the scientific and legal aspects of the resuts of the toxicological studies submitted by several petitioners. Previously in the **Federal Register** of March 27, 1981 (46 FR 18954), FDA had published a rule establishing the March 31, 1983 closing date for the provisional listing of D&C Red No. 33 to provide time for the completion of toxicity studies, submission of the data to FDA, review and evaluation of the data concerning the drug and cosmetic uses of D&C Red No. 33 by FDA, and publication of a regulation in the **Federal Register** regarding the agency's final decision on

the petition for the permanant listing of this color additive. The regulation set forth below will postpone the May 31, 1983 closing date for the provisional listing of the color additive until July 29, 1983.

As noted in the **Federal Register** of November 20, 1968 (33 FR 17205) and of August 6, 1973 (38 FR 21200), D&C Red No. 33 is the subject of a petition (CAP 8C0086) submitted by the Toilet Goods Association, Inc. (now the Cosmetic, Toiletry and Fragrance Association, Inc.), the Pharmaceutical Manufacturers Association, and the Certified Color Industry Committee (now the Certified Color Manufacturers Association, Inc.) and of a petition (CAP 7C0059) submitted by the Procter & Gamble Co. The petitions requested that D&C Red No. 33 be permanently listed for use in ingested drugs, all types of cosmetics subject to ingestion, including lipsticks, externally applied drugs and cosmetics, and for use in the area of the eye.

The review and evaluation of the data relevant to the use of D&C Red No. 33 have required more time than anticipated. FDA concludes that the brief postponement will provide time for the agency to complete its review and to prepare the appropriate **Federal Register** document(s). Therefore, FDA concludes that the brief extension of the closing date to July 29, 1983, is necessary. The agency has also concluded that no harm to the public health will result from this extension.

Because of the short time until the May 31, 1983 closing date, FDA concludes that notice and public procedure on this regulation are impracticable, and that good cause exists for issuing this postponement as a final rule. This regulation will permit the uninterrupted use of this color additive until July 29, 1983. To prevent any interruption in the provisional listing of D&C Red No. 33, and in accordance with 5 U.S.C. 553(d) (1) and (3), this postponement is issued as a final regulation, effective on May 31, 1983.

List of Subjects in 21 CFR Part 81

Color additives, Color additives provisional list, Cosmetics, Drugs.

PART 81—GENERAL SPECIFICATIONS AND GENERAL RESTRICTIONS FOR PROVISIONAL COLOR ADDITIVES FOR USE IN FOODS, DRUGS, AND COSMETICS

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 701, 706 (b), (c), and (d), 52 Stat. 1055–1056 as amended, 74 Stat. 399–403 (21 U.S.C. 371, 376 (b), (c), and (d))) and under the transitional provisions of the Color Additive Amendments of 1960 (Title II, Pub. L. 86–618, sec. 203, 74 Stat. 404–407 (21 U.S.C. 376 note)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Part 81 is amended as follows:

§ 81.1 [Amended]

1. In § 81.1 *Provisional lists of color additives* by revising the closing date for "D&C Red No. 33" in paragraph (b) to read "July 29, 1983."

§ 81.27 [Amended]

2. In § 81.27 *Conditions of provisional listing* by revising the closing date for "D&C Red No. 33" in paragraphs (d) and (e) to read "July 29, 1983."

Effective date. This final rule shall be effective May 31, 1983.

(Secs. 701, 706 (b), (c), and (d), 52 Stat. 1055–1056 as amended, 74 Stat. 399–403 (21 U.S.C. 371, 376 (b), (c), and (d)); sec. 203, 74 Stat. 404–407 (21 U.S.C. 376 note))

Dated: May 17, 1983.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 83-14259 Filed 5-27-83; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 81

[Docket No. 76N-0366]

Provisional Listing of D&C Orange No. 17 for Use in Externally Applied Drugs and Cosmetics; Postponement of Closing Date

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is postponing the closing date for the provisional listing of D&C Orange No. 17 for use as a color additive in externally applied drugs and cosmetics. The new closing date will be July 29, 1983. This brief postponement will provide time for the agency to determine the applicability of the statutory standard for the listing of noningested color additives to the results of the scientific investigatons of D&C Orange No. 17.

DATES: Effective May 31, 1983, the new closing date for D&C Orange No. 17 will be July 29, 1983.

FOR FURTHER INFORMATION CONTACT: Julia L. Ho, Bureau of Foods (HFF–334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: FDA established the current closing date of May 31, 1983, for the provisional listing of the use of D&C Orange No. 17 in externally applied drugs and cosmetics in a rule published in the **Federal Register** of April 1, 1983 (48 FR 13975). The agency extended the closing date until May 31, 1983, to provide time for the uninterrupted use of this color additive in externally applied drugs and cosmetics while FDA considered the scientific and legal aspects of the recent skin penetration studies submitted by the Cosmetic, Toiletry and Fragrance Association, Inc. (CTFA). Previously, in the **Federal Register** of March 27, 1981 (46 FR 18954), FDA had published a rule establishing March 31, 1983, as the closing date for the provisional listing of D&C Orange No. 17 for cosmetic and general drug uses. The agency had extended the closing date until March 31, 1983, to provide time for the completion of chronic toxicity studies and to allow time for the agency to review and evaluate these studies. In the **Federal Register** of April 1, 1983 (48 FR 13976), FDA announced that the provisional listing of D&C Orange No. 17 for coloring ingested drugs and cosmetic had expired. In that issue of the **Federal Register** (48 FR 14045), FDA also published a final rule denying those portions of the color additive petition for D&C Orange No. 17 that requested permanent listing of the color additive for use in drugs and cosmetics intended for ingestion and in cosmetics intended for use in the area of the eye.

As noted in the **Federal Register** of August 6, 1973 (38 FR 21199), D&C Orange No. 17 is the subject of a petition (CAP 9C0090) submitted by the Toilet Goods Association, Inc. (now CTFA), for use in coloring drugs and cosmetics. The agency has concluded that D&C Orange No. 17 is an animal carcinogen when administered in the diet, based on the increased incidence of hepatocellular neoplasms in two mammalian species (48 FR 13977 and 14046–7). Therefore, FDA has denied that portion of the petition for this color additive that relates to ingested uses. However, under 21 U.S.C. 376(b)(5)(B)(ii), the agency must determine whether the ingestion studies that show D&C Orange No. 17 to be a carcinogen are appropriate for the evaluation of the safety of the external uses of this color additive. To assist the agency in making this determination, the petitioner has submitted the recent skin penetration studies on D&C Orange No. 17.

The agency is now considering the scientific and legal aspects of the CTFA submissions in support of the external uses of D&C Orange No. 17. Although D&C Orange No. 17 has been shown to be an animal carcinogen upon ingestion, the agency believes that somewhat different questions are raised by the

request to list these color additives for noningested use. Thus, FDA finds that a brief extension of the closing date to July 29, 1983, is necessary to provide sufficient time for the agency to determine the applicability of the statutory standard for listing color additives for noningested use to D&C Orange No. 17. It has taken FDA more time to evaluate the data involved in making this decision than the agency anticipated. This postponement will also provide time for the agency to prepare and to publish a **Federal Register** document setting forth its final decision on the petition for the permanent listing of this color additive. The continued use of this color additive in externally applied products for the short time needed for adequate evaluation of the data and for preparation of the **Federal Register** document will not pose a hazard to the public health.

Because of the short time until the May 31, 1983 closing date, FDA concludes that notice and public procedure on this regulation are impracticable. This regulation will permit the uninterrupted use of this color additive until July 29, 1983. To prevent any interruption in the provisional listing of D&C Orange No. 17 and in accordance with 5 U.S.C. 553(d) (1) and (3), this final rule is being made effective May 31, 1983.

List of Subjects in 21 CFR Part 81

Color additives, Color additives provisional list, Cosmetics, Drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 701, 706 (b), (c), and (d), 52 Stat. 1055–1056 as amended, 74 Stat. 399–403 (21 U.S.C. 371, 376 (b), (c), and (d))) and under the transitional provisions of the Color Additive Amendments of 1960 (Title II, Pub. L. 86–618; sec. 203, 74 Stat. 404–407 (21 U.S.C. 376 note)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Part 81 is amended as follows:

PART 81—GENERAL SPECIFICATIONS AND GENERAL RESTRICTIONS FOR PROVISIONAL COLOR ADDITIVES FOR USE IN FOODS, DRUGS, AND COSMETICS

§ 81.1 [Amended]

1. In § 81.1 *Provisional lists of color additives* by revising the closing date for "D&C Orange No. 17" in paragraph (b) to read "July 29, 1983."

§ 81.27 [Amended]

2. In § 81.27 *Conditions of provisional listing* by revising the closing date for "D&C Orange No. 17" in paragraph (d) to read "July 29, 1983."

Effective date. This final rule shall be effective May 31, 1983.

(Secs. 701, 706(b), (c), and (d), 52 Stat. 1055–1056 as amended, 74 Stat. 399–403 (21 U.S.C. 371, 376(b), (c), and (d)); sec. 203, 74 Stat. 404–407 (21 U.S.C. 376 note))

Dated: May 13, 1983.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 83-14163 Filed 5-27-83; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 81

[Docket Nos. 76N-0366 and 82N-0378]

Provisional Listing of D&C Red No. 6 and D&C Red No. 7; Postponement of Closing Date

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is postponing the closing date for the provisional listing of D&C Red No. 6 and D&C Red No. 7 for general use as color additives in drugs and cosmetics, except for use in the area of the eye. The new closing date will be July 29, 1983. This brief postponement will provide time for the agency to complete its evaluation of an objection received in response to the final regulation approving the petition for the permanent listing of D&C Red No. 6 and D&C Red No. 7 for these uses.

DATES: Effective May 31, 1983, the new closing date for D&C Red No. 6 and D&C Red No. 7 will be July 29, 1983.

FOR FURTHER INFORMATION CONTACT: John L. Herrman, Bureau of Foods (HFF–334), Food and Drug Administration, 200 C St. SW., Washington, D.C. 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: FDA stayed the effective date of the final rule permanently listing D&C Red No. 6 and D&C Red No. 7 and established the current closing date of May 31, 1983, for the provisional listing of D&C Red No. 6 and D&C Red No. 7 by a rule published in the **Federal Register** of March 29, 1983 (48 FR 13022). The agency extended the closing date until May 31, 1983, to provide time for the completion of its evaluation of an objection received in response to the final rule published in the **Federal Register** of December 28, 1982 (47 FR 57681), approving the petition for the permanent listing of D&C Red No. 6 and D&C Red No. 7 for general use in drugs and cosmetics except for use in the area of the eye. Also in the **Federal Register** of December 28, 1982 (47 FR 57691), FDA had published a final rule establishing a closing date of March 29, 1983, for the provisional listing of D&C Red No. 6 and D&C Red No. 7 to provide time for receipt and evaluation of any objections to the final regulation approving the petition for permanent listing of these color additives. The regulations set forth below will postpone the May 31, 1983 closing date for the provisional listing of these color additives until July 29, 1983.

The review and evaluation of the objection received in response to the final rule permanently listing these color additives have required more time than anticipated. Therefore, FDA concludes that a brief postponement of the closing date for provisional listing until July 29, 1983, is necessary. This brief postponement will provide time for the agency to complete its evaluation of the objection and publish a final decision concerning it in the **Federal Register**. The agency has also concluded that no harm to the public health will result from this extension because the agency has previously concluded that D&C Red No. 6 and D&C Red No. 7 are safe for their intended use under the Color Additive Amendments of 1960.

Because of the short time until the May 31, 1983 closing date, FDA concludes that notice and public procedure on this regulation are impracticable, and that good cause exists for issuing this postponement as a final rule. This regulation will permit the uninterrupted use of these color additives until July 29, 1983. To prevent any interruption in the provisional listing of D&C Red No. 6 and D&C Red No. 7 and in accordance with 5 U.S.C. 553(d) (1) and (3), these regulations are being made effective on May 31, 1983.

List of Subjects in 21 CFR Part 81

Color additives, Color additives provisional list, Cosmetics, Drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 701, 706 (b), (c) and (d), 52 Stat. 1055–1056 as amended, 74 Stat, 399–403 (21 U.S.C. 371, 376 (b), (c), and (d))) and under the transitional provisions of the Color Additive Amendments of 1960 (Title II, Pub. L. 86–618, sec. 203, 74 Stat. 404–407 (21 U.S.C. note)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Part 81 is amended as follows:

PART 81—GENERAL SPECIFICATIONS AND GENERAL RESTRICTIONS FOR PROVISIONAL COLOR ADDITIVES FOR USE IN FOODS, DRUGS, AND COSMETICS

§ 81.1 [Amended]

1. In § 81.1 *Provisional lists of color additives* by revising the closing date for "D&C Red No. 6" and "D&C Red No. 7" in paragraph (b) to read "July 29, 1983."

§ 81.27 [Amended]

2. In § 81.27 *Conditions of provisional listing* by revising the closing date for "D&C Red No. 6" and "D&C Red No. 7" in paragraph (d) to read "July 29, 1983."

Effective date. This final rule shall be effective May 31, 1983.

(Secs. 701, 706 (b), (c), and (d), 52 Stat. 1055–1056 as amended, 74 Stat. 399–403 (21 U.S.C. 371, 376 (b), (c), and (d)); sec. 203, 74 Stat. 404–407 (21 U.S.C. 376 note))

Dated: May 17, 1983.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 83-14280 Filed 5-27-83; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 145

[Docket No. 82N-0160]

Canned Fruits; Repeal of Standards of Identity for Canned Fruits With Rum; Confirmation of Effective Date

AGENCY: Food and Drug Administration.

ACTION: Final rule; confirmation of effective date.

SUMMARY: The Food and Drug Administration (FDA) confirms the effective date for repealing standards of identity for canned apricots with rum, canned cherries with rum, canned peaches with rum, and canned pears with rum.

DATES: Effective April 15, 1983, for all affected products.

FOR FURTHER INFORMATION CONTACT: F. Leo Kauffman, Bureau of Foods (HFF–214), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–245–1164.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 15, 1983 (48 FR 10812), FDA issued a final regulation repealing the standards of identity for canned apricots with rum (21 CFR 145.118), canned cherries with rum (21 CFR 145.128), canned peaches with rum (21 CFR 145.173), and canned pears with rum (21 CFR 145.178) because they are no longer necessary to protect the interest of consumers. Any person adversely affected by the regulation could have, at any time on or before April 14, 1983, filed written objections to the final regulation and requested a public hearing on the specific provisions to which there were objections. No objections or requests for a hearing were received.

List of Subjects in 21 CFR Part 145

Canned fruit, Food standards, Fruits.

PART 145—CANNED FRUITS

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 401, 701 (e), 52 Stat. 1406 as amended, 70 Stat. 919 as amended (21 U.S.C. 341, 371(e))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), notice is given that the effective date for amendment of Part 145, as set forth in the **Federal Register** of March 15, 1983 (48 FR 10812), which repealed § 145.118 *Canned apricots with rum*, § 145.128 *Canned cherries with rum*, § 145.173 *Canned peaches with rum*, and § 145.178 *Canned pears with rum*, is April 15, 1983.

Dated: May 20, 1983

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 83-14415 Filed 5-27-83; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 430

[Docket No. 83N-0074]

Antibiotic Drugs; Netilmicin Sulfate Injection; Correction

AGENCY: Food and Drug Administration.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting the final rule that amended the antibiotic drug regulations to provide for the inclusion of accepted standards for netilmicin sulfate injection.

FOR FURTHER INFORMATION CONTACT: Agnes Black, Federal Register Writer (HFC–11), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2994.

SUPPLEMENTARY INFORMATION: In FR Doc. 83–11135 at page 18799 in the **Federal Register** of Tuesday, April 26, 1983, the following correction is made on page 18800: In amendment 3.c. to § 430.6, *Definitions of the terms "unit" and "microgram" as applied to antibiotic substances*, the paragraph designation (b)(78) is changed to (b)(79).

Dated: May 24, 1983.

James C. Morrison,

Assistant Director for Regulatory Affairs.

[FR Doc. 83-14416 Filed 5-27-83; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 207

[Docket No. R–83–710]

Multifamily Housing Mortgage Insurance; Special Eligibility Provisions for Existing Projects in Target Preservation Areas

AGENCY: Office of Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: On October 3, 1979, HUD published an interim rule (44 FR 56927) which established the Target Area Preservation Demonstration Program for mortgages insured pursuant to section 223(f) of the National Housing Act covering existing multifamily housing projects in older, declining urban areas. The rule provided more favorable insured financing terms in order to ascertain the feasibility of encouraging FHA mortgage insurance for existing projects in these areas, while meeting the requirement that insured projects be economically sound. This rule makes the interim rule final, with changes designed to provide more flexible limitations on secondary financing by project sponsors and to clarify the Demonstration Program's purpose.

EFFECTIVE DATE: July 15, 1983.

FOR FURTHER INFORMATION CONTACT: Michael Wells, Office of Policy and Budget, Housing, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410. (202) 755–6454. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Section 223(f) of the National Housing Act ("the Act") authorizes the Secretary of HUD to provide mortgage insurance, under any appropriate section of that Act, for the purchase or refinancing of existing multifamily housing projects. This authority was added to the Act in 1974.

Regulations implementing the authority were promulgated in March of 1975 at 24 CFR 207.32a. Under these regulations, insurance pursuant to

section 223(f) is written under section 207 of the Act, the Multifamily Housing Mortgage Insurance Program. Experience under the Section 223(f) Program demonstrated that many or most dwellings in older and declining urban areas were ineligible for insurance, since they could not meet the economic soundness underwriting standard required under section 207. Further, the regulations made 223(f) insurance available on a generally more restrictive basis than insurance under the basic Section 207 Program. For example, the maximum allowable repayment term for section 207 mortgage insurance is the lesser of 40 years or 100 percent of the economic life of the property. The maximum term generally permitted for the Section 223(f) Program was the lesser of 35 years or 75 percent of economic life. The maximum allowable ratio of the mortgage amount to the estimated value of the project is 90 percent in section 207, but generally was 85 percent for the Section 223(f) Program.

In order to ascertain the feasibility and desirability of encourging FHA mortgage insurance for existing multifamily projects in older, declining urban areas, while meeting the test of economic soundness, HUD published an interim rule in the **Federal Register** on October 3, 1979 (44 FR 56927, effective October 29, 1979), amending the regulations for the Section 223(f) Mortgage Insurance Program. The interim rule added a new provision, 24 CFR 207.32a(1), authorizing a demonstration Target Area Preservation Program for older declining urban areas. The terms of the Program are as follows:

(1) A maximum allowable mortgage term that is the lesser of 40 years or 100 percent of economic life;

(2) A 90 percent maximum allowable ratio of the mortgage amount to the Secretary's estimate of the value of the project;

(3) A 90 percent maximum allowable ratio of the mortgage amount to the cost of acquisition as determined by the Secretary.

In order to be eligible for Section 223(f) financing on these more favorable terms, multifamily properties must be in areas designated by the Secretary (a) in which concentrated housing, physical development or public service activities are being or are to be carried out in a coordinated manner to serve a common objective or purpose pursuant to a locally developed plan or strategy for neighborhood improvement, conservation, or preservation and (b) that are either older, declining urban areas or were so before the concentrated activities referred to began. The Secretary has designated certain areas meeting the foregoing criteria which are eligible to receive the favorable financing as Target Preservation Areas.

The 1979 interim rule also set limits on the amount of secondary financing that can be used in connection with section 223(f) mortgage insurance. Thus, when a loan is made to finance the purchase of an existing multifamily project, secondary financing cannot exceed the lesser of 5 percent of HUD's estimate of value or 5 percent of HUD's determination of the cost of acquisition. When a loan is made to refinance an existing multifamily project, secondary financing cannot exceed the lesser of 5 percent of HUD's estimate of value or 50 percent of the difference between the cost of refinancing and the maximum insurable mortgage amount. The maximum amount of secondary financing permitted for projects in the Target Preservation Areas is less than the secondary financing amount generally permitted in the Section 223(f) Program—7.5 percent of value or acquisition cost, as appropriate.

After promulgation of the 1979 interim rule, interested persons were given an opportunity to participate in the rulemaking through the submission of written comments. During the comment period (through December 31, 1979), the Department received two comments on the interim rule. Neither comment objected to the rule but the commenters did make recommendations for certain program changes with which the Department agreed and has been able to effect without a change in the regulations. Among the nonregulatory changes suggested by the comments and accommodated are: (1) Changing the section 223(f) insurance claims payment from debentures to cash so that projects will have access to the tax-exempt bond market; (2) allowing rehabilitation that exceeds the existing repair limits of the Section 223(f) Program; and (3) combining section 223(f) financing with GNMA Targeted Tandem Program subsidies in accordance with amendments to section 223(f) contained in the Housing and Community Development Act of 1980. These changes permitted the Demonstration Program to finance moderate rehabilitation in projects where: (a) A neighborhood program has firmed up the rental housing market sufficiently so that tenants who have incomes which are adequate for continued maintenance of the projects will live there for the indefinite future; (b) the more favorable section 223(f) financing assures that the incomes of the present occupants are adequate for the continued maintenance of the projects; and (c) shallow subsidies, through GNMA Targeted Tandem, support repair and rehabilitation which otherwise cannot be supported by project revenues.

Because of the GNMA Targeted Tandem Program's impact on the Federal budget, the Department is not seeking authority to fund additional GNMA Targeted Tandem projects. Partially in lieu of the assistance provided by Targeted Tandem under the interim rule, this final rule revises the interim rule to provide for more flexible limitations on secondary financing by a project sponsor. Currently, as noted above, secondary financing in Target Preservation Areas cannot exceed 5 percent of HUD's estimate of a property's value. The final rule provides that, where the interest rate on secondary financing does not exceed the applicable HUD-established interest rate, the total secondary financing cannot exceed: (a) In the case of the purchase of a project, the difference between the insured mortgage amount and 95 percent of HUD's estimate of value or cost of acquisition, whichever is lower, and (b) in the case of a refinancing, the difference between the insured mortgage and 95 percent of HUD's estimate of value or the refinancing costs, whichever is lower. With this revision, a more effective level of repair or moderate rehabilitation should be possible, based on subsidized secondary financing provided by State or local governments, with either no rent change, or only modest rent increases. For example, under this final rule, a property may be covered by a 223(f) first mortgage to the amount of 80 percent of value, and by a second mortgage securing a State or local subsidized loan, for further amount of up to 15 percent of value.

This final rule also revises the last paragraph of 207.32a(1)(3) to clarify and make more comprehensive the stated objective of the TAP Demonstration Program. The interim rule states the Program's objective is "* * * to determine whether a sufficient number of multifamily property owners in the Target Preservation Areas avail themselves of section 223(f) insurance that meets the economic soundness test, and whether section 223(f) financing can make sufficient contributions to the preservation, conservation or revitalization of the Target Preservation Areas to justify making the demonstration's approach to providing financing to multifamily properties in older, declining urban areas a permanent part of the section 223(f) program." This rule restates this

objective as "to test the feasibility of mortgage insurance in upgrading and maintaining older, declining urban areas and multifamily rental housing in these areas.".

Findings and Certification

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(c) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular business hours at the Office of the Rules Docket Clerk, Room 10278, 451 Seventh Street, SW., Washington, D.C. 20410.

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 issued on February 17, 1981. Analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in cost 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 does not have a significant economic impact on a substantial number of small entities. The changes made by this rule can be considered technical adjustments to the existing Target Area Preservation Demonstration Program. They do not change the goals toward which program activities are directed and any effect on small entities should be minor and positive.

This program is cited in the Catalog of Federal Domestic Assistance as: 14.155, Mortgage Insurance for the Purchase or Refinancing of Existing Multifamily Housing Projects.

This rule was listed as item H-82-78 under the Office of Housing in the Department's Semiannual Agenda of Regulations published on April 25, 1982 (48 FR 18054) pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

List of Subjects in 24 CFR Part 207

Mortgage insurance, Rental housing, Mobile home parks.

PART 207—[AMENDED]

Accordingly, paragraphs (b), (c), (e) and (k) of § 207.32a, promulgated as interim rules at 44 FR 56927, October 3, 1979, are hereby adopted as final rules and 24 CFR Part 207 is further revised to read as follows:

1. In § 207.32a, paragraph (j)(4) is revised to read as follows:

§ 207.32a Eligibility of mortgages on existing projects.

* * * * *

(j) *Secondary financing.*

* * * * *

(4) For those projects which meet the eligibility requirements contained in paragraph (k) or paragraph (l) of this section, any additional obligations on the project in connection with the insured transaction shall be in an amount approved by the Commissioner and represented by such credit and security instruments as are approved by the Commissioner. In the case of projects which meet the eligibility requirements contained in paragraph (l) of this section, the additional obligations shall in no event exceed:

(i) When a loan is made to finance the purchase of an existing multifamily housing project and the interest rate of the additional obligations does not exceed the current maximum interest rate permitted under § 207.7, the difference between the amount of the insured mortgage and the lesser of 95 percent of the Commissioner's estimate of value or 95 percent of the cost of acquisition as defined in paragraph (c) of this section.

(ii) When a loan is made to finance the purchase of an existing multifamily housing project, and the interest rate of the additional obligations exceeds the current maximum interest rate permitted under § 207.7, the lesser of:

(A) Five percent of the Commissioner's estimate of value, or

(B) Five percent of the cost of acquisition as defined in paragraph (c) of this section.

(iii) When a loan is made to refinance an existing multifamily housing project and the interest rate of the additional obligations does not exceed the current maximum interest rate permitted under § 207.7, the lesser of:

(A) The difference between the amount of the insured mortgage and 95 percent of the Commissioner's estimate of value, or

(B) The difference between the amount of the insured mortgage and the cost to refinance as defined in paragraph (d)(2) of this section.

(iv) When a loan is made to refinance an existing multifamily housing project, and the interest rate of the additional obligations exceeds the current maximum interest rate permitted under § 207.7, the lesser of:

(A) Five percent of the Commissioner's estimate of value, or

(B) Fifty percent of the difference between the cost to refinance as defined in paragraph (d)(2) of this section and the maximum mortgage amount as determined by the Commissioner."

2. In § 207.32a, paragraph (l)(3) is revised to read as follows:

§ 207.32a Eligibility of mortgage on existing projects.

* * * * *

(l) *Additional eligibility requirements for a mortgage financing a project in a Target Preservation Area.*

* * * * *

(3) The area has unique qualities that make it suitable for inclusion as one of the demonstration areas in the Target Area Preservation Demonstration Program. The Target Area Preservation Demonstration Program makes section 223(f) financing available on a limited, carefully controlled demonstration basis to areas that meet the requirements given above, and such additional Target Preservation Area eligibility criteria as the Secretary may announce in the future. The objective of the Target Area Preservation Demonstration Program is to test the feasibility of mortgage insurance in upgrading and maintaining older, declining urban areas and multifamily rental housing in these areas. An area approved as a Neighborhood Strategy Area under the provisions of 24 CFR Part 881, Subpart C, shall be considered to have met the criteria in paragraphs (l) (1) and (2) of this section.

(Sec. 223(f), National Housing Act (12 U.S.C. 1715n); section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)))

Dated: May 23, 1983.

Philip Abrams,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 83-14409 Filed 5-27-83; 8:45 am]

BILLING CODE 4210-27-M

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24 CFR Part 867

[Docket No. R-83-1057]

Costs of Certification of Housing Managers and Related Training in Projects Owned by Public Housing Authorities

AGENCY: Office of Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This rule amends the regulations governing certification of housing managers for projects owned by a Public Housing Agency (PHA). The amendment removes several restrictions relating to payment by a PHA of the costs of certification of an employee as a housing manager or assistant housing manager, including costs of training to qualify for such certification.

EFFECTIVE DATE: July 15, 1983.

FOR FURTHER INFORMATION CONTACT: Wayne Hunter, Office of Public Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410, telephone number (202) 472–4703. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Subpart C of 24 CFR Part 867 governs the certification of Housing Managers and Assistant Housing Managers for projects owned by a Public Housing Agency (PHA). Section 867.307, which deals with costs of certification and related training, currently provides that costs of specialized training directly related to qualifying for certification and costs of general education necessary for certification shall be includible as eligible expenditures in PHA operating budgets. Under the existing regulation, such training must be approved in writing by an Approved Certifying Organization or by HUD and be designed to enhance the skills of the trainee for the purpose of qualifying for certification. However, such certification and training costs are includible as eligible expenditures in the PHA budgets submitted to HUD only with respect to persons employed on the date of issuance of the regulation (September 29, 1976).

On January 8, 1983, the Department published a proposed amendment to § 867.307 which would afford PHAs more discretion regarding payment of certification and training costs. The following changes were proposed:

(1) To replace the detailed descriptions of types of eligible costs with the basic standard of "reasonable costs";

(2) To remove the restrictions against payment of certification costs for employees hired after September 29, 1976;

(3) To remove the requirement that training must be approved by HUD or an Approved Certifying Organization; and

(4) To give each PHA discretion as to whether to pay costs of certification and of training to enable an employee to qualify for certification out of PHA funds. However, the rule proposed that such costs incurred by a PHA must be paid within its existing operating subsidy availability under 24 CFR Part 890 and that no additional subsidy will be paid to cover such costs.

The Department received three public comments on the proposed rule. All three comments were generally in favor of the amendment as proposed and made no specific recommendations for changes. While we have revised the proposed language of the new § 867.307 to make it clearer, we have not made any changes in substance from the proposed amendment.

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 Environmental 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, Office of the General Counsel, Counsel Room 10278, Department of Housing and Urban Development, 451 7th Street, SW., Washington, D.C. 20410.

This rule does not constitute a "major rule" as that term is defined in Section 1(b) of Executive Order 12291 on Federal Regulation issued on February 17, 1981. Analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have 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.

Pursuant to the provisions of 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. While this rule will affect a substantial number of small governmental entities, it is not expected to have a significant economic impact on any of them.

This rule is listed at 48 FR 18074 as item H–77–82 in the Department's Semiannual Agenda of Regulations published on April 25, 1983 (48 FR 18054), pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

(The Catalog of Federal Domestic Assistance program number is 14.156 (Lower Income Housing Assistance Program))

List of Subjects in 24 CFR Part 867

Public housing.

PART 867—[AMENDED]

Accordingly, 24 CFR Part 867 is amended by revising § 867.307 to read as follows:

§ 867.307 Costs of certification and related training.

The reasonable costs incurred by a PHA for Certification of a PHA employee as a Housing Manager or Assistant Housing Manager (whether or not the Certification is required under this part), including training to enable a PHA employee to qualify for such Certification, shall be allowable as eligible expenditures for a PHA. The PHA may, at its discretion, include a provision for payment of such costs in its operating budget. However, such expenditures must be within the PHA's existing operating subsidy availability under 24 CFR Part 890, since no additional operating subsidy will be provided to cover them.

(Sec. 6(c)(4), U.S. Housing Act of 1937; Sec. 7(d) Department of HUD Act; 42 U.S.C. 1437d, 3535(d))

Dated: May 23, 1983.

Philip Abrams,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 83-14406 Filed 5-27-83; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 178

[T.D. ATF–135; Ref: Notice No. 437]

Three Year Firearms Licenses

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF) Treasury.

ACTION: Final rule. Treasury decision.

SUMMARY: This final rule establishes a three year firearms license for manufacturers, importers, dealers, and collectors instead of an annual firearms license. This regulation change will reduce paperwork and other administrative costs to the firearms industry and to the Government.

EFFECTIVE DATE: August 1, 1983.

FOR FURTHER INFORMATION CONTACT: James A. Hunt, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW, Washington, DC 20226, (202–566–7626).

SUPPLEMENTARY INFORMATION:

Background

On November 30, 1982, ATF published a notice of proposed rulemaking, Notice No. 437, in the **Federal Register** (47 FR 53929) proposing a three year firearms license for manufacturers, importers, dealers, and collectors. The license period of an original license and for a license renewal has been one year since implementation of the Gun Control Act of 1968. A review of the law and legislative history indicated that a firearms license could be issued for more than a one year period provided the total fee was based on a "per year" rate. Since there are over 200,000 firearms licensees, a change in the license period from one to three years would result in a significant reduction in paperwork and other administrative costs for the firearms industry and the Government.

Comments

During the 60 day comment period 46 written comments were received. Forty-four of the commenters favored an increase in the licensing period and two were opposed.

Most of the commenters in favor were in agreement with the three year licensing period and stated there would definitely be a reduction in paperwork burden. One particular administrative cost savings noted was the elimination of the need to furnish a license copy to firearms suppliers annually. Four commenters favored an increase in the licensing period to five years and two commenters wanted a substantial increase in the license fees. Two organizations, National Rifle Association and Handgun Control Inc, commented in favor of the three year license.

One of the two comments opposed to the proposal was from an individual opposed to firearms. The other commenter opposed a three year firearms license because he is 75 years old and since he has two licenses, the licenses would cost him $60 for three years. He expressed a concern that he might not remain in business for three years. This commenter correctly stated that there is no refund provision for a license used less than three years and that the paperwork for any refund would make such a provision too costly.

ATF considered a five year license period before proposing a three year license. We believe a five year period might impose a financial hardship on some licensees and would present a problem for ATF by causing the Bureau to maintain an active status for a longer period of time for licensees who have gone out of business and who have failed to notify ATF. Any change in the license fee would require a change in the law by Congress. A refund procedure was considered and rejected because the administrative costs would be higher than the license fee in most cases. A provision to allow for an optional annual license was considered and rejected because this would require and expensive special handling.

Implementing the Three Year License

The three year firearms license will become effective August 1, 1983. Because there are over 200,000 licensees with an annual license, a phase-in period will be required for the first year the licenses are renewed. If all licenses were renewed on a three year period, the work load for ATF would be very low for two years and very high during the third year. Therefore, for the first year the license renewals issued by ATF during a month will be selected at random for one, two or three years and indicated on the license renewal form sent to the licensees. The one year phase-in of the three year license will be discussed in more detail in an Industry Circular to be sent to all licensees. All original firearms licenses issued will be for a three year period.

The amendments made in this final rule are basically those proposed in the notice of proposed rulemaking except for the following technical and conforming amendments:

(1) In accordance with the establishment of three year firearms licenses, a technical and conforming amendment is made to §§ 178.52 and 178.95. These provisions currently provide for the furnishing of a copy of the license to licensees for their certification and use in accordance with § 178.94. Section 178.94 requires that a licensee furnish a certified copy of his firearm's license to a licensee from whom he acquires firearms. The three year firearms license will contain a purchasing certification statement which a transferee may execute in order to furnish a certified copy of his license to a transferor in accordance with § 178.94. Since licensees may simply reproduce their licenses and then certify the reproduction, they will not need a certified copy of their licenses in order to comply with § 178.94. The provision set forth in §§ 178.52 and 178.95 that licensees be furnished a copy of their license for certification and use pursuant to § 178.94 is, therefore, unnecessary. (A reference to the license copy was also removed from § 178.47.) This technical change will further reduce paperwork and other administrative costs for firearms licensees and the Government.

(2) Regulations in Part 178 state that license applications and fees are sent to the District Director. However, most license applications and fees are sent for processing to the Service Center Director for the internal revenue district in which the applicant is to do business. This final rule makes reference to the Service Center Director and the District Director.

(3) The firearms license used to consist of three parts: Original license, ATF Form 8 (5310.11) Part 1; copy, ATF Form 8 (5310.11) Part 2; and a Renewal, AFT Form 8 (5310.11) Part 3. Since a purchasing copy, Part 2, is no longer necessary, the renewal will be changed to ATF Form 8 (5310.11) Part II. The sections referring to the renewal form, ATF Form 8 Part 3, have been changed to ATF Form 8 (5310.11) Part II.

Drafting Information

The principal author of this document is James A. Hunt, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 178

Administrative practice and procedure, Arms and munitions, Authority delegations, Customs delegations, Customs duties and inspection, Exports, Imports, Military personnel, Penalties, Reporting requirements, Research, Seizures and forfeitures, Transportation.

Executive Order 12291

It has been determined that this final rule is not a "major rule" within the meaning of Executive Order 12291 of February 17, 1981, because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographical regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to a final regulatory flexibility analysis (5 U.S.C. 604) are not applicable to this final rule because it will not have a significant economic impact on a substantial number of small entities. The final rule is expected to have a significant secondary or incidental effect on a substantial number of small entities in

reducing the paperwork and other administrative costs associated with obtaining a firearms license. The final rule will not impose, or otherwise cause, a significant increase in reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of Section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this final rule will not have a significant economic impact on a substantial number of small entities.

PART 178—COMMERCE IN FIREARMS AND AMMUNITION

Accordingly, under the authority in 18 U.S.C. 926 (82 Stat. 1226), 27 CFR Part 178 is amended as follows:

Paragraph 1. The table of sections in 27 CFR Part 178, Subpart D, is amended by revising the section heading of § 178.46 to add the Service Center Director.

Subpart D—Licensees

Sec.

* * * * *

178.46 Procedure by Service Center Director or District Director.

* * * * *

Par. 2. The meaning of terms, § 178.11, is amended by adding in alphabetical order the following definition:

§ 178.11 Meaning of terms.

* * * * *

Service Center Director. A director of an Internal Revenue Service Center.

* * * * *

Par. 3. The Service Center Director is added to two subparagraphs in Section 178.41. § 178.41 is amended by revising the first sentence of paragraphs (b) and (c) to read as follows:

§ 178.41 General.

* * * * *

(b) Each person intending to engage in business as a firearms or ammunition importer, manufacturer, or dealer shall file an application with the required fee (See § 178.42), with the Service Center Director or District Director for the internal revenue district in which his premises are to be located, and, pursuant to § 178.47, receive the license required for such business from the Regional regulatory administrator.

(c) Each person seeking the privileges of a collector licensed under this part shall file an application, with the required fee (see § 178.42), with the Service Center Director or District Director for the internal revenue district in which his collection premises are to be located, and pursuant to § 178.47, receive from the Regional regulatory administrator the license covering the collection of curios and relics.

* * * * *

Par. 4. Section 178.42 is amended to provide for a three year firearms license. Section 178.42 is amended by revising the introductory text of the section to read as follows:

§ 178.42 License fees.

Each applicant shall pay a fee at a yearly rate for obtaining a firearms license, a separate fee being required for each business or collecting activity at each place of such business or activity, as follows:

* * * * *

Par. 5. Section 178.44 is amended to reflect a three year firearms license. Section 178.44 is amended by revising paragraphs (a) and (b) to read as follows:

§ 178.44 Original license.

(a) Any person who intends to engage in business as a firearms or ammunition importer, manufacturer, or dealer on or after the effective date of this part, or who has not previously been licensed under the provisions of this part to so engage in business, or who has not timely submitted application for renewal of his previous license issued under this part, shall, except as provided in paragraph (c) of this section, file with the Service Center Director or District Director for the internal revenue district in which the applicant is to do business, an application, ATF Form 7 (5310.12). The application, ATF Form 7 (5310.12), shall include information as to the ownership of the business, the type of firearms or ammunition to be dealt in, the business hours, the business history, and the identity of the responsible persons in the business. The application must be executed under the penalties of perjury and the penalties imposed by 18 U.S.C. 924. The application shall be accompanied by the appropriate fee in the form of: (1) Cash, or (2) money order or check made payable to the Internal Revenue Service. ATF Forms 7 (5310.12), may be obtained from any Regional regulatory administrator or District Director.

(b) Any person who desires to obtain the privileges granted to a licensed collector under the Act and this part on or after the effective date of this part, or who has not timely submitted application for renewal of his previous license issued under this part, shall file with the Service Center Director or District Director for the internal revenue district in which the applicant is to maintain his collection premises an application, ATF Form 7 (5310.12). The application, ATF Form 7 (5310.12), shall include information as to the ownership of the activity, and the identity of the responsible persons in the activity. The application must be executed under the penalties of perjury and the penalties imposed by 18 U.S.C. 924. The application shall be accompanied by the appropriate fee in the form of: (1) Cash, or (2) money order or check made payable to the Internal Revenue Service. ATF Forms 7 (5310.12) may be obtained from any Regional regulatory administrator or District Director.

* * * * *

Par. 6. Section 178.45 is amended to provide for renewing a firearms license for one, two, or three years. Section 178.45 is revised to read as follows:

§ 178.45 Renewal of license.

If a licensee intends to continue the business or activity described on a license issued under this part during any portion of the ensuing year, he shall, unless otherwise notified in writing by the Regional regulatory administrator, execute and file prior to the expiration of his license an application for a license renewal, ATF Form 8 (5310.11) Part II, accompanied by the required fee, with the Service Center Director or District Director for the internal revenue district in which the business or activity is operated. The Regional regulatory administrator may, in writing, require an applicant for license renewal to also file completed ATF Form 7 (5310.12) in the manner required by § 178.44. In the event the licensee does not timely file an ATF Form 8 (5310.11) Part II, he must file an ATF Form 7 (5310.12) as required by § 178.44, and obtain the required license before continuing business or collecting activity. If an ATF Form 8 (5310.11) Part II is not timely received through the mails, the licensee should so notify his Regional regulatory administrator.

Par. 7. Section 178.46 is amended to add the Service Center Director and change ATF Form 8 Part 3 to Part II. Section 178.46 is revised to read as follows:

§ 178.46 Procedure by Service Center Director or District Director.

Upon receipt of an application for an original license on ATF Form 7 (5310.12) or an application for renewal of a license on ATF Form 8 (5310.11) Part II or a required ATF Form 7 (5310.12), the Service Center Director or District Director shall deposit the fee accompanying the license application and forward the application to the Regional regulatory administrator. Where an application is filed with an

insufficient fee, the application and any fee submitted shall be returned.

Par. 8. Section 178.47 is amended to provide for a firearms license for one, two, or three years and to remove reference to a copy of the license. Section 178.47 is amended by revising paragraph (a), introductory text of paragraph (b), and paragraph (c) to read as follows:

§ 178.47 Issuance of license.

(a) Upon receipt of a properly executed application for a license on ATF Form 7 (5310.12), or ATF Form 8 (5310.11) Part II, the Regional regulatory administrator may, upon finding through further inquiry or investigation, or otherwise, that the applicant is entitled thereto, issue the appropriate license. Each license shall bear a serial number and such number may be assigned to the licensee to whom issued for so long as he maintains continuity of renewal in the same internal revenue district.

(b) The Regional regulatory administrator shall approve a properly executed application for license on ATF Form 7 (5310.12), or ATF Form 8 (5310.11) Part II, if:

* * * * *

(c) The Regional regulatory administrator shall approve or deny an application for license within the 45-day period beginning on the date the application was received by the Service Center Director or District Director: Provided, That when an applicant for license renewal is a person who is, pursuant to the provisions of §§ 178.82, 178.143, or 178.144, conducting business or collecting activity under a previously issued license, action regarding the application will be held in abeyance pending the completion of the proceedings against the applicant's existing license or license application, final determination of the applicant's criminal case, or final action by the Director on an application for relief submitted pursuant to § 178.144, as the case may be.

* * * * *

Par. 9. Section 178.49 is amended to provide for a firearms license for three years. Section 178.49 is revised to read as follows:

§ 178.49 Duration of license.

The license entitles the person to whom issued to engage in the business or activity specified on the license, within the limitations of the Act and the regulations contained in this part, for the period stated on the license, unless sooner terminated. Original licenses issued August 1, 1983, and thereafter will be for a three year period unless terminated sooner. Licenses renewed August 1, 1983, through July 31, 1984, will be for a one, two or three year period. Licenses renewed August 1, 1984 and thereafter will be for a three year period unless terminated sooner.

Par. 10. Section 178.52 is amended to remove reference to a copy of the license. Section 178.52 is revised to read as follows:

§ 178.52 Change of address.

A licensee may during the term of his current license remove his business or activity to a new location at which he intends regularly to carry on such business or activity, without procuring a new license. However, in every case, whether or not the removal is from one region to another, notification of the new location of the business or activity must be given not less than 10 days prior to such removal to the Regional regulatory administrator for the region from which or within which the removal is to be made, and the Regional regulatory administrator for the region to which the removal is to be made. In each instance, the license must be submitted for endorsement to the Regional regulatory administrator having jurisdication over the region to which or within which removal is to be made. After endorsement of the license to show the new address and the new license number, if any, the Regional regulatory administrator will return same to the licensee.

Par. 11. Section 178.59 is amended to change ATF Form 8 Part 3 to Part II. Section 178.59 is revised to read as follows:

§ 178.59 Abandoned application.

Upon receipt of an incomplete or improperly executed application on ATF form 7 (5310.12), or ATF Form 8 (5310.11) Part II, the applicant shall be notified of the deficiency in the application. If the application is not corrected and returned within 30 days following the date of notification, the application shall be considered as having been abandoned and the license fee returned.

Par. 12. Section 178.95 is amended to remove reference to a copy of the license being furnished with the original license. Section 178.95 is revised to read as follows:

§ 178.95 Certified copy of license.

The license furnished to each person licensed under the provisions of this part contains a purchasing certification statement. This original license may be reproduced and the reproduction then certified by the licensee for use pursuant to § 178.94. If the licensee desires an additional copy of the license for certification (instead of making a reproduction of the original license), the licensee may submit a request, in writing, for a certified copy of the license to the Regional regulatory administrator for the region in which the license was issued. The request must set forth the name, trade name (if any) and address of the licensee, and the number of license copies desired. There is a charge of $1 for each copy. The fee paid for copies of the license must accompany the request for copies. The fee may be paid by (1) cash, or (2) money order or check made payable to the Internal Revenue Service.

Signed: April 18, 1983.

Stephen E. Higgins,

Director.

Approved: May 6, 1983.

John M. Walker, Jr.,

Assistant Secretary, Enforcement and Operations.

[FR Doc. 83-14357 Filed 5-27-83; 8:45 am]

BILLING CODE 4810-31-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

Occupational Exposure to Inorganic Arsenic; Supplemental Statement of Reasons for Rule; Corrections

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Supplemental statement of reasons for final rule; corrections.

SUMMARY: This notice announces corrections to the Supplemental Statement of Reasons for the Final Rule for Occupational Exposure to Inorganic Arsenic which appeared in the **Federal Register** on January 14, 1983 (48 FR 1864).

EFFECTIVE DATE: May 31, 1983.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, OSHA, Office of Public Affairs, U.S. Department of Labor, Rm. N3637, 200 Constitution Ave., N.W., Washington, D.C. 20210. Telephone: (202) 523-8148.

SUPPLEMENTARY INFORMATION: On January 14, 1983 (48 FR 1864) OSHA published a document titled "Occupational Exposure to Inorganic Arsenic; Supplemental Statement of Reasons for Final Rule." There were a number of typographical errors. This document corrects only those typographical errors where correction is necessary to make the meaning clear, to correct citations or to correct numbers.

Accordingly, 48 FR 1864–1903 are corrected as follows:

1. On page 1864, first column, the address and telephone number of the OSHA Office of Publications, U.S. Department of Labor, is corrected to read, "Room S1212, 200 Constitution Ave., N.W. Washington, D.C. 20210. Telephone: (202) 523–6138."

2. On page 1866, third column, lines 13 and 14 are corrected to read, "Consultants in Epidemiology and Occupational Health (CEOH) presented".

3. On page 1867, first column, lines 13–15 are corrected to read, "significant health risk . . ." (*ASARCO et al.* v. *OSHA*, 647 F.2d 1, 2 (9th Cir., 1981)".

4. On page 1872, Tables 1 and 2 are corrected to read as follows:

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Table 1

		Ceiling							
		Low		Medium		High		Very High	
		Obs**	SMR	Obs.	SMR	Obs.	SMR	Obs.	SMR
TWA	Low	7	115	1	113	3	310	0	-
	Medium	1	765	3	120	18*	398	0	-
	High					20*	318	9*	641
	Very High							18*	704

*Statistically significant

**Obs = Observed number of lung cancer deaths.

Table 2

		LIFETIME CEILING					
		Low/Medium		High		Very High	
		Obs.	SMR	Obs.	SMR	Obs.	SMR
CUMULATIVE EXPOSURE (ug/m^3-years)	Less than 500	3	67	1	77	0	-
	500 - 2000	1	79	8	180	0	-
	2000-12000	0	-	22*	394	5*	637
	12000 or more	1	940	10*	409	29*	616

*Statistically significant

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5. On page 1875, column one, line one is corrected to read, "500 $\mu g/m^3$ was very small and that".

6. On page 1875, column one, line 3 of the note is corrected to read, "equivalent to an SMR of 150 or a relative risk".

7. On page 1875, column one, fifth line from the bottom is corrected to read, "did find non-significant excesses below a 500 $\mu g/m^3$".

8. On page 1875, column three, the bottom line is corrected to read, "exposure or average exposure stemmed".

9. On page 1876, column two, line 40 is corrected to read, "were receiving pensions (Ex. 29B; Ex.".

10. On page 1876, column two, line 55 is corrected to read "exposure in micrograms of arsenic per liter of urine-years (μg As/1-years) and average".

Note.—In a number of places in the document the abbreviation for liter in the abbreviations μg As/1 and μg As/1-years is incorrectly printed as "1" rather than the correct abbreciation of "l".

11. On page 1877, column one, the bottom line is corrected to read, "expressed in micrograms of arsenic per".

12. On page 1880, column three, the Note is corrected to read, "This large a difference in smoking habits seems a reasonable upper bound".

13. On page 1883, column three, Table 3 is corrected to read as follows:

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Table 3

Respiratory Cancer Risk Observed in Low Exposure Categories

Studies	Exposure Categories	Respiratory Cancer SMR's
Lee- Feldstein (Ex. 201-16)	Maximum Exposure (Table 5, 6) [1]Light (12 or more months) Light (1-15 years) Light (15 - 24 years) Light (25 or more years)	 231* 223* 186* 313*
Enterline and Marsh (Ex. 201-9)	[2]Cumulative Exposure (Table 8) Less than 150 ug/m^3 - years 150-450 ug/m^3 - years 450-900 ug/m^3 - years [3]Average Exposure by Duration of Exposure (Table 12) Less than 10 years (49 ug/m^3) 10-19 years (49 ug/m^3)	 155.4 176.6* 226.4* 169.9 268.2*
Higgins et al. (Ex. 202-38, 203-5)	Average Exposure (Table 16) Less than 100 ug/m^3 100 - 499 ug/m^3 Ceiling Exposure (Table 20) Less than 100 ug/m^3 100 - 499 ug/m^3 Cumulative Exposure (Table 6) Less than 500 ug/m^3 - years 500 - 2000 ug/m^3 - years	 138 303* 129 116 69 157

* Statistically significant (P less than 0.05)

1. Light estimated to average 290 ug/m^3 by H.F. Morris
2. Based on 10 year Lag Data and 0.3 conversion factor for urinary levels to air levels.
3. Based on 0.3 conversion factor for urinary levels to air levels

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14. On page 1884, Table 4 is corrected to read as follows:

TABLE 4.—SUMMARY OF RISK ASSESSMENTS, EXCESS RISK OF LUNG CANCER PER 1,000 WORKERS, RISK AT 10/50/500 MG/CUBIC METER

	Model used	Lee and Fraumeni	Pinto et al.	Ott et al.	Lee-Feldstein	Enterline and Marsh	Higgins et al.
CHU	Linear RR[a]	10/51/393	25/125/713	29/146/787			
	Quadratic RR	0.3/7/-	2/49/-	2.1/52/-			
Cement Associates	Linear RR	7.7/39/394	9.1/46/465				
EPA-CAG	Liner RR	8/38/375[b]					
Crump	Linear RR	8.7/43/321	19/92/518	25/117/578	8.3/40.6/310		9.4/45.8/342[c]
	Linear AR[d]				3.2/16.0/148	7.8/38.6/315[e] LAG 0 7.6/37.3/303 LAG 10	5.2/25.9/228
Radford	Linear RR			18.6-37.5/-/-[f]			
Enterline	Linear RR					2.7/13.4/- LAG 10 2.2/11.2/- Table 12	
Biejer and Wagner				Recommends 2 µg/m³			
World health Organization	Linear RR		61/305/-[f]				
CEOH							No excess risk if exposure <500 µg/m³.

a. Relative risk (Observed/Expected).
b. Combined estimates from Lee and Fraumeni, Pinto et al. and Ott et al. studies.
c. Cumulative exposure data, Ex. 202–8, Appendix D.
d. Absolute risk (Observed-Expected)/Person-Years.
e. Range of estimates from Ott et al., Lee-Felstein, and Enterline and Marsh studies.
f. Calculated by OSHA using WHO's methodology for risk analysis.
g. Ex. 202–3A.

15. On page 1885, column two, the tenth line from the bottom is corrected to read "(Ex. 206, p. 12)".

16. On page 1887, column one, line 4 is corrected to read, "(Ex. 202–3D, p. 23) criticized the use of".

17. On page 1888, column one, the fifteenth line from the bottom is corrected to read "202–3A, Table 10) Drs. Crump and".

18. On page 1888, column three, line 2 is corrected to read, "(Ex. 206, pp. 17–18)".

19. On page 1889, column two, line 24 is corrected to read, "speculative at this point. (Ex. 212, p. 5)".

20. On page 1889, column three, line 19 is corrected to read, "202–8 Appendix E, p. 3) commenting on".

21. On page 1896, column two, line 8 is corrected to read, "addition. (Tr. p. 370, 7/15/82)".

22. On page 1898, column one, Table 5, the right hand column heading is corrected to read "Absolute risk X 10,000".

23. On page 1901, column one, lines 42 and 43 are corrected to read, "500 ug/m³ . . . poses a 'significant' health risk . . . *ASARCO* v. *OSHA*, 647 F. 2d 1,2 (Ninth Cir., 1981) (47 FR".

24. On page 1901, column three, line 35 is correted to read, "reduces risk (47 FR 15365)".

25. On page 1902, column one, line 42 is corrected to read, "exposure limit (the ALARA principle)".

(Secs. 6 and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655, 657); Secretary of Labor's Order 8–76 (41 FR 25059); 29 CFR Part 1911).

Signed at Washington, D.C. this 24th day of March 1983.

Thorne G. Auchter,

Assistant Secretary of Labor.

[FR Doc. 83-14381 Filed 5-27-83; 8:45 am]

BILLING CODE 4510-26-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 916

Kansas Permanent Regulatory Program; Informal Conference on Status

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

ACTION: Notice of informal conference.

SUMMARY: On January 21, 1981, the Secretary of the Interior approved the Kansas program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). On March 11, 1983, the Director, OSM, notified the Governor of Kansas that OSM had reason to believe that serious problems exist which are adversely affecting the effective implementation, administration, maintenance and enforcement of Kansas' approved regulatory program.

Under the provisions of OSM's regulations at 30 CFR 733.12(c), the Director may hold an informal conference to discuss the facts surrounding the Director's notification if such an informal conference is requested by the State. By letter dated May 6, 1983, the Governor of Kansas requested that the Director hold an informal conference. Accordingly, the Director hereby notifies Kansas and the public that OSM will hold an informal conference on June 16, 1983, at the address shown below under "ADDRESSES." All interested persons may attend the informal conference.

DATE: OSM has scheduled an informal conference on June 16, 1983, to be held at the address below.

ADDRESSES: The informal conference will be held on June 16, 1983, beginning at 1:30 p.m. at the Holiday Inn, 4020 Parkview Drive, Pittsburg, Kansas 66762

Copies of Administrative Record documents referenced in this notice are available for public inspection and copying during normal business hours at: Office of Surface Mining, Scarritt Building, 818 Grant Avenue, Kansas City, Missouri 64106; Telephone: (816) 374–5527.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Rieke, Kansas City Field Office Director, Office of Surface Mining Reclamation and Enforcement, Scarritt Building, 818 Grand Avenue, Kansas City, Missouri 64106; Telephone: (816) 374–5527.

SUPPLEMENTARY INFORMATION: The Secretary of the Interior conditionally approved the Kansas program on January 21, 1981 (46 FR 5892).

On March 11, 1983, the Director, OSM, notified the Governor of Kansas that OSM had reason to believe that serious problems exist which are adversel affecting the effective implementation, administration, maintenance, and enforcement of Kansas' approved permanent regulatory program under SMCRA.

Since the approval of Kansas' program, and in keeping with its policy of working closely with the State, OSM has had numerous discussions with officials from the Kansas Mined Land Conservation and Reclamation Board (the Board) about the State's performance. Recent discussions and investigations have centered on inadequacies of the Board's implementation of the approved program in the areas set forth below.

1. *Permitting:* OSM has conducted a review of five Board approved permanent program permits. Although the State was able to process and approve, within eight months following primacy, 26 of the 28 permit applications received, OSM's review of five of the permits disclose major deficiencies. For example, OSM has reason to believe that:

(a) The Board is not conducting adequate completeness reviews of permit applications prior to issuance. As a result, certain required categories of information have been omitted.

(b) Technical review of permit applications is inadequate. OSM has found what appear to be major technical deficiencies in every permit reviewed. Inadequate analyses of the hydrologic balance, sediment ponds, prime farmland and revegetation success, and fish and wildlife protection are leading problems.

(c) The Board has not been making written findings on the critical categories of information required in the permit application. Therefore, the Board will not have the necessary documentation to support its decisions.

(d) The Board's approved program staffing plan is not being followed and may be a contributing factor to the problems with permit review. The Board does not have all technical positions filled, particularly in the fields of geology, engineering and agronomy.

2. *Inspection and Enforcement*: OSM has identified the following issues with respect to inspection and enforcement actions:

(a) OSM oversight inspections have resulted in the discovery of an inordinate number of significant violations which should have been cited previously by MLCRB inspectors.

(b) MLCRB inspection records indicate that State inspections are not adequately documented, evidence is not gathered, and the inspections rarely include a complete review of all applicable performance standards.

(c) While the State appears to be meeting or even exceeding the required frequency standards for complete and partial inspections, these numbers are misleading. OSM's review of State records shows that as many as six "complete" inspections were conducted by a single inspector in a single day. OSM questions that this frequency is possible while still observing and documenting all applicable performance standards.

(d) The MLCRB staff generally failed to take enforcement action when violations were observed.

(e) The civil penalty assessment procedures required in the approved State program are not being followed. Continuing analysis indicates that the Board consistently fails to properly consider assessment criteria (the operator's previous history of violations, seriousness, negligence, and good faith compliance), generally waive penalty points, and assesses no penalty.

(f) OSM believes that the Board's inspection staff is not receiving adequate guidance and training. Specific areas of concern include lack of training for blasting, seismograph operation, penalty assessment procedures, hydrology, report writing and evidence gathering.

(g) The Board's staff is deficient in its handling of citizen complaints. While it generally responds to a complaint by making an inspection, the Board rarely provides to the citizen the required written response detailing the disposition of the complaint, nor does it take appropriate enforcement action.

3. *Bond Release*: The State is releasing performance bonds for surface coal mining operations that do not meet the State's required performance standards.

4. *General Board Procedures and Administrative Maintenance*: A general area of concern is the apparent failure of the Board to create or maintain administrative record procedures or tracking systems for such matters as permit reviews, citizen complaints, ten-day notices from OSM, enforcement actions and civil penalty assessments and bonding.

Pursuant to 30 CFR 733.12(b)(3), the Director requested that the Board take certain actions by April 15, 1983, to correct the deficiencies in its program. The Director also advised the State of its opportunity to request an informal conference, pursuant to 30 CFR 733.12(c). On May 6, 1983, the Chairman of the Board requested that the Director hold an informal conference.

The Director has agreed to Kansas' request, and hereby gives public notice of the informal conference for all persons wishing to attend. The date, time and location of the informal conference are identified above under the "Date" and "Addresses" sections of this notice.

The informal conference will pertain to the facts or the time period for accomplishing remedial actions as specified in the Director's notification.

Conference Rules

The informal conference is an opportunity for the Director to discuss the status of the implementation of the Kansas program with Kansas officials.

Because the conference will be informal, no testimony from the public will be taken, but a verbatim transcript of the meeting will be kept. Persons wishing to attend the informal conference will be permitted to do so.

Dated: May 25, 1983.

Arthur W. Abbs,

Acting Assistant Director, Program Operations and Inspection.

[FR Doc. 83-14503 Filed 5-27-83; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD8-81-801]

Safety Zone; Mississippi River Gulf Outlet

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending its Safety Zone Regulations, 33 CFR 165, by establishing a safety zone in the Mississippi River Gulf Outlet (MRGO), the Michoud Canal and the Inner Harbor Navigation Canal (IHNC). As the number and size of the vessels utilizing the MRGO increases, so does the need to coordinate their movements to minimize the possibility of environmental or economic harm befalling the Port of New Orleans as a result of a collision. The Safety Zone is being established to prevent larger vessels from having dangerous meeting and overtaking situations between the seaward entrance and LT 62 of the MRGO.

EFFECTIVE DATE: This final rule became effective on July 1 1983.

FOR FURTHER INFORMATION CONTACT: LCDR R. E. FORD, Port Safety Officer, or LTJG S. EVANS, Waterways Safety Officer, c/o U.S. Coast Guard, Captain of the Port, 4640 Urquhart Street, New

Orleans, Louisiana 70117, telephone: (504) 589–7108.

SUPPLEMENTARY INFORMATION: On June 4, 1981, the Coast Guard published interim final rules in the **Federal Register** for the regulations [46 FR 29933]. Interested persons were requested to submit comments and seven comments were received. The publishing of timely responses to these seven comments in Final Rule making action was delayed by the subsequent unanticipated closure of the New Orleans Vessel Traffic Service (VTS) in March 1982. Inasmuch as the Interim Final Rules assigned to the VTS the vital function of coordinating vessel movements within the Safety Zone, its closure curtailed the ability of the Coast Guard to carry out this vital function and essentially rendered the regulations establishing the Safety Zone moot. In the aftermath of the closure of VTS, further action to amend the Interim Final Rules to reflect the loss of the VTS, or to withdraw them in their entirety, was purposely postponed until a final resolution of the future status of VTS was made.

In August 1982, funding was restored for the VTS and the system was partially reactivated shortly thereafter. This partial reactivation did not include coverage of the MRGO which, at the time, was preliminarily scheduled for coverage sometime during the period of mid to late 1983. However, the continued existence of the VTS remained somewhat in doubt, resulting in the further postponement of Final Rules on the MRGO Safety Zone pending a final resolution of the matter.

Regardless of the long term status of the VTS, the system's immediate operational plans are to reactivate coverage on the MRGO on July 1, 1983. In response to these plans, a decision was made that a continued delay in publishing Final Rules was not in the public's best interest because of the confusion that could arise as to the status of the regulations upon the reactivation of coverage on the MRGO.

Drafting Information

The principal persons involved in drafting this rule were LCDR G. J. E. THORNTON, Port Safety Officer, or LTJG M. R. BESKEEN, Waterways Safety Officer, U.S. Coast Guard, Captain of the Port, 4640 Urquhart Street, New Orleans, Louisiana 70117, Telephone (504) 589–7108. The project attorney is LCDR R. A. BRUNELL, c/o Commander, Eighth Coast Guard District (dl), Hale Boggs Federal Building, 500 Camp Street, New Orleans, Louisiana 70130, Telephone (504) 589–6188.

Discussion of Comments

Comments were received from persons with and/or representing the following organizations: Transworld Drilling Company, Oklahoma City, Oklahoma; Associated Branch Pilots, New Orleans, Louisiana; Crescent River Port Pilots Association, New Orleans, Louisiana; New Orleans Steamship Association; American Waterways Operators, Inc., New Orleans, Louisiana, Thomas and James Harrison Ltd., Liverpool, England; Vessel Traffic Service, New Orleans, Louisiana.

One commentor suggested that the proposed rule be amended to exclude all vessels, including mobile offshore drilling units (MODUs), from the requirement to notify Vessel Traffic Service (VTS) when crossing the MRGO normal to the canal axis. The Coast Guard designed the MRGO Safety Zone to prevent meeting and/or overtaking situations in the open water section of the MRGO between vessels, including tows over 600 feet long or over 80 feet abeam, or over 30 feet in draft. Crossing situations were not anticipated in a channel 600 feet wide and therefore were not specifically addressed in the rulemaking. Also, the hydrodynamic interaction between ships that make meeting and overtaking situations potentially hazardous are not present in a crossing situation. The crossing of the axis of the safety zone by a MODU, or any vessel meeting one or more of the size criterion, is so rare that it need not be addressed by regulations if prudent seamanship is conscientiously applied and the rules of the road adhered to.

Another commentor's suggestions concerns the definition of regulated vessels. Since the actual depth of the MRGO changes due to shoaling and dredging, he felt the regulation should be rewritten so that the thirty foot draft criterion could be changed accordingly, consistent with the needs of safety and the recommendations of the pilots. He further writes that the regulation should be writen so that if, and when, the current project dimensions of the channel are increased, the length/beam/draft criteria in the regulations will increase accordingly. The Coast Guard believes that changes to the depth in the MRGO are not sudden and any future changes to the controlling depths of the MRGO which would warrant changing the criteria for a regulated vessel would be more appropriately handled with future rulemaking. A system that would link the size criteria for the regulated vessels to the width and depth of the MRGO would be too complex and would not vary enough to warrant inclusion in the rulemaking.

This commentor also suggested that since vessels are already, by another regulation, required to give a 24-hour advance notice of arrival to the Captain of the Port, that this requirement suffice for the two hour notice. Another commentor also thought that the two hour advance of intended movement needs more study because arriving vessels will not be able to contact the VTS two hours before they enter the Safety Zone due to the distance involved. He felt that this problem could be resolved if the system of contact with the VTS by the vessel was broadened. Coast Guard experience has shown that the advance notice of arrival required by 33 CFR 161.7 is not accurate enough to allow for the scheduling of vessels in the Safety Zone. Regulations in 33 CFR 161.7 allow a vessel to arrive up to six hours before or after the time given in the advance notice before the Captain of the Port needs to be notified of any changes. Small and infrequent delays of two hours have been encountered and are considered acceptable compared to the delays that would result if the Coast Guard tried to coordinate vessel movements based on inaccurate 24-hour advance notice of arrival. Some vessels have experienced problems contacting VTS on Channel 12 VHF–FM as was anticipated by one commentor. These vessels with the problem have been able to reach VTS via the marine operator, or by relaying the needed information through another vessel or the Assocated Branch Pilots.

One commentor presented the opinion that the pilots should share in the responsibility for making vessel position reports. The Coast Guard believes that the pilots have a professional, but not legal, obligation within the realm of providing "local knowledge" to advise masters of the local regulations. Finally, he recommended that outbound vessels be required to give their estimated times of arrival at the regulated area. He contended that this information is necessary to adequately schedule transits of the regulated area. Coast Guard Vessel Traffic Service experience has shown that if departing vessels comply with the reporting procedures outlined in the final rule, they can accurately compute the vessel's arrival time at LT 62.

In this regard, one pilot association suggested that two reporting points be added above the regulated area to provide the VTS with a more accurate speed plot of transiting vessels. This suggestion is adopted and reporting

points at MRGO LT 96 and LT 114 are added accordingly.

Two commentors pointed out that tows were included in the discussion but omitted from the regulation. One of these commentors felt that tows should not be included as regulated vessels for two reasons. First, their ability to maneuver outside of the channel allows tows to give way to a larger vessel more easily. Secondly, the time required for most tows to move through the regulated area is substantial and the inclusion of tows as regulated vessels based on their dimension is an unnecessarily broad circumscription. The Coast Guard acknowledges that tows were not specifically mentioned in the regulation itself. Tows meeting criteria for regulated vessels were addressed in the original discussion and are intended to be included among the regulated vessels. The regulation has been amended accordingly. In the first four months that this regulation has been in effect, only three tows known to meet the criteria for regulated vessels have transited the length of the MRGO. One of these regulated tows has made several transits of the MRGO since commencement of the Safety Zone but has traveled outside the dredged channel and entered the MRGO just before LT 62. This tow while outside the channel is not subject to the regulation, however, it must still give the proper two hour notification before entering the MRGO south of LT 62. The Coast Guard believes that the relative infrequency of large tows transiting the MRGO will make their delaying impact insignificant. One commentor suggested that attainment of the goals of this program could be achieved by cooperation among the users of the MRGO and intervention by the Captain of the Port only when cooperation was not forthcoming and safety was jeopardized. He stated that the cross currents below LT 62 are very similar to those encountered at the junctions of bayous with the MRGO and do not warrant special consideration as their presence can be anticipated. He contended that there are several factors, including currents, which cause a ship to be positioned improperly in a channel. It was his recommendation that larger vessels, more likely to run into problems, be restricted to daylight transit and one-way traffic only. He felt the present regulation is unnecessarily restrictive. A combination of the daylight and one-way transits along with pilot discretion and judgment would allow a free flow of traffic during daylight hours with transit by large vessels restricted to one-way scheduling only at night. The intermittent Coast Guard involvement suggested is considered unacceptable. By the time the Coast Guard intervention is requested it would be too late. This regulation was developed to present "in extremis" situations, not to provide for emergency response. Although the commentor contended the present regulations are unnecessarily restrictive, one-way traffic during daylight hours is far more restrictive than the present regulation. However, the Coast Guard does recognize thaty the absolute prohibition against regulated vessels meeting or overtaking each other within the regulated area is unnecessarly restrictive and, accordingly, has relaxed the regulation to permit such passing when in the opinion of the pilots and/or operators on both vessels it can be accomplished safely.

One commentor faulted the Coast Guard for using Vessel Traffic Service as its method of regulating traffic based on what he perceives as unqualified, inexperienced personnel manning the Vessel Traffic Service and making the decisions on regulating traffic. VTS has communications capability and computer enhanced tracking capabilities that simplify the coordination and decision making processes. It will therefore not require persons with years of seagoing experience to schedule these regulated vessels effectively.

One commentor requested a public hearing. He stated, "In light of the fact that there have been no collisions in the area being considered and the present relatively light flow of large vessels, the subject should be left open to public discussion and study before final rulemaking." Of the seven letters received commenting on the Safety Zone, only this one requests a public hearing. The Captain of the Port feels that oral presentations in this case would not aid the rulemaking process, only delay it. The Coast Guard acknowledges that while the number of vessels using the MRGO is not large, the percentage of regulated vessels encompasses a significant portion of the total and is expected to increase with expanded coal exports from the bulk terminal and completion of the Jourdan Road Facility.

One commentor described an incident between his vessel, a regulated vessel, and another vessel which was not regulated. The letter described the effects that take place between vessels as they meet or overtake one another in this narrow channel. In this case, his vessel almost struck the other vessel as his vessel was being passed due to the hydrodynamic interaction between the two ships. He concluded by suggesting that the regulations be amended to prohibit any vessel from overtaking a regulated vessel in the MRGO. The Coast Guard presently believes this comment is too restrictive, but paragraph (e) of the regulation allows for the Coast Guard to include non-regulated vessels when necessary.

Due to an editorial error, the Michoud Slip was used in paragraph (2) to define a safety zone boundary. The Michoud Canal was the intended boundary and the rule has been changed accordingly. To eliminate confusion stemming from the requirements for all vessels being located in paragraph (c) of the regulation, the Coast Guard has divided old paragraph (c) into new paragraphs (c) and (d) and changed paragraph (d) to paragraph (e). Segregation of the requirements for inbound and outbound vessels into separate paragraphs with no indication of requirements for all vessels, as a category, will serve to simplify the information necessary for a proper transit to be made. Further, several descriptive phrases and alternative actions are added for ease of operation.

Summary of Final Evaluation

These regulations are considered to be insignificant in accordance with guidelines set out in the Policies and Procedures for Simplification, Analysis and Review of Regulations (DOT Order Z100.5 of 5–22–80). An evaluation under the Regulatory Flexibility Act of 1980 has been conducted. With proper notification procedures followed, delays in excess of two hours are extremely rare. This delay is relatively minor in the shipping industry and minimal compared to what it would be if there was a collision. For these reasons, it has been determined that this action will not have a significant economic effect on a substantial number of small entities.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Waterways.

Final Regulations

PART 165—[AMENDED]

In consideration of the foregoing, the Coast Guard amends Part 165 of Title 33 Code of Federal Regulations by revising § 165.801 to read as follows:

§ 165.801 Mississippi River Gulf Outlet.

(a) The area enclosed by the following boundary is a Safety Zone—The Mississippi River Gulf Outlet from Lighted Buoy 1 (LLNR 2014) northwesterly to its junction with the Gulf Intracoastal Waterway and then

westerly to, and including, the Inner Harbor Navigation Canal and easterly to and including the Michoud Canal.

(b) Vessels including tows over 600 feet in length, or over 80 feet in beam, or with a draft in excess of 30 feet, and intending to transit that portion of the Safety Zone from its seaward entrance at Lighted Buoy 1 to the jetty at Light 62 (LLNR 2068) must receive permission to enter or move within the Safety Zone. Vessels meeting this criteria will not meet or overtake each other in this seaward portion of the Safety Zone unless the pilots and/or operators of both vessels consider such passage to be safe and agree to it. Such an agreement must be reported beforehand to the VTS.

(c) All inbound vessels meeting the criteria of paragraph (b) of this section shall notify New Orleans Vessel Traffic Service (VTS) two hours prior to intended entry into the Safety Zone (in order to be scheduled), and immediately prior to entry (in order to obtain permission to enter), and upon passing MRGO Lighted Buoy 1, and MRGO Light 33 (LLNR 2046.50), MRGO Light 62, MRGO Light 96 (LLNR 2084), and MRGO Light 114 (LLNR 2092). Notification shall be made on Channel 12 VHF–FM. Notification prior to intended entry which cannot be accomplished on Channel 12 VHF–FM due to extreme range, shall be made by telephone to the VTS at (504) 589–2772 or 589–2773 by the vessel's agent or via the marine operator.

(d) All outbound vessels meeting the criteria of paragraph (b) of this section shall notify VTS two hours prior to intended movement within the Safety Zone (in order to be scheduled), and immediately prior to movement (in order to obtain permission to move), and immediately after heading fair in the outbound direction, and as the vessel passes the junction of the MRGO and Gulf Intracoastal Waterway (mile 60.0 MRGO), MRGO Light 114, MRGO Light 96, and MRGO Light 62, and MRGO Light 33 and MRGO Lighted Buoy 1. Notification two hours prior to movement shall be made by telephone to the VTS at (504) 589–2772 or 589–2773. Other notification shall be made on Channel 12 VHF–FM. Channel 11 VHF–FM may be used in lieu of Channel 12 by vessels above the Paris Road Bridge (mile 60.9 MRGO).

(e) Movement within this Safety Zone is normally unrestricted for vessels that do not meet the criteria of paragraph (b) of this section. The Captain of the Port may require other vessels within this defined zone to comply with the general regulations governing safety zones as contained in 33 CFR 165.20 whenever necessary for the protection of vessels, structures and water and shore areas.

(33 U.S.C. 1225, 1231; 49 CFR 1.46(n)(4))

Dated: March 28, 1983.

John L. Bailey,

Captain of the Port, Coast Guard, New Orleans, LA.

[FR Doc. 83-14511 Filed 5-27-83; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF DEFENSE

Corps of Engineers; Department of the Army

33 CFR Parts 204 and 207

Danger Zone, Key West, Florida and Navigation Regulation; Cape Fear River, North Carolina

AGENCY: Army Corps of Engineers, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Army is deleting a regulation which establishes a danger zone in the waters surrounding Woman Key and Ballast Key, Florida. The Army is also deleting a regulation which establishes schedules of operation for the three locks on the Cape Fear River, North Carolina. The danger zone is no longer used for its intended purpose and the locks schedules are an unnecessary restriction which prevents changes at the local level.

EFFECTIVE DATE: June 30, 1983.

ADDRESS: HQDA, DAEN–CWO–N, Washington, D.C. 20314.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph T. Eppard at (202) 272–0200.

SUPPLEMENTARY INFORMATION: The U.S. Navy has requested that the regulations in 33 CFR 204.90 Straits of Florida; Navy restricted area surrounding Woman Key and Ballast Key, be revoked as the government is no longer using the area. This revocation will remove a restriction from a waterway and return the area to the public.

33 CFR 207.161 establishes schedules for operation of the three locks on the Cape Fear River, North Carolina. The Corps of Engineers has determined that operating schedules are properly established at the district level through local notices to navigation interests. Continued promulgation of these rules in the CFR unnecessarily restricts the authority of the district engineer to make changes consistent with changes in local conditions and in response to available resources.

The Department of the Army has determined that notice of proposed rulemaking and public procedures thereto are unnecessary since the revocation of these two regulations will remove an unnecessary restriction on a waterway and return operating controls to the local level in the spirit of regulatory reforms. Local public notices announcing the revocation of these regulations are also being distributed by the district engineers.

Note.—The Department of the Army has determined that this document does not contain a major rule requiring a regulatory impact analysis under Executive Order 12291 because it will not result in an annual effect on the economy of $100 million or more and it will not result in a major increase in costs or prices. The Army has also determined that this rule will not have s significant economic impact on a substantial number of entities and thus does not require the preparation of a regulatory flexibility analysis.

List of Subjects in 33 CFR Parts 204 and 207

Transportation and waterways.

Dated: April 28, 1983.

William R. Geavelli,

Assistant Secretary of the Army (Civil Works).

PART 204—DANGER ZONE REGULATIONS

Accordingly, the Department of the Army is amending 33 CFR by removing §§ 204.90 and 207.161 as set forth below

§ 204.90 Straits of Florida; Navy restricted area surrounding Woman Key and Ballast Key. [Removed]

PART 207—NAVIGATION REGULATIONS

§ 207.161 Cape Fear River, Navigation Locks between 29 and 94 river miles north of Wilmington, North Carolina; use, administration and navigation. [Removed]

[FR Doc. 83-14455 Filed 5-27-83; 8:45 am]

BILLING CODE 3710-92-M

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Ch. I

Land Protection Plans

Correction

In FR Doc. 83–12578, beginning on page 21121, in the issue of Wednesday May 11, 1983, make the following changes:

1. On page 21124, in the first column, in the seventh line, "will" should read "will be".

2. In the third column, the fourth paragraph should begin "(d)"; in the fifth paragraph, in the first line "or" should read "of".

3. On page 21126, in the first column, in the third complete paragraph, in the seventh line "projection" should read "protection".

4. On page 21127, in the first column, in the third line from the bottom, "NPA" should read "NPS"; in the second column in the third line from the top "Faimly" should read "Family".

5. On page 21128, in the first column in the eighth line from the bottom, "acquire or" should read "acquire fee or"; in the second column, in the first paragraph under "Emergencies and Hardships", in the ninth line "revised" should read "reviewed".

BILLING CODE 1505-01-M

VETERANS ADMINISTRATION

38 CFR Part 3

Veterans Benefits; Persons Included as Having Served on Active Duty

AGENCY: Veterans Administration.

ACTION: Final regulation amendment.

SUMMARY: We have amended our regulation concerning persons who are included as having served on active duty. The need for this action results from a recent decision of the Secretary of the Air Force that the service of the members of the group known as Civilian Personnel Assigned to the Secret Intelligence Element of the Office of Strategic Services (OSS) constitutes active military service in the Armed Forces of the United States for purposes of all laws administrated by the Veterans Administration. The effect of this action is to confer veteran status for Veterans Administration benefit purposes on former members of this group who were discharged under honorable conditions.

EFFECTIVE DATE: This section is effective December 27, 1982, the date that the Secretary of the Air Force held that service in the group constitutes active duty.

FOR FURTHER INFORMATION CONTACT: Robert M. White (202) 389-3005.

SUPPLEMENTARY INFORMATION: Pursuant to 38 CFR 1.12(b) the Veterans Administration finds that prior publication of this change for public notice and comment is impracticable and unnecessary. The Veterans Administration has no discretion in this matter. The decision of the Secretary of the Air Force concerning active duty status is binding on the Veterans Administration. Consequently, a proposed notice will not be published. For this reason, these changes are also not subject to the Regulatory Flexibility Act, 5 U.S.C. 601-612, since they do not come within the term "rule"as defined in that act.

In accordance with Executive Order 12291, Federal Regulation, we have determined that this regulation change is nonmajor for the following reasons:

(1) It will not have an effect on the economy of $100 million or more.

(2) It will not cause a major increase in costs or prices.

(3) It will not have 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.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health Care, Pensions, Veterans.

There is no affected catalog of Federal Domestic Assistance Program number.

Approved: May 13, 1983.

By direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Administrator.

PART 3—ADJUDICATION

The Veterans Administration is amending 38 CFR Part 3 as follows:

In § 3.7 paragraph (x)(10) is added to read as follows:

§ 3.7 Persons included.

* * * * *

(x) *Active military service certified as such under section 401 of Pub. L. 95-202.*

* * *

(10) Civilian Personnel Assigned to the Secret Intelligence Element of the OSS.

[FR Doc. 83-14471 Filed 5-27-83; 8:45 am]

BILLING CODE 8320-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Part 4

Service of Process

AGENCY: Office of the Secretary, HHS.

ACTION: Final rule with request for comments.

SUMMARY: The regulation concerning service of process on Department officials is being revised to reflect recent statutory changes and reorganization in the Department's Office of the General Counsel. The regulation revises the method for serving legal process on the Department and its officials.

DATES: The regulation is effective June 30, 1983. Comments must be received by August 1, 1983.

ADDRESS: Send comments on the regulation to: Office of the General Counsel, Department of Health and Human Services, 200 Independence Avenue, S.W., Washington, D.C. 20201.

FOR FURTHER INFORMATION CONTACT: Beverly Dennis, (202) 245-6733.

SUPPLEMENTARY INFORMATION: On January 12, 1983, the President signed into law Pub. L. 97-462, which amended Rule 4 of the Federal Rules of Civil Procedure. The amendments took effect February 26, 1983, and changed various requirements related to service of process in civil litigation in federal courts, including service on federal agencies and officials.

A principal form of process is the summons and complaint initiating a lawsuit. Prior to the recent amendments, the method of service prescribed in Rule 4 for initiating a lawsuit against a federal agency or officer was delivering a copy of the summons and complaint to the United States Attorney for the district in which the action is brought (or designated subordinates), sending a copy by registered or certified mail to the Attorney General, and delivering a copy to the agency or officer being sued. Under 28 U.S.C. 1391(e) delivery of the summons and complaint to the agency or officer may be made by certified mail beyond the territorial limits of the district in which the action is brought. Thus, under these provisions, service on a federal agency or officer could be made by delivery under Rule 4(d)(5) or by certified mail under 28 U.S.C. 1391(e).

Public Law 97-462 has changed the method for service of the summons and complaint. As revised, Rule 4(d)(5) specifies that service on a federal agency or officer is to be made by sending a copy of the summons and complaint to the officer or agency by registered or certified mail (in addition to service on the United States Attorney and Attorney General). The option for service by personal delivery no longer exists.

HHS regulations (45 CFR 4.1) currently require that summonses, complaints, subpoenas, and other process that are required to be served on or delivered to the Secretary of

Health and Human Services shall be delivered or sent by mail to certain employees in the Department's Office of the General Counsel. In light of the amendments to Rule 4 and reorganization of the Office of the General Counsel, we are revising the Department's regulation on service of process.

Under the regulation being adopted, service of a summons and complaint on the Department or on any Department official sued in his offical capacity may be made by mailing a copy to the Department's General Counsel. Such service will constitute service on the Department or the official, as required by Rule 4. Process mailed directly to the General Counsel will avoid the delays encountered when the documents must be transferred from other offices.

Under the regulation, the Office of the General Counsel will also accept service of subpoenas and other process required to be served on the Department or on the Secretary. The regulation specifies certain employees in the Office who are authorized to accept such process when it is delivered. Subpoenas and other process directed at other officials of the Department would not be subject to this general rule and would have to be served on the individual official unless different arrangements for acceptance of process are made in a particular case.

The current regulation does not address the issue of suits against Department officials in their individual capacities. Under the amended regulation the Office of the General Counsel is authorized but not required to accept service of summonses and complaints initiating lawsuits against a Department employee when the employee is sued in his individual capacity and the suit relates to the employee's official duties. Such service must nevertheless be accomplished in accordance with the provisions of Rule 4 applicable to service on individual defendants or, in the case of suits brought in State courts, in accordance with the applicable requirements. This change simply clarifies existing policy, except that, for the first time, the Office of the General Counsel is authorized by regulation to accept certain process on behalf of Department employees sued as individuals.

The regulation is also being amended to state that the Department will not ordinarily provide a receipt or other acknowledgment of process received. Plaintiffs mailing a summons and complaint to the Department sometimes enclose a form by which they seek acknowledgment of receipt of the process, and in the past such forms have sometimes been completed and returned by the Department. Since completion of such forms is not required or contemplated by Rule 4 and therefore creates unnecessary work for Department employees, the regulation states the Department's current policy of not returning such forms. Where a Department official is sued in his individual capacity, however, and service is accomplished pursuant to the new Rule 4(c)(2)(C), the Department may return the acknowledgment form required under that rule.

This regulation is not being published for public comment prior to its taking effect since it simply changes the existing regulation to reflect statutory changes and reorganization within the Office of the General Counsel, and assigns certain responsibilities within the Department. Accordingly, notice and comment procedures are unnecessary. Nevertheless, we are soliciting comments on the changes, and any revisions in the regulation shown by the comments to be appropriate will be made.

This is not a major rule within the meaning of Executive Order 12291 and thus does not require a regulatory impact analysis. Also, since the regulation does not have any significant impact on a substantial number of small entities, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act (5 U.S.C. Ch. 6).

List of Subjects in 45 CFR Part 4

Courts.

Therefore, 45 CFR Part 4 is amended by revising it to read as follows:

PART 4—SERVICE OF PROCESS

Sec.

4.1 Suits against the Department and its employees in their official capacities.
4.2 Other process directed at the Department or Secretary.
4.3 Process against Department employees in their individual capacities.
4.4 Acknowledgment of mailed process.
4.5 Effect of regulations.

Authority: 5 U.S.C. 301.

§ 4.1 Suits against the Department and its employees in their official capacities.

Summonses and complaints to be served by mail on the Department of Health and Human Services, the Secretary of Health and Human Services, or other employees of the Department in their official capacities should be sent to the General Counsel, Department of Health and Human Services, 200 Independence Avenue, S.W., Washington, D.C. 20201.

§ 4.2 Other process directed to the Department or Secretary.

Subpoenas and other process (other than summonses and complaints) that are required to be served on the Department of Health and Human Services or the Secretary of Health and Human Services in his official capacity should be served as follows:

(a) If authorized by law to be served by mail, any mailed process should be sent to the General Counsel, Department of Health and Human Services, 200 Independence, S.W., Washington, D.C. 20201.

(b) If served by an individual, the process should be delivered to the staff of the correspondence control unit in the Office of the General Counsel, Room 711–E, 200 Independence Avenue, S.W., Washington, D.C., or, in the absence of that staff, to any Deputy General Counsel or secretary to any Deputy General Counsel of the Department.

§ 4.3 Process against Department officials in their individual capacities.

Process to be served on Department officials in their individual capacities must be served in compliance with the requirements for service of process on individuals who are not governmental officials. The Office of the General Counsel is authorized but not required to accept process to be served on Departmental officials in their individual capacities if the suit relates to an employee's official duties.

§ 4.4 Acknowledgement of mailed process.

The Department will not provide a receipt or other acknowledgement of process received, except for a return receipt associated with certified mail and, where required, the acknowledgement specified by Rule 4(c)(2)(C) of the Federal Rules of Civil Procedure.

§ 4.5 Effect of regulations.

The regulations in this part are intended solely to identify Department officials who are authorized to accept service of process. Litigants must comply with all requirements pertaining to service of process that are established by statute and court rule even though they are not repeated in these regulations.

Dated: May 19, 1983.

Margaret M. Heckler,

Secretary.

[FR Doc. 83-14500 Filed 5-27-83; 8:45 am]

BILLING CODE 4150-04-M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 310

Merchant Marine Training

AGENCY: Maritime Administration, DOT.

ACTION: Final rulemaking.

SUMMARY: The Maritime Administration (MARAD) is amending its merchant marine training regulations to implement a 10 percent reduction in the entering classes at the U.S. Merchant Marine Academy. There are some minor amendments to ease administration, both for MARAD and for the state maritime academies. To eliminate a duplication in numbering, we are renumbering § 310.13, in Subpart A, as § 310.12–1. Subpart D—Regulations for Receipt of Donation for Chapel and Library at U.S. Merchant Marine Academy, Kings Point, New York is being revoked as obsolete, since its purpose has been accomplished.

EFFECTIVE DATE: May 31, 1983.

FOR FURTHER INFORMATION CONTACT: Mr. Arthur W. Friedberg, Director, Office of Maritime Labor and Training, Maritime Administration—DOT, 400 7th Street, SW., Room 7302, Washington, DC 20590, Telephone: (202) 426–5755.

SUPPLEMENTARY INFORMATION: Following is a summary of the content of this final rulemaking.

Subpart C—Admission and Training of Midshipmen at the U.S. Merchant Marine Academy.

Section 310.53 Nominations and vacancies—Indicates lower quotas for geographical areas eligible to send students to the U.S. Merchant Marine Academy.

Subpart A—Regulations and Minimum Standards for State Maritime Academies and Colleges.

Section 310.6 Entrance requirements—Provides that students enrolled on or after April 1, 1982, and receiving Federal assistance, shall be obligated before enrollment to complete the Naval Science curriculum.

Section 310.7 Federal student subsistence allowances and student incentive payments—Requires (1) the state maritime academies to inform MARAD annually no later than February 1, of those students who have been selected to receive the student incentive payments; and (2) removal of students from the MARAD assistance rolls upon either loss of midshipman status or enrollment in the ROTC program.

Section 310.8 Leave—Provides clarification of the leave policy for students enrolled after April 1, 1982.

EO 12291, Statutory Requirements and DOT Procedure—The Maritime Administrator has made a determination that this rulemaking meets none of the criteria in Executive Order 12291 for a major rule. Since this rulemaking affects only students and applicants to the USMMA and state academies, the Maritime Administrator certifies that the regulation would have no significant economic impact on a substantial number of small entities that would require preparation of a regulatory flexibility analysis, pursuant to the Regulatory Flexibility Act of 1980 (Pub. L. 96–354). The regulation contains no new or amended reporting requirement within the scope of the Paperwork Reduction Act of 1980 (Pub. L 96–511). Pursuant to DOT Order 2100.5, this rulemaking is considered to be significant because there is substantial public interest, as well as Congressional interest in Federal assistance provided to state maritime academies and in the selection process for and allocation of appointments to the United States Merchant Marine Academy. A Regulatory Evaluation has been prepared and placed in the rulemaking docket. A copy of this document will be made available upon request in writing addressed to the Secretary, Maritime Administration, Department of Transportation, 400 7th Street, SW., Room 7300, Washington, D.C. 20590; phone—(202) 426–5746.

Inasmuch as the Congressional nomination process for the class entering July 1983 is complete, it is imperative that the amendment to Subpart C be published as a final rule. Delay would seriously affect the selection process at the Admissions Office of the U.S. Merchant Marine Academy, where the number of appointments are awarded based on precise knowledge of freshman vacancies available.

Pursuant to provisions of 5 U.S.C. 553, good cause exists for finding that notice and public procedure is impracticable and unnecessary. Accordingly, we are publishing these regulations as final rulemaking, effective immediately.

List of Subjects in 46 CFR Part 310

Grants programs, Education, Schools, Seamen.

Accordingly, 46 CFR Part 310 is amended in Subparts A and C, and existing Subpart D is removed and reserved as follows:

PART 310—MERCHANT MARINE TRAINING

Subpart A—Regulations and Minimum Standards for State Maritime Academies and Colleges

§ 310.6 [Amended]

1. Section 310.6 *Entrance requirements*, is amended:

a. By revising the introductory words of the first sentence of (a)(2) preceding subdivision "(i)" to read:

Be obligated to . . .

b. By revising the first sentence of (a)(3) to read:

(a) * * *

(3) Be obligated to sit for the appropriate licensing examination of the United States Coast Guard.* * *

* * * * *

c. By adding paragraph (b)(4) to § 310.6 to read:

* * * * *

(b) * * *

(4) Be obligated to complete the naval science curriculum.

§ 310.7 [Amended]

2. Section 310.7 *Federal student subsistence allowances and student incentive payments*, is amended:

a. By revising paragraph (a)(4) to read:

(a) * * *

(4) *ROTC enrollment.* Subsidized cadets who make a commitment to an Armed Force Reserve Officer Training Corps will be removed from the Administration subsidy rolls effective on the date they receive funds from a U.S. military service. Should they leave the program for any reason they may not reclaim the Administration subsidy as a cadet.

* * * * *

b. By revising the first sentence of paragraph (b)(1) to read:

* * * * *

(b) * * *

(1) *General provisions.* In accordance with the Administration's established subsidy quotas for classes entering after April 1982, each school shall identify to the Administration, no later than February 1 annually, those students who have been selected to receive the student incentive payment authorized by the Act. * * *

* * * * *

c. By revising the last sentence of paragraph (b)(1) to read:

* * * * *

(b) * * *

(1) * * * The School shall submit a quarterly certified Daily Attendance Report listing the names of all

designated midshipmen who are entitled to student incentive payments.

* * * * *

d. By adding the following sentence at the end of paragraph (b)(1):

* * * * *

(b) * * *

(1) * * * Midshipmen who do not take all necessary steps to maintain their midshipman status, who lose their midshipman status due to action by the U.S. Navy, or who make the commitment identified in paragraph (a)(4) of this section will have their student incentive payment terminated.

3. Section 310.8 is revised to read:

§ 310.8 Leave.

(a) *Enrolled before April 1, 1982.* Limitations on cadet leave, without loss of Federal student subsistence, with the specific limits to be set at the discretion of the Superintendent on an academic year basis, are:

(1) If hospitalized, sick at home, or confined in the sick bay, leave shall not exceed four (4) months.

(2) For an emergency due to the serious illness, injury or death of a very near relative, leave shall not exceed seven (7) days.

(3) Annual leave shall not exceed thirty (30) days.

(4) Christmas and Easter leave shall not exceed a total of twelve (12) days, and leave may be granted for all legal holidays—Federal and state. This leave is in addition to that granted in paragraph (a)(3) of this section.

(5) Leave in addition to that provided in paragraphs (a)(3) and (a)(4) of this section may be granted only if approved in advance by the Supervisor, upon direct request by the Superintendent.

(b) *Enrolled on or after April 1, 1982.* Midshipmen will be granted leave without loss of incentive payments as follows:

(1) Medical leave, as authorized by the school, not to exceed four (4) months.

(2) Christmas and Easter leave and all legal holidays—Federal and state—as authorized by the school. This leave is in addition to that granted in paragraph (b)(3) of this section.

(3) Excused absences, as authorized by the school, not to exceed thirty (30) days per academic year. All unauthorized leave and all excused absences in excess of thirty (30) days will result in loss of incentive payments. Midshipmen receiving student incentive payments may be granted leaves of absence without pay, as approved by the Superintendent, for periods not to exceed one (1) academic year at a time. Midshipmen in a pay status will only be granted a leave of absence if they continue to meet all requirements for graduation in this part, including age requirements.

§ 310.9 [Amended]

4. Section 310.9, *Medical attention and injury claims,* is amended by revising paragraph (b) to read:

* * * * *

(b) *Compensation claims of Cadets or Midshipmen.* Compensation claims for personal injuries or death sustained by a federally-assisted cadet or midshipman in the performance of official duty shall be forwarded to the Supervisor for transmission to the Office of Workers' Compensation Programs. The Supervisor shall furnish necessary forms.

* * * * *

§ 310.13 [Redesignated as § 310.12–1]

5. Section 310.13 is renumbered as § 310.12–1. *Form of agreement.*

Subpart C—Admission and Training of Midshipmen at the U.S. Merchant Marine Academy

§ 310.53 [Amended]

6. Section 310.53, *Nominations and vacancies,* is amended by revising paragraph (b)(5) to read:

* * * * *

(b) * * *

(5) The distribution of each entering class by State is:

Alabama	5
Alaska	1
Arizona	4
Arkansas	3
California	24
Colorado	4
Connecticut	4
Delaware	1
Florida	11
Georgia	6
Hawaii	2
Idaho	2
Illinois	12
Indiana	6
Iowa	4
Kansas	4
Kentucky	5
Louisiana	5
Maine	2
Maryland	5
Massachusetts	7
Michigan	10
Minnesota	5
Mississippi	4
Missouri	6
Montana	2
Nebraska	2
Nevada	2
New Hampshire	2
New Jersey	8
New Mexico	2
New York	18
North Carolina	7
North Dakota	1
Ohio	12
Oklahoma	4
Oregon	4
Pennsylvania	13
Rhode Island	2
South Carolina	4
South Dakota	1
Tennessee	6
Texas	15
Utah	2
Vermont	1
Virginia	6
Washington	5
West Virginia	3
Wisconsin	6
Wyoming	1

Subpart D—[Removed and Reserved]

7. Subpart D is removed and reserved.

(Sec. 204(b), Merchant Marine Act, 1936, as amended (46 U.S.C. 1114(b)); (Pub. L. 97–31 August 6, 1981); 49 CFR § 1.66 (46 FR 47458, September 28, 1981))

Dated: May 20, 1983.

By Order of the Maritime Administrator

Georgia P. Stamas,

Secretary.

[FR Doc. 83–14475 Filed 5–31–83 8:45 am]
BILLING CODE 4910–81–M

Research and Special Programs Administration

49 CFR Part 173

[Docket No. HM–188A, Amdt. No. 164]

Transportation of Hazardous Substances Between Canada and the United States

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

ACTION: Final rule.

SUMMARY: Section 173.8 of the Department's Hazardous Materials Regulations (HMR) does not currently allow shipments of hazardous materials designated as hazardous substances to be tranported by railroad into or through the United States in conformance with the regulations of the Canadian Transport Commission (CTC). The purpose of this final rule is to amend § 173.8 to allow hazardous substances (other than hazardous wastes) that are subject to the CTC Regulations to be transported into or through the United States in accordance with CTC Regulations. This action is being taken in recognition of recent amendments to the CTC Regulations which provide for the proper identification of hazardous substances during transport.

EFFECTIVE DATE: This amendment is effective May 26, 1983.

FOR FURTHER INFORMATION CONTACT: Edward A. Altemos, International Standards Coordinator, Materials Transportation Bureau, Department of Transportation, 400 Seventh Street, S.W., Washington, D.C. 20590. Telephone (202) 426-0656.

SUPPLEMENTARY INFORMATION: Section 173.8 of the HMR allows, with certain exceptions, shipments of hazardous materials to be transported by railroad into or through the United States in conformance with the CTC Regulations. One of the exceptions to this provision pertains to hazardous substances. Therefore, no (so-called) reciprocity is granted with respect to the transport of these materials and they must be transported fully in accordance with HMR. It was not intended by MTB that this exception should apply to all of the transport requirements for hazardous substances (e.g., packaging and, when required labeling requirements). The original intent in including this exception in § 173.8 was to insure that shipments of hazardous substances entering the United States from Canada conformed to the additional description and marking requirements in the HMR applying to hazardous sustances. However, the manner in which the text of § 173.8 was drafted results in a totol exclusion of hazardous substances from the provisions of § 173.8.

Problems have been encountered in the transport of hazardous substances from Canada to the United States as a result of this exception. Many materials designated as hazardous substances in the HMR, which also meet the definition of another hazard class, have classifications and labeling, placarding and description requirements under the CTC Regulations that are different from those under the HMR. Because these materials are excluded from the reciprocity provisions of § 173.8, they are required to be replacarded and relabeled, and to have shipping papers prepared in accordance with the HMR, before they enter the United States. Many of these materials are of very considerable commercial importance and the requirement to replacard, relabel and redescribe them imposes a serious burden on industry and results in an unnecessary delay in the movement of these materials.

On May 10, 1983, the CTC adopted changes to its regulations that define and designate hazardous substances in the same manner as they are defined and designated in the HMR. These changes also prescribe Reportable Quantities (RQ) for the designated hazardous substances that are consistent with those prescribed in the HMR. Furthermore, these amendments require the identification of hazardous substances on shipping papers and in package marking in the same manner required in the HMR. Consequently, the MTB believes there is no need to maintain the exception for hazardous substances in § 173.8 in order to insure the adequate identification of hazardous substances transported into the United States from Canada, and is deleting the reference to hazardous substances in this section.

It must be noted that not all of the materials designated as hazardous substances in the HMR have also been designated as such in the CTC Regulations. Under the amended CTC Regulations, only those materials designated as hazardous substances in the HMR and which also meet the definition of another hazard class in the CTC Regulations, have been designated as hazardous substances. However, as explained in Docket No. HM-188 (48 FR 20255), the MTB has determined that reciprocity exists with the CTC Regulations under § 173.8 only in regard to the transport of hazardous materials that are subject to both CTC and DOT regulations. That is, unless a CTC Regulation applies to a material considered a hazardous material under the HMR, the provisions of § 173.8 do not apply and the material must be transported in conformance with the HMR. Therefore, although the reference to hazardous substances is being deleted in § 173.8, those hazardous substances that are not subject to the CTC Regulations must still be transported in conformance with the HMR.

I. Classification of Rule; Reporting Requirements; and Impact on Small Entities

A. *Non-Major Rule.* The Materials Transportation Bureau has determined that this regulatory amendment is not a major rule under terms of Executive Order 12291 or significant under DOT's regulatory procedures (44 FR 11034), and does not require a Regulatory Impact Analysis, nor does it require an environmental impact statement under the National Environmental Policy Act (42 U.S.C. 4321 et.seq.) A regulatory evaluation is not warranted since the anticipated impact is minimal.

B. *Impact on Small Entities.* Based on information available concerning size and nature of entities likely to be affected, I certify that this amendment will not as promulgated, have a significant economic impact on a substantial number of small entities.

II. *Final Rule Without Notice and Without Usual Delay in Effective Date*

The MTB considers this action to constitute an emergency final rule due to the potential for serious economic impact on trans-border shipments if MTB does not take expedited action and since this rule changes does not impose additional requirements, notice and procedure thereon are considered unnecessary. For the same reason, it is considered necessary to make the rule effective immediately.

List of Subjects in 49 CFR Part 173

Hazardous materials transportation, Regulations, Definitions.

PART 173-SHIPPERS-GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

In consideration of the foregoing, 49 CFR 173 is amended as follows:

§ 173.8 [Amended]

In § 173.8, paragraph (a) is amended by removing the words "and hazardous substances".

(49 U.S.C. 1803, 1804, 1808 and 1809; 49 CFR 1.53, Appendix A to Part 1)

Issued in Washington, D.C. on May 24, 1983.

L. D. Santman,

Director, Materials Transportation Bureau.

[FR Doc. 83-14330 Filed 5-27-83; 8:45 am]

BILLING CODE 4910-60-M

Federal Railroad Administration

49 CFR Part 223

[Docket No. RSGM-1, Notice No. 6]

Safety Glazing Standards—Locomotives, Passenger Cars and Cabooses

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Final rule; extension of compliance date.

SUMMARY: This document amends the final rule published on December 31, 1979 (44 FR 77348) which established a compliance date of June 30, 1983 for retrofitting existing locomotives, passenger cars and cabooses with improved safety glazing materials. It extends the compliance date six months until December 31, 1983. This action is being taken in response to a petition by the Association of American Railroads (AAR) and multiple individual requests from railroads for additional time to complete the retrofit program.

EFFECTIVE DATE: This final rule becomes effective on June 30, 1983.

FOR FURTHER INFORMATION CONTACT:
Principal Program Person: Philip Olekszyk; Office of Safety, Federal Railroad Administration, Washington, D.C. 20590, Telephone (202) 426–0897.
Principal Attorney: Lawrence I. Wagner; Office of Chief Counsel, Federal Railroad Administration, Washington, D.C. 20590, Telephone (202) 426–8836.

SUPPLEMENTARY INFORMATION: In response to a joint petition from the AAR and the Railway Labor Executives Association (RLEA), the FRA adopted regulations in 1979 that require the installation of improved safety glazing materials for all new railroad locomotives, passenger cars and cabooses. That regulation also required the retrofitting of most existing locomotives, passenger cars and cabooses. The regulation required that the retrofit program be accomplished by June 30, 1983.

The AAR has petitioned the FRA to amend the regulation to provide at least a six month extention of the compliance date. This extension request from the AAR was concurred in by the RLEA. In support of their request the AAR points out that the start up of the retrofit program was severely hampered by the lack of sufficient materials and that the depressed economic conditions of recent years have further impeded the progress of the program. By AAR estimates, there are approximately 7,800 locomotives and 4,800 cabooses that still require installation of improved glazing. In addition to the AAR request the FRA has received 20 individual requests from railroads or commuter agencies for extension of the compliance date. After considering the AAR petition for extension, the RLEA concurrence in that request, the individual requests, and FRA's independent data base, FRA has decided to extend the current compliance date six months to December 31, 1983. This timeframe should provide a sufficient period for completion of most retrofit programs.

Notice and Public Procedure

Since this final rule merely extends for six months the compliance date for a regulation that is already in effect and imposes no additional burden on any person, notice and public procedure are not necessary and because of the imminent June 30, 1983 compliance date, are also impractical. This final rule will avoid the disruption of rail service and public inconvenience that would result if all non-complying locomotives, passenger cars and cabooses were removed from service on the current compliance date of June 30, 1983.

List of Subjects in 49 CFR Part 223

Railroad safety.

Regulatory Impact

This final rule has been evaluated in accordance with existing regulatory policies. It will not have an adverse or significant economic impact on any entity, including small entities, because it does not place any new requirements or burdens on the public. Accordingly, it is certified that the proposal will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (Pub. L. 95–354, 94 Stat. 1164, September 13, 1980). It does not constitute a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. The amendment does not constitute a major rule under the terms of Executive Order 12291 and does not constitute a significant rule under the Department of Transportation regulatory policies and procedures. Moreover, since there are no costs associated with this amendment, a further regulatory evaluation is not warranted.

PART 223—[AMENDED]

In consideration of the foregoing, Part 223 of Title 49, Code of Federal Regulations is amended effective June 30, 1983 as follows:

1. Paragraph (c) of § 223.11 is revised to read as follows:

§ 223.11 [Amended]

* * * * *

(c) Except for yard locomotives and locomotives equipped as described in paragraphs (a) and (b), of this section, locomotives built or rebuilt prior to July 1, 1980, shall be equipped with certified glazing in all locomotive cab windows after December 31, 1983.

* * * * *

2. Paragraph (c) of § 223.13 is revised to read as follows:

§ 223.13 Requirement for existing cabooses.

* * * * *

(c) Except for yard cabooses and cabooses equipped as described in paragraphs (a) and (b), cabooses built or rebuilt prior to July 1, 1980, shall be equipped with certified glazing in all windows after December 31, 1983.

* * * * *

3. Paragraph (c) of § 223.15 is revised to read as follows:

§ 223.15 Requirement for existing passenger cars.

* * * * *

(c) Except for passenger cars described in paragraphs (a) and (b), passenger cars built or rebuilt prior to July 1, 1980, shall be equipped with certified glazing in all windows and a minimum of four emergency windows after December 31, 1983.

* * * * *

(Sec. 209 of the Federal Railroad Safety Act (94 Stat. 957, 45 U.S.C. 438); Section 1.49(m) of the Regulations of the Office of the Secretary of Transportation, 49 CFR 1.49(m))

Issued in Washington, D.C., on May 24, 1983.

Thomas A. Till,
Acting Administrator.

[FR Doc. 83-14480 Filed 5-27-83; 8:45 am]
BILLING CODE 4910-06-M

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49 CFR Part 231

[FRA Docket No. SA-3, Notice No. 7]

Safety Appliance Standards

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Final rule; extension of compliance date.

SUMMARY: This document amends the final rule published on December 30, 1982 (47 FR 58272), which extended the compliance date for the removal of roof running boards from box and other house cars from December 31, 1982 to June 30, 1983. It extends the compliance date six months until December 31, 1983. This action is being taken in response to a petition of the Association of American Railroads.

EFFECTIVE DATE: This final rule becomes effective on June 30, 1983.

FOR FURTHER INFORMATION CONTACT:

Principal Program Person: Philip Olekszyk; Office of Safety, Federal Railroad Administration, Washington, D.C. 20590, Telephone (202) 426–0897.
Principal Attorney: Lawrence I. Wagner, Office of Chief Counsel, Federal Railroad Administration, Washington, D.C. 20590; Telephone (202) 426–8836.

SUPPLEMENTARY INFORMATION: The Association of American Railroads (AAR) has filed a petition requesting that the Federal Railroad Administration (FRA) delete the first sentence of the Note in § 231.1 of the Safety Appliance Standards (49 CFR 231.1). This would eliminate in its entirety the requirement for the removal of roof running boards and the

completion of the related changes in associated ladders and handholds on all box and other house cars built on or before April 1, 1966, or under construction prior to that date and placed in service on or before October 1, 1966. The present compliance date for this requirement is June 30, 1983. The petition also requests that this compliance date be extended to permit completion of rulemaking to delete this requirement.

In its petition, the AAR states that this requirement now "has less than a tenuous relationship to the safety of railroad employees". Railroad operating rules prohibit engine and train crews from going on the roof of a freight car. Railroad rules also prohibit other employees such as maintenance and repair personnel from going on the roof of a moving freight car.

On the basis of a recent survey, AAR estimates that approximately 30,000 cars are still in service that have not been so modified. The survey also indicates that almost one-half of these cars will be retired within the next three years.

After considering this petition, FRA has decided to extend the current compliance date six months to December 31, 1983. This will provide sufficient time for FRA to complete a rulemaking proceeding concerning the AAR request that this requirement be deleted in its entirety.

Notice and Public Procedure

Since this final rule merely extends for six months the compliance date of a regulation that is already in effect and imposes no additional burden on any person, FRA finds that notice and public procedure are not necessary and, because of the imminent June 30, 1983 compliance date, are also impractical.

List of Subjects in 49 CFR Part 231

Railroad safety.

Regulatory Impact

This final rule has been evaluated in accordance with existing regulatory policies. It will not have an adverse or significant economic impact on any entity, including small entities, because it does not place any new requirements or burdens on the public. Accordingly, it is certified that the proposal will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (Pub. L. 95–354, 94 Stat. 1164, September 13, 1980). It does not constitute a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. The amendment does not constitute a major rule under the terms of Executive Order 12291 and does not constitute a significant rule under the Department of Transportation regulatory policies and procedures. Moreover, since there are no costs associated with this amendment, a regulatory evaluation is not warranted.

The Final Rule

PART 231—[AMENDED]

In consideration of the foregoing, § 231.1 of Part 231 of Title 49, Code of Federal Regulations, is amended, effective June 30, 1983, by amending the Note in that section to read as follows:

§ 231.1 Box and other house cars.

* * * * *

Note.—After December 31, 1983, cars of this type built on or before April 1, 1966, or under construction prior to that date and placed in service before October 1, 1966, must be equipped as nearly as possible with the same complement of safety appliances, depending upon type, as specified in § 231.27 for box and other house cars without roof hatches, or in § 231.28 for box and other house cars with roof hatches.

* * * * *

(Secs. 2, 4, and 6, 27 Stat. 531, as amended, secs. 1 and 3, 32 Stat. 943, as amended, sec. 6 (e) and (f), 80 Stat. 939; 45 U.S.C. 2, 4, 6, 8, 10, 11–16, 49 U.S.C. 1655; and § 1.49(c) of the Regulations of the Office of the Secretary of Transportation, 49 CFR 1.49(c))

Issued in Washington, D.C., on May 24, 1983.

Thomas A. Till,

Acting Administrator.

[FR Doc. 83-14470 Filed 5-27-83; 8:45 am]

BILLING CODE 4910-06-M

Proposed Rules

Federal Register
Vol. 48, No. 105
Tuesday, May 31, 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

Commodity Credit Corporation

7 CFR Part 1430

1982–83 and 1983–84 Milk Price Support Program

AGENCY: Commodity Credit Corporation.

ACTION: Notice of proposed determination.

SUMMARY: As part of the milk price support program, the Commodity Credit Corporation (CCC) proposes that for the period August 1, 1983, through September 30, 1983, 50 cents per hundredweight, in addition to the 50 cents per hundredweight deduction implemented as of April 16, 1983, be deducted from the proceeds of sale of all milk marketed commercially by producers. CCC further proposes that for the period October 1, 1983, through September 30, 1984, the price of milk be supported at $13.10 per hundredweight and that two 50-cent per hundredweight deductions totaling $1.00 be made from the proceeds of sale of all milk marketed commercially by producers. The price support and the deductions are authorized by the Agricultural Act of 1949, as amended by section 101 of the Omnibus Budget Reconciliation Act of 1982 (Pub. L. 97–253, 96 Stat. 763, approved September 8, 1982).

DATE: Comments should be received by June 30, 1983 in order to be assured of consideration.

ADDRESS: Written comments should be sent to the Director, Analysis Division, ASCS, U.S. Department of Agriculture, P.O. Box 2415, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT: Charles N. Shaw, Leader, Dairy and Sweeteners Group, Analysis Division, ASCS, U.S. Department of Agriculture, P.O. Box 2415, Washington, D.C. 20013, (202) 447–7601. The Preliminary Regulatory Impact Analysis describing the proposed action and its impact is available from Dr. Shaw.

SUPPLEMENTARY INFORMATION: This proposed determination has been reviewed in accordance with Executive Order 12291 and Secretary's Memorandum No. 1512–1 and has been classified as a "major" action since the determination would result in an annual effect on the economy of $100 million or more.

While the Regulatory Flexibility Act (Pub. L. 96–354) is not applicable to this notice of proposed determination, an Initial Regulatory Flexibility Analysis has been prepared. A summary of the analysis is included in this notice and copies of the analysis have been sent to the Chief Counsel for Advocacy of the Small Business Administration. Additional copies are available to the public from Director, Analysis Dividison, Agricultural Stabilization and Conservation Service, USDA, P.O. Box 2415, Washington, D.C. 20013.

This action will not have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is required.

The title and number of the Federal assistance program to which this proposed determination applies are: Title—Commodity Loans and Purchases; Number—10.051, as found in the Catalog of Federal Domestic Assistance.

Statutory Authority for Proposed Determination

Section 201(c) of the Agricultural Act of 1949 (the "1949 Act") provides that the price of milk shall be supported at a level not in excess of 90 percent nor less than 75 percent of parity as the Secretary determines necessary in order to assure an adequate supply of pure and wholesome milk to meet current needs, reflect changes in the cost of production, and assure a level of farm income adequate to maintain productive capacity sufficient to meet anticipated future needs. Section 201(d) of the 1949 Act, as added by the Omnibus Budget Reconciliation Act of 1982, provides that notwithstanding any other provision of law, for the period beginning October 1, 1982, and ending September 30, 1984, the price of milk shall be supported at not less than $13.10 per hundredwight for milk containing 3.67 percent milkfat.

Section 201(d) of the 1949 Act also provides that during the period October 1, 1982 through September 30, 1985, the Secretary of Agriculture is authorized to require the deduction of 50 cents per hundredweight from the proceeds of the sale of all milk marketed commercially by producers. These deductions are to be remitted to the Commodity Credit Corporation to offset a portion of the cost of the milk price support program.This authority does not apply for any fiscal year for which the Secretary estimates that the net price support purchases will be less than 5 billion pounds milk equivalent. If, at any time during a fiscal year, the Secretary estimates that the net price support purchases during that year will be less than 5 billion pounds, the authority for making deductions does not apply for the balance of the year.

Section 201(d) of the 1949 Act further provides that during the period April 1, 1983, through September 30, 1985, the Secretary of Agriculture may provide for an additional deduction of 50 cents per hundredweight from the proceeds of sale of all milk marketed commercially by producers if a program is established under which the second 50-cent deduction is refunded to producers who reduce their milk marketings by a specified amount. This authority does not apply to any fiscal year or portion of a fiscal year for which the Secretary estimates that price support purchases of dairy products will be less than 7.5 billion pounds milk equivalent during the fiscal year.

Background

The price support level for milk is $13.10 per hundredweight for the period October 1, 1982 through September 30, 1983, pursuant to a determination of the Secretary published in the **Federal Register** on September 24, 1982 (47 FR 42128). A determination to impose a deduction of 50 cents per hundredweight from the proceeds of sale of all milk marketed commercially, beginning on April 16, 1983, was published in the **Federal Register** on March 17, 1983 (48 FR 11253).

Proposed regulations establishing procedures for collecting an additional deduction of 50 cents per hundredweight from the proceeds of the sale of milk and establishing a program under which the additional deduction would be refunded were published in the **Federal Register** on December 17, 1982 (47 FR 56500).

Price Support Program

The price of milk is supported by the Commodity Credit Corporation through purchases of butter, cheese and nonfat dry milk at prices which are calculated to enable plant operators to pay dairy farmers, on average, a price equal to the support price. The effectiveness of the program depends on competition by manufacturers for available supplies of milk so that the average price received by farmers will equal the announced support price. At times of significant price support purchases, the purchase prices for these products tend to become the floor for the market prices of such products. Since most of the fluid milk prices are based on prices paid for manufacturing milk, the price support program undergirds all milk and dairy product prices.

Summary of Proposed Determination

It is proposed that a 50 cents per hundredweight deduction, in addition to the 50 cents per hundredweight deduction implemented as of April 16, 1983, be made from the proceeds of sale of all milk sold commercially by producers during the period August 1, 1983, through September 30, 1983. In addition, it is proposed that for the period October 1, 1983, through September 30, 1984, the price of milk be supported at $13.10 per hundredweight and two 50-cent deductions, totaling $1.00 per hundredweight, be made from the proceeds of sale of all milk sold commercially by producers. The second 50 cents per hundredweight deduction would operate in conjunction with a program under which the deduction would be refunded to those producers who reduce their commercial milk marketings by 11.6 percent during August and September 1983 and by 8.4 percent during October 1983 through September 1984, in comparison to marketings during an established base period.

Summary of Preliminary Regulatory Impact Analysis

The level of price support for the 1982–83 marketing year has been established at $13.10 per hundredweight for milk of national average fat content (3.67 percent). (47 FR 42128, September 24, 1982). A 50-cent per hundredweight deduction has been imposed for the period April 16 through September 30, 1983. (48 FR 11253, March 17, 1983).

Milk production continues to increase, and is projected to be 138.7 billion pounds for the 1982–83 marketing year, assuming a support price of $13.10 per hundredweight, and a 50-cent per hundredweight deduction for the last 5 and one-half months of the year. This represents a projected increase of 3.7 billion pounds milk equivalent over milk production in the 1981–82 marketing year and is .5 billion pounds greater than the estimate in March. Even though feed prices have increased, the milk-feed price relationships are expected to remain favorable and to result in increased milk production. Commercial consumption is projected to increase only 0.5 billion pounds to 122.5 billion pounds, partly because of the displacement of commercial sales by domestic donations of CCC-owned dairy products. CCC removals of dairy products are projected to be 16.3 billion pounds, an increase of 2.5 billion pounds from the 1981–82 level.

Implementation of the second 50-cent per hundredweight deduction on August 1 would result in a projected milk production level in the marketing year of 138.5 billion pounds, commercial consumption of 122.5 billion pounds, and CCC removals of dairy products of 16.1 billion pounds milk equivalents.

With a price support level of $13.10 per hundredweight and a 50-cent per hundredweight deduction beginning April 16, 1983, the net price support purchases during fiscal year 1983 are projected to be $2,637 million. The new outlay, before taking the deductions into consideration, is projected to be $2,695 million. The deduction will likely total $325 million. Implementation of the second 50-cent per hundredweight deduction on August 1 would result in projected CCC net price support purchases during fiscal year 1983, which corresponds to the 1982–83 milk marketing year, of $2,606 million. The new outlay, before taking the deductions into consideration, is projected to be $2,664 million. Total deductions during the year would likely total $437 million. Therefore, the net outlays for the marketing year, after taking the amount of the deductions into consideration, are projected to be $2,370 million if only the first deduction is implemented or $2,227 million if both deductions are implemented. These figures compare with an estimated CCC purchase cost of $2,282 million and a net outlay of $2,182 million for fiscal year 1982, and an estimated CCC purchase cost of $2,717 million and a net outlay of $2,775 million for fiscal year 1983 with support at $13.10 per hundredweight and no deductions implemented.

Several options were examined for the 1983–84 marketing year. A support price of $13.10 per hundredweight was compared to a support price established at 75 percent of parity. In addition, the deduction programs in conjunction with a $13.10 support level were examined on the basis of: (1) No deduction, (2) a 50-cent per hundredweight deduction and (3) a $1.00 per hundredweight deduction.

With a support price of $13.10 per hundredweight without any deductions, milk production is projected to 139.1 billion poinds, commercial consumption is projected to be 125.4 billion pounds and CCC net price support purchases of dairy products are projected to total 13.2 billion pounds milk equivalent. CCC purchase costs are estimated to total $2,179 million with net outlays of $2,348 million.

A support price of 75 percent of parity (currently estimated at $15.23 per hundredweight) would result in even greater milk production, porjected to be 141.9 billion pounds, with commercial consumption projected to be 123.0 billion pounds—2.4 billion pounds less than with support at $13.10—and CCC purchases are projected to total 18.4 billion pounds milk equivalent. CCC purchase costs are estimated to total $3,427 million with net outlays of $3,596 million.

With a support price of $13.10, a 50-cent deduction would result in a reduction in CCC's annual net outlays of $804 million and milk production at 138.3 billion pounds, 800 million pounds less than without the deduction. CCC purchases are projected to total 12.4 billion pounds milk equivalent. CCC purchase costs are estimated to total $2,056 million, net outlays before deductions $2,225 million, deductions $681 million, and net outlays after deductions $1,544 million.

With a support price of $13.10, a $1.00 deduction would result in a reduction in CCC's annual net outlays of $1,601 million and milk production at 137.5 billion pounds, 1.6 billion pounds less than without any deduction. CCC purchases are projected to total 11.6 billion pounds milk equivalent. CCC purchase costs are estimated to total $1,932 million, net outlays before deductions $2,101 million, deductions $1,354 million, and net outlays after deductions $747 million. However, the refund provisions of the second 50-cent deduction would reduce net deductions and increase CCC net otlays after deduction by $65 million to $70 million for each 10 percent of average producers who participate in the milk reduction and refund program.

With a support price higher than $13.10 and below 75 percent of parity ($15.23), each 50 cent per hundredweight incremental deduction is estimated to reduce milk production and CCC price support purchases by about .7 billion to .8 billion pounds milk equivalent from

the level which would occur at that respective price support level in the absence of the deduction. However, commercial use would decline if the support price were increased and CCC purchases would increase as a result of the lower commercial use. Per unit CCC purchase costs would also increase with a respective increase in the support price level.

Under section 201(d) of the 1949 Act, a refund of 50 cents per hundreweight must be made when a $1.00 per hundredweight deduction is in effect if the producer reduces commercial marketings by a specified level from the producer's marketings during the base period. The proposed regulations of December 17, 1982, provide for a base period of 24 months from October 1, 1980, through September 30, 1982. The maximum reduction which may be required under section 201(d) is estimated surplus as a percent of the estimated total milk production. Assuming that a $1.00 per hundredweight deduction were to be implemented effective August 1, 1983, the estimated total milk production would be 138.5 billion pounds and the estimated surplus (*i.e.*, CCC net price support purchases) would be 16.1 billion pounds. The proposed reduction of 11.6 percent is the maximum which could be required during August and September 1983 on the basis of these estimates. Assuming that a $1.00 per hundredweight deduction were to be implemented effective October 1, 1983, the estimated total milk production for fiscal year 1984 would be 137.5 billion pounds and the estimated surplus would be 11.6 billion pounds. The proposed reduction of 8.4 percent is the maximum which could be required during fiscal year 1984 on the basis of these estimates.

In deciding whether to propose these deductions, consideration has been given to the statutory standards prescribed by section 201(c) of the 1949 Act. Consideration has also been given to the Congressional policy statement with respect to dairy production which is set forth in section 204 of the Agricultural Act of 1954. The general non-binding policy of section 204 is, of course, subject to the specific statutory standards of section 201(c). The proposal will not affect the promotion of increased use of dairy products. The proposal will assure an adequate supply of milk and dairy products and will encourage efficient production units consisting of high-grade, disease-free cattle and modern sanitary equipment. It also will assure diary farmers as a whole of a fair return for their labor and investment while assuring an adequate supply of pure and wholesome milk to meet current needs. The proposal will assure a level of farm income adequate to maintain productive capacity sufficient to meet anticipated future needs. The proposal also reflects the recent increase in the cost of feed and increased efficiency in production.

Some marginal operators may not be able to profit under the proposal (some in fact may go out of business) but the statute which authorizes the milk price support program does not guarantee each and every dairy farmer a profit. A long-term trend shows that the number of operations with milk cows has declined steadily, while the average number of cows per operation has increased each year. In fiscal year 1984, even with a support price established at 75 percent of parity, there would be some 10,000 fewer operations with milk cows than in fiscal 1983. With a $13.10 per hundredweight support level and no deductions implemented, some 16,000 operations would cease to operate. This decline is about equal to the average annual decline from 1977 through 1982. Each 50-cent per hundredweight incremental deduction is estimated to result in an additional 1,600 fewer operations with milk cows in fiscal 1984. Thus, a full $1.00 deduction at a $13.10 support price would result in some 19,000 fewer operations than in fiscal 1983. This decline is less than the average annual decline of nearly 21,000 which occurred from 1973 through 1982, and well below the annual average decline of 28,000 which has occurred since 1970. This analysis is based on long-term trends and estimated aggregate cow numbers. Thus, no inference should be drawn as to size of operation impacted.

The implementation of the deductions would principally affect farm income in the areas of greatest production. More than 60 percent of the nation's milk production is concentrated in eight States: Wisconsin, California, New York, Minnesota, Pennsylvania, Michigan, Ohio and Iowa. However, every milk producer in the United States who markets milk commercially will be affected by the program. The 50-cent deduction represents less than 4 percent of producer gross income from milk and the one dollar deduction represents less than 8 percent of producer gross income from milk. Those producers who comply with the specified reduction will receive a refund of 50 cents per hundredweight of the $1.00 per hundredweight deduction.

The price support program operates nationally on a gross dollar basis (currently $13.10 per hundredweight) without regard to net income or individual producer costs. Individual producer costs vary widely depending on efficiency of the operation, accounting methods, and what is included in costs. Thus, using such cost data to arrive at net income figures can lead to distorted conclusions about individual dairy farmer's financial conditions.

Summary of Initial Regulatory Flexibility Analysis

Milk production exceeds milk consumption in the United States by about 10 percent. CCC has been, and is expected to continue, purchasing about 10 percent of the annual milk production at a net purchase cost in excess of $2 billion per year.

The objectives of this proposal are to defray part of the cost of the milk price support program, slow the rate of increase in milk production, and bring milk production into balance with commercial consumption.

The Statistical Reporting Service, United States Department of Agriculture, reports that in 1982 there were 311,800 operations with one or more dairy cows. Of the operations with dairy cows in 1981, 5.7 percent had 100 or more cows. The Small Business Administration (SBA) has defined the size standard for small farms as those for which average annual receipts for the preceding three fiscal years do not exceed $1 million. Using the average production per cow of 12,800 pounds per year and the average price of all milk at $13.78 per hundredweight, the break point with respect to cow numbers for defining small farms in accordance with the SBA size standard would be over 550 cows. Thus, well over 95 percent of all farms with dairy cows may be classified as small businesses. The total number of "responsible persons," those who will be required to deduct and remit funds to CCC, is estimated to be 2,500. While the Department does not maintain any size data regarding such entities, the vast majority come within the SBA's definition of "small business."

Small organizations and small governmental jurisdictions will not be substantially affected by this proposed determination.

Those defined as "responsible persons" will have the responsibility of providing documentation upon which deductions will be assessed. Since those entities purchase milk from producers and maintain records of individual producer marketings in the normal course of business, the additional paperwork and recordkeeping costs

involved with remitting deducted amounts are negligible.

Farmers who wish to reduce their production and apply for a refund would be required to verify at their local county ASC office their milk marketings for the base period, October 1, 1980, through September 30, 1982, in addition to marketings for the months that the additional 50-cent deduction and the refund program are in effect. The records required for verification of marketings should already be in the hands of farmers, since handlers presently provide this information to farmers with their milk checks. In some States, this information is available from State agencies.

No additional professional skills are required in order to comply with the requirements of this proposal.

This rule does not duplicate, overlap or conflict with the provisions or requirements of any other rules promulgated by the Federal Government. Any duplication of State or local government rules will be minimal.

CCC has considered two alternative programs for the current 1982–83 marketing year. These alternatives are: (1) Maintaining the 50-cent per hundredweight deduction which began April 16, 1983 and (2) imposing an additional 50-cent per hundredweight deduction in conjuction with a refund program effective August 1, 1983, through September 30, 1983.

CCC has considered alternative programs for the 1983–84 marketing year. These alternatives are: a support price of 75 percent of parity ($15.23 per hundredweight) or a support price of $13.10 per hundredweight in conjuction with: (1) No deduction, (2) a 50-cent per hundredweight deduction effective October 1, 1983 (without any refund program), or (3) a $1.00 per hundredweight deduction (two 50-cent deductions) in conjunction with a 50-cent per hundredweight refund program, effective October 1, 1983.

These alternatives are more fully discussed in the Preliminary Regulatory Impact Analysis.

Failure to implement any deduction would fail to accomplish CCC's stated objectives and would result in a continuation of the present situation where milk production exceeds commercial consumption and CCC purchases large amounts of dairy products under the milk price support program at great expense.

A refund will only be available if the $1.00 deduction is in effect. Only those farmers who wish to receive a refund will be required to establish their production during the base period or their production for the months during which the refund program is available. Information necessary to comply with these requirements normally accompanies a farmer's milkcheck and may also be readily available from other sources.

CCC believes that the compliance and reporting requirements are as simple as the purpose of this proposal permits.

No performance or design standards are involved in any of the proposals under consideration.

Since more than 95 percent of all dairy farms are small businesses under SBA size standards, all classes of dairy farms must be included under any proposal in order to make a program work.

Cash flow will be reduced for dairy farmers but, in most cases, not to an extent which threatens the continued viability of dairy enterprises. The deductions could have a significant impact upon individual farmers, large or small, depending upon a given farmer's financial condition.

Large and small businesses will be affected in direct relations to the volume of output, and their competitive positions relative to each other will not be affected as the per unit effect of this proposal will be the same for both small and large enterprises.

The information collection requirements for implementation of this notice have been approved by the Office of Management and Budget under OMB Number 0581–0132 pursuant to the requirements of the Paper Work Reduction Act.

List of Subjects in 7 CFR Part 1430

Milk, Agriculture, Price support programs, Dairy products.

Proposed Determinations

It is estimated that net price support purchases by the CCC of milk and the products of milk will exceed 7.5 billion pounds milk equivalent during both the 1982–83 and the 1983–84 marketing years. After consideration of the impact of the alternative programs set forth herein, it is proposed that the following action be taken to slow the rate of increase in milk production, bring milk production into balance with commercial consumption, and reduce the cost of the dairy price support program. The price support level shall be established at $13.10 per hundredweight for manufacturing grade milk of national average milk fat content (3.67 percent) for the 1983–84 milk marketing year. Deductions totaling $1.00 per hundredweight shall be made from the proceeds of sale of all milk marketed commercially by producers during the period August 1, 1983, through September 30, 1983, and for the period October 1, 1983, through September 30, 1984. The deduction shall be remitted to the Commodity Credit Corporation to offset a portion of the cost of the milk price support program. Refunds of 50 cents per hundredweight shall be made to producers who reduce their commercial marketings by 11.6 percent during August and September 1983 and by 8.4 percent during October 1, 1983, through September 30, 1984, from marketings during the base period. The collection of the deductions and the making of the refunds shall be conducted in accordance with the final rule to be published pursuant to the rulemaking that began with the publication of a notice of proposed rulemaking on December 17, 1982 (47 FR 56500).

Comments are requested on these proposed determinations.

(Sec. 201 (c) and (d) of the Agricultural Act of 949, as amended 7 U.S.C. 1146); and secs. 4 and 5 of the Commodity Credit Corporation Charter Act, as amended (15 U.S.C. 714b and 714c))

Signed at Washington, D.C. on May 26, 1983.

John R. Block,

Secretary of Agriculture

[FR Doc. 83-14582 Filed 5-27-83; 8:45 am]

BILLING CODE 3410-05-M

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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; correction.

SUMMARY: This document corrects a citation appearing in a Notice of Intent to Review and Request for Comment, which was published on Wednesday, May 18, 1983 (48 FR 22318).

FOR FURTHER INFORMATION CONTACT: Bruce Starnes (ASCS), 202–382–0151.

SUPPLEMENTARY INFORMATION: The following correction is made in **Federal Register** Document 83–13287 appearing on page 22318 in the issue of May 18, 1983: On page 22318, third column, eight lines from the bottom, the phrase "April

13, 1983 (47 FR 21533)" is corrected to read "May 13, 1983 (48 FR 21533)".

Everett Rank,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 83-14443 Filed 5-27-83; 8:45 am]

BILLING CODE 3410-05-M

DEPARTMENT OF TREASURY

Comptroller of the Currency

12 CFR Part 30

[Docket No. 83-21]

Real Estate Loans Made by National Banks; Validation and Enforcement of Due-on-Sale Clauses

AGENCY: Comptroller of the Currency, Treasury.

ACTION: Notice of withdrawal of proposed rule.

SUMMARY: The Comptroller has decided to withdraw a proposed rulemaking regarding the validation and enforcement of due-on-sale clauses in real estate loans made by national banks. This proposed regulation was published on September 23, 1981, at 46 FR 46964. See "Supplementary Information" for a discussion of reasons for withdrawing the proposed rule.

FOR FURTHER INFORMATION CONTACT: Francis S. Rath, Attorney, Legal Advisory Services Division, (202) 447-1880, Office of the Comptroller of the Currency, Washington, D.C. 20219.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal drafter of this document was Francis S. Rath, Attorney, Legal Advisory Services Division, Office of the Comptroller of the Currency, Washington, D.C. 20219.

Background and Analysis

On September 23, 1981, the Office of the Comptroller of the Currency ("Office") published a proposed regulation concerning the validation and enforcement of due-on-sale clauses in real estate loans made by national banks.

The proposed regulation was described in the Notice as follows:

> This proposed regulation would validate the inclusion of due-on-sale clauses in real estate loans made by national banks and make such clauses fully enforceable. The regulation would also revalidate due-on-sale clauses in loans made prior to the rendering of any state court decision or passage of any state statute impairing the enforceability of such clauses, unless the property subject to the mortgage lien containing such a clause was transferred prior to the final promulgation of this regulation. This regulation is intended to make fixed-rate mortgage loans more viable financing vehicles for national banks by effectively permitting the shortening of the average life of such loans. It would also prevent national banks from being deprived, by court decisions impairing the enforceability of due-on-sale clauses, of the opportunity to invest at market rates of interest funds they reasonably expected would be available, given the average turnover rate for real property.

The Office received numerous comments regarding the proposed rulemaking. The Office has decided to withdraw the proposed regulation for the following reasons.

First, due to the time that has passed since the proposal was published and comments were solicited, various changes have occurred which may have an impact on the enforceability of due-on-sale clauses in general and the proposed regulation in particular. Since the publication of the proposal, there has been much discussion and numerous legislative debates and proposals at both the state and federal levels concerning the validation of due-on-sale clauses. At the federal level, this has resulted in the passage of Section 341 of the Garn-St Germain Depository Institutions Act of 1982 (Pub. L. 97-320) ("the Act"), which established a broad preemptive rule concerning due-on-sale clauses. The Act also reserves to the Office specific rulemaking authority regarding "window-period" loans—*i.e.*, those made or assumed after a state, by statute, constitutional provision or judicial decision of statewide applicability, restricts the enforceability of due-on-sale clauses and before enactment of the Act. In addition, there have also been significant changes in the housing markets, interest rates, and other market and financial conditions during this time period. These occurrences moot some of the provisions of the proposal and raise questions about the continuing validity of the comments received.

Secondly, the Act authorizes state legislatures to enact laws affecting window-period loans as to lenders other than national banks, Federal savings and loan associations, Federal savings banks and Federal credit unions. The Office has determined that, prior to the issuance of a regulation, it would be desirable to provide reasonable time for state legislatures to enact laws pursuant to this authority regarding the enforceability of due-on-sale clauses in window-period loans. Some legislatures are presently considering such measures. This provides the Office with the opportunity to review and consider state legislative actions regarding due-on-sale clauses prior to a decision to issue a pre-emptive regulation.

Finally, the degree of controversy aroused by the subject of due-on-sale clauses since the passage of the Act has raised questions within the Office as to the completeness and currency of the administrative record. The Office desires to give full consideration to the views of all interested parties in all rulemakings. Any future rulemaking on due-on-sale clauses will provide a new opportunity for written comments focused on those issues not laid to rest by the Act the Office encourages written comments and gives careful consideration to those received in response to notices of proposed rulemaking.

For these reasons, the Office is withdrawing the proposed regulation published on September 23, 1981, and may consider publishing a new proposal concerning the enforceability of due-on-sale clauses by national banks.

Dated: May 4, 1983.

C. T. Conover,

Comptroller of the Currency.

[FR 83-14406 Filed 5-27-83; 8:45 am]

BILLING CODE 4810-33-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 83-CE-53-AD]

Airworthiness Directives; Pilatus Britten-Norman Ltd. Models BN-2, BN-2A, and BN-2B Islander Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to adopt a new Airworthiness Directive (AD), applicable to certain Pilatus Britten-Norman Ltd., Models BN-2, BN-2A, and BN-2B Islander Series Airplanes equipped with wing tip tanks (Mod NB/M/364) which would require changes to the fuel tip tank selector switches, placarding and indicator lamps. Two accidents involving fuel mismanagement have occurred. The modifications of the switches, placarding and indicators will reduce the possibility of mismanagement of the tip tank fuel system.

DATES: Comments must be received on or before August 2, 1983.

COMPLIANCE: Within 100 hours time-in-service, but no later than December 31, 1983.

ADDRESSES: Pilatus Britten-Norman Ltd. Service Bulletin No. BN-2/SB.157, dated March 14, 1983, applicable to this AD may be obtained from Pilatus Britten-Norman Ltd., Bembridge, Isle of Wight, England or the Rules Docket at the address below.

Send comments on the proposal in duplicate to Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 83-CE-53-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: A. Astorga, Aircraft Certification Staff, AEU-100, Europe, Africa and Middle East Office, FAA, c/o American Embassy, 1000 Brussels, Belgium, Telephone 513.38.30; or L. Werth, Foreign FAR 23 Section, ACE-109, 601 East 12th Street, Kansas City, Missouri, Telephone (816) 374-6932.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments submitted will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 83-CE-53-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Discussion

Based upon findings of two accident investigations involving the affected model Pilatus Britten-Norman Islander Series airplanes which indicated the pilots may not have understood proper operation of the fuel system, the manufacturer has initiated changes in the wing tip fuel tank selector switches, system placarding and selection indicator lamps, on aircraft currently in production. Also, a kit for incorporating these changes on airplanes in service with wing tip tanks (Mod NB/M/364) installed is now available. As a result, Pilatus Britten-Norman Ltd. has issued Service Bulletin No BN-2/SB.157, dated March 14, 1983, containing instructions for incorporating these modifications which simplify and clarify wing tip fuel tank operational procedures. The United Kingdom Civil Aviation Authority (UKCAA), who has the responsibility and authority to maintain the continuing airworthiness of these airplanes in the United Kingdom, has classified this Service Bulletin and the actions recommended therein by the manufacturer as mandatory to assure the continued airworthiness of the affected airplanes. On airplanes operated under United Kingdom registration, this action has the same effect as an AD on airplanes certified for operation in the United States. The FAA relies upon the certification of the UKCAA combined with FAA review of pertinent documentation in finding compliance of the design of these airplanes with the applicable United States airworthiness requirements and the airworthiness and conformity of products of this design certificated for operation in the United States.

The FAA has examined the available information related to the issuance of Service Bulletin No. BN-2/SB.157, dated March 14, 1983, and the mandatory classification of this Service Bulletin by the UKCAA.

Based on the foregoing, the FAA believes that the condition addressed by Service Bulletin No. BN-2/SB.157, dated March 14, 1983, is an unsafe condition that may exist on other products of this type design certificated for operation in the United States. Consequently, the proposed AD would require modification of the wing tip tank fuel management system on certain Pilatus Britten-Norman Ltd. Models BN-2, BN-2A, and BN-2B Islander Series Airplanes equipped with wing tip tanks (Mod NB/M/364).

There are approximately 130 airplanes which could have Mod NB/M/364 and which may be affected by the proposed AD. The cost of complying with the proposed AD is estimated to be minimal to the private sector.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, the Federal Aviation Administration proposes to amend 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) by adding the following new Airworthiness Directive:

Pilatus Britten-Norman Ltd: Applies to Model BN-2, BN-2A, and BN-2B Islander Series Airplanes equipped with wing tip tanks (Mod NB/M/364— certificated in any category except BN-2 MKIII Series Trislander airplanes.

Compliance: Required within 100 hour time-in-service, but no later than December 31, 1983.

To preclude fuel mismanagement and possible fuel starvation, accomplish the following:

(a) Modify the wing tip tank fuel management system in accordance with steps 1. through 12. of the ACTION section of Pilatus Britten-Norman Ltd. Service Bulletin No. BN-2/SB.157, dated 14, 1983.

(b) Aircraft may be flown in accordance with Federal Aviation Regulations 21.197 to a location where this AD can be accomplished.

(c) An equivalent method of compliance with this AD, if used, must be approved by the Manager, Aircraft Certification Staff, AEU-100, Europe, Africa and Middle East Office, FAA, c/o American Embassy, 1000 Brussels, Belgium.

(Secs. 313(a), 601 and 603 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a) 1421 and 1423; Section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)); and § 11.85 of the Federal Aviation Regulations (14 CFR 11.85).

Note. For reasons discussed earlier in the preamble: the FAA has determined that this document: (1) Involves a proposed regulation that is not major under the provisions of Executive Order 12291, (2) is not significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979), and (3) certifies under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. A draft regulatory evaluation has been prepared and has been placed in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location identified under the caption "Addresses."

Issued in Kansas City, Missouri, on May 19, 1983.

John E. Shaw,

Acting Director, Central Region.

[FR Doc. 83-14504 Filed 5-27-83; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 83-AGL-4]

Proposed Designation of Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to designate controlled airspace near Motley, Minnesota, to accommodate a new instrument approach procedure into Morey Fish House Airport, Motley, Minnesota, established on the basis of a request from the Morey Fish House Airport officials to provide that facility with instrument approach capability utilizing the Brainerd, Minnesota VORTAC.

The intended effect of this action is to insure segregation of the aircraft using approach procedures in instrument weather conditions from other aircraft operating under visual weather conditions in controlled airspace.

DATE: Comments must be received on or before June 30, 1983.

ADDRESS: Send comments on the proposal in triplicate to FAA Office of Regional Counsel, AGL-7, Attention: Rules Docket Clerk, Docket No. 83-AGL-4, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket will be available for examination by interested persons in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

An informal docket will also be available for examination during normal business hours in the Airspace Procedures, and Automation Branch, Air Traffic Division, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

FOR FURTHER INFORMATION CONTACT: Edward R. Heaps, Airspace, Procedures, and Automation Branch, Air Traffic Division, AGL-530, FAA, Great Lakes Region, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7360.

SUPPLEMENTARY INFORMATION: The floor of the controlled airspace in this area will be lowered from 1200' above ground to 700' above ground. The development of the proposed instrument procedures requires that the FAA lower the floor of the controlled airspace to insure that the procedure will be contained within controlled airspace. The minimum descent altitude for this procedure may be established below the floor of the 700-foot controlled airspace.

Aeronautical maps and charts will reflect the area of the instrument procedure which will enable other aircraft to circumnavigate the area in order to comply with applicable visual flight rule requirements.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-adressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 83-AGL-4." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling (202) 426-8058. Communications must identify the notice of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2, which describes the application procedures.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish a new 700-foot controlled airspace transition area near Motley, Minnesota.

Section 71.181 of Part 71 of the Federal Aviation Regulations was published in Advisory Circular AC 70-3A dated January 3, 1983.

List of Subjects in 14 CFR Part 71

Transition areas, Aviation safety.

The Proposed Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

Motley, MN

That airspace extending upward from 700 feet above the surface within a 5-mile radius of the Morey Fish House Airport (latitude 46°19'30" N., longitude 94°38'25" W.) within 4.75 miles each side of the 267° radial from the Brainerd VOR, extending from the 5-mile radius to 16.5 miles west of the Airport, excluding that portion within the Staples, Minnesota, transition area.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.65.)

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

Issued in Des Plaines, Illinois, on May 10, 1983.

Kenneth C. Patterson,

Acting Director, Great Lakes Region.

[FR Doc. 83-14509 Filed 5-27-83; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[File No. 771 0055]

Great Dane Trailers, Inc. and Great Dane Distributer Council; Proposed Consent Agreements With Analysis To Aid Public Comment

Correction

In FR Doc. 83-12603 beginning on page 21156 in the issue of Wednesday, May 11, 1983, make the following correction:

On page 21157, first column, words were omitted in the text between the seventh and eleventh lines from the top of the page. Those lines should have read as follows: "* * * Delivery by the U.S. Postal Service of the complaint and decision containing the agreed to order to proposed respondent's address shall constitute service. Proposed respondent waives any right it may have to any other manner of service. * * *"

BILLING CODE 1505-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[EE-140-82]

Top-Heavy Plans; Public Hearing on Proposed Regulations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed regulations relating to top-heavy pension, profit-sharing, and stock bonus plans. The proposed regulations also contain proposed amendments to regulations relating to retroactive plan amendments.

DATES: The public hearing will be held on Friday, August 5, 1983, beginning at 10:00 a.m. Outlines of oral comments must be delivered or mailed by Friday, July 22, 1983.

ADDRESS: The public hearing will be held in the I.R.S. Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, N.W., Washington, D.C. The requests to speak and outlines of oral comments should be submitted to the Commissioner of Internal Revenue, Attn: CC:LR:T (EE-140-82), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: Lou Ann Craner of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, 202-566-3935, not a toll-free call.

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 416 of the Internal Revenue Code of 1954. The proposed regulations appeared in the **Federal Register** for Tuesday, March 15, 1983, (48 FR 10868).

The rules of § 601.601 (a) (3) of the "Statement of Procedural Rules" (26 CFR Part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit, not later than Friday, July 22, 1983, an outline of the oral comments to be presented at the hearing and the time they wish to devote to each subject.

Each speaker will be limited to 10 minutes for an oral presentation exclusive of the time consumed by questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the speakers. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue.

Peter K. Scott,

Director, Employee Plans and Exempt Organizational Division.

[FR Doc. 83-14446 Filed 5-27-83; 8:45 am]

BILLING CODE 4830-01-M

Fiscal Service

31 CFR Part 240

Extension of Treasury's Reclamations Authority

AGENCY: Bureau of Govenment Financial Operations, Fiscal Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: Under 31 CFR 240.4 and 240.5, Treasury has the right to refunds from banks and other indorsers receiving payment on Treasury checks bearing forged or unauthorized indorsements or any other material defects or alterations. The United States has a common law right to offset amounts owed to it against amounts in its possession belonging to its debtors. United States V. Munsey Trust Co., 332 U.S. 234, 239 (1947). On March 17, 1983, Treasury issued a temporary regulation implementing the Federal Claims Collection Act of 1966, *as amended*. The temporary regulation authorized Treasury to recover amounts of delinquent reclamations and accrued interest thereon by offsetting those amounts against amounts in the possession of the United States that are owed to presenting banks. This proposed rule requests comments on whether procedures similar to those contained in that temporary rule should be adopted as final. This proposed rule should result in more effective debt collection

DATE: Comments on this proposed rule must be received on or before August 1, 1983.

ADDRESS: Submit comments to the address shown under "FOR FURTHER INFORMATION CONTACT."

FOR FURTHER INFORMATION CONTACT: Mr. Michael D. Serlin, Assistant Commissioner, Governmentwide Accounting, Room 416, Treasury Annex, Pennsylvania Avenue and Madison Place NW, Washington, D.C. 20226 (202-566-5594).

SUPPLEMENTARY INFORMATION: The purpose of the proposed rule is more effective debt collection. Under the Federal Claims Collection Act of 1966, as amended by Pub. L. 97-365, section 10, the Secretary of the Treasury has the duty to attempt colleciton of all claims of the United States for money or property arising out of the activities of, or referred to Treasury. *See*, section 1, Pub. L. 97-258, 96 Stat. 877 at 971, Sept. 13, 1982 (Revised 31 U.S.C.A. section 3711 (1982)) and 4 CFR 102.3. Treasury's claims against indorsers of, and banks that present for payment, Treasury checks bearing forged or unauthorized indorsements are within the scope of this duty. Historically, many presenting banks have declined to pay these legitimate claims (reclamations), forcing Treasury to either litigate its claims, a procedure which is rarely cost-effective, or absorb the loss.

Treasury first advised the public that it was considering collecting the amounts owed it because of check claims by offset against amounts owed a presenting bank by a Federal Reserve bank in an Advance Notice of Proposed Rulemaking (ANPRM) published in the **Federal Register** on April 25, 1979 (44 F.R. 24306). (Although the term "setoff" was used in the ANPRM and in the

Notice of Proposed Rulemaking (NPRM) discussed below, the term "offset" will be used uniformly here because the debt collection methods described are substantially the same.) Because of substantial questions raised by several commenters, Treasury withheld further action on the proposal pending additional consideration of 44 FR 53090, Sept. 12, 1979.

After further consideration, Treasury again invited comments from the public concerning a proposed change in the regulations that would allow Treasury to recover delinquent reclamations through offset. *See*, NPRM published November 4, 1981 (46 FR 54762). Unlike the ANPRM, the NPRM provided specific regulatory language for comment. Although the NPRM also provided for recovery from banks' reserve account balances, the Supplementary Information portion of the document referred both to offset authorized by contract between Treasury and presenting banks and to offset authorized at common law. This latter type of offset is referred to by regulations implementing the Federal Claims Collection Act. 4 CFR 102.3.

Treasury received 35 comments on the NPRM. Most of the comments concerned Treasury's lack of statutory authority to offset and certain due process considerations in connection with the procedure for offset against reserve account balances. upon review of the comments received, Treasury considered several alternatives and found that the most feasible was offset against other amounts owed debtor banks by government agencies under the common law offset theory. Although this re-evaluation resulted in a shift of targets of offset, Treasury considered its action to be close enough to the action proposed by the ANPRM and the NPRM that it was unnecessary to obtain further comments before taking definitive action. In addition, Treasury found that certain facts warranted the taking of immediate action to implement an offset mechanism. Therefore, Treasury issued a Temporary Rule, 48 FR 11261 (March 17, 1983), implementing its offset procedure. However, in publishing that Temporary Rule, Treasury indicated that it would request comments on whether the procedures in the Temporary Rule should be adopted as a final rule.

It has been determined that this amendment is not a "major rule" as defined in Executive Order 12291, dated February 17, 1981. This determination is based on the fact that the rule's only purpose and effect will be to increase the efficiency and effectiveness of the United States' efforts to collect debts which arise under existing law and for the collection of which the Secretary is responsible under existing law. In addition, the only significant alternative collection device, litigation, has not been sufficiently effective. For the same reasons, this proposed rule will not have a significant economic impact on a substantial number of small entities. Therefore, the regulatory flexibility analysis referred to in Pub. L. 96-354, 94 Stat. 1168 (Sept. 19, 1980) is not required and has not been conducted.

List of Subjects in 31 CFR Part 240

Banks, banking, Forgery, Treasury checks.

PART 240—INDORSEMENT AND PAYMENT OR CHECKS DRAWN ON THE UNITED STATES TREASURY

Accordingly, it is proposed that 31 CFR Part 240 be amended as follows:

1. By revising the authority citations to read as follows:

Authority: 5 U.S.C. 301; 12 U.S.C. 391; section 1, Pub. L. 97-258, 96 Stat. 877 at 955, Sept. 13, 1982 (Revised 31 U.S.C.A. 3331 (1982)); section 1, Pub. L. 97-258, 96 Stat. 877 at 957, Sept. 13, 1982 (Revised 31 U.S.C.A. 3343; section 1, Pub. L. 97-258, 96 Stat. 877 at 971, Sept. 13, 1982 (Revised 31 U.S.C.A. 3711 (1982)), *as amended* by Pub. L. 97-365, sections 10 and 11.

2. By revising section 240.1 to read as follows:

§ 240.2 Scope of regulations

The regulations in this part prescribe the requirements for indorsement and the conditions for payment of checks drawn on the United States Treasury. These regulations also establish procedures for collection of amounts due the United States Treasury because of payments on checks bearing forged or other unauthorized indorsements, or other material defects or alterations.

3. By revising § 240.2 to read as follows:

§ 240.2 Definitions

(a) "Check" or "checks" means a check or checks drawn on the United States Treasury.

(b) "Check payments" means the amount paid to a presenting bank in accordance with section 240.8(a)(3) of this Part.

(c) "Days" means calendar days.

(d) "Financial organization" means any bank, savings bank, savings and loan association, Federal or State chartered credit union, or similar institution.

(e) "Item" means a reference in a monthly interest billing statement to a check for the amount of which Treasury has demanded refund from a presenting bank.

(f) "Monthly interest billing statement" means a statement prepared by Treasury and sent to a presenting bank which includes the following information regarding each outstanding demand for refund:

(1) The reclamation date;

(2) The reclamation number;

(3) Check identifying information; and

(4) The balance due, including interest.

(g) "Person" or "persons" means an individual or individuals, or an organization or organizations, including all forms of financial organizations.

(h) "Presenting bank" means: (1) A financial organization which, either directly or through a correspondent banking relationship, presents checks to and receives credit from a Federal Reserve Bank, or (2) a depositary which is authorized to charge checks directly to the General Account of the United States Treasury and present them directly to Treasury for payment.

(i) "Protest" means a presenting bank's written statement and any supporting documentation tending to prove that it is not liable for refund of the reclamation balance.

(j) "Reclamation" means a demand by Treasury for refund of the amount of a check payment.

(k) "Reclamation date" means the date on which a demand for refund was prepared. Normally, demands are sent to presenting banks within two working days of the reclamation date.

(l) "Treasury" means the United States Treasury.

(m) "U.S. securities" means securities of the United States and securities of Federal agencies and wholly or partially Government-owned corporations for which the Treasury acts as transfer agent.

(n) "Unauthorized indorsement" means: (1) An indorsement made by a person other than the payee, except as authorized by an in accordance with sections 240.4 and 240.10 through 240.14 of this part, (2) an indorsement by a financial organization under circumstances in which the financial organization breaches the guaranty required of it by 31 CFR 209.10(a) (*see* 31 CFR 209.9), or (3) a missing indorsement where the depositary bank had no authority to supply the indorsement.

4. By revising section 240.5 to read as follows:

§ 240.5 Collection of amounts of paid checks

(a) If, after a check has beer paid by Treasury, it is found to:

(1) Bear an unauthorized indorsement, or

(2) Contain any other material defect or alteration which was not discovered upon first examination,

Othen, upon demand by the Treasury in accordance with the procedures specified in section 240.6 of this Part, the presenting bank or other indorser shall refund the amount of the check payment.

(b) Interest on any unpaid item shall commence to accrue on the sixty-first day after the reclamation date. Interest shall be calculated at the rate set from time to time for purposes of section 1, Pub. L. 97–258, 96 Stat. 877 at 882 (Revised 31 U.S.C.A. 323 (1982)). Interest shall continue to accrue until the amount demanded is paid or the reclamation is abandoned.

(c) In addition to its right to recover interest, Treasury shall have the right to recover such other applicable charges (e.g., administrative collection costs, late payment penalties) as may be authorized or required by law.

5. By redesignating sections 240.6 through 240.12 as sections 240.8 through 240.14, respectively, and by adding new sections 240.6 and 240.7 as follows:

§ 240.6 Demand and protest.

(a) For all reclamations an initial demand for refund of the amount of a check payment will be made by sending a "Request for Refund (Reclamation)," to the presenting bank. This Request shall advise the presenting bank of the amount demanded and the reason for the demand. Treasury will make follow-up demands by including each unpaid item on at least three monthly interest billing statements sent to the presenting bank. Monthly interest billing statements will identify any unpaid reclamation demands and will also show the amount of any accrued interest for each outstanding reclamation. Monthly interest billing statements will contain or be accompanied by notice to the bank:

(1) That Treasury intends to collect the debt through administrative offset if the reclamation is not paid within 120 days of the reclamation date,

(2) That the bank has an opportunity to inspect and copy Treasury's records with respect to the reclamation,

(3) That the bank may, by filing a protest, request Treasury to review its decision that the bank is liable for the reclamation, and

(4) That the bank has an opportunity to enter into a written agreement with Treasury for the repayment of the amount of the reclamation. A request for a repayment agreement must be accompanied by proof that satisfies the Treasury that the requesting bank is unable to repay the entire amount owed at the time that it is due.

(b) Requests for an appointment to inspect and copy Treasury's records with respect to a reclamation and requests to enter into repayment agreements should be sent in writing to: Department of the Treasury, Division of Check Claims, Reclamation Policy and Collection Section, 401 14th Street, Washington, D.C. 20227.

(c)(1) If a presenting bank wishes to contest its liability for the principal amount demanded, it shall send a protest, *i.e.*, a written statement and all documentary evidence (*e.g.*, affidavits, account agreements, signature cards) and other written information raising a question of law or fact which, if resolved in the bank's favor, would disprove its liability for the reclamation, to: Department of The Treasury, Division of Check Claims, Reclamation Policy and Collection Section, 401 14th Street, Washington, D.C. 20227.

The Assistant Director (Support Services), Division of Check Claims, who has supervisory authority over the Reclamation Policy and Collection Section, or his authorized subordinate, shall consider and decide any protest properly submitted under this paragraph. Neither the Assistant Director (Support Services), Division of Check Claims, nor any of his subordinates, shall have any involvement in the process of making findings or demands under section 240.5(a). In order to be considered, and to be timely, a protest must be received not later than 90 days after the reclamation date. Treasury will refrain from collection in accordance with section 240.7 while a timely protest is being considered.

(2) If Treasury accepts the protest, the presenting bank shall be notified in writing that efforts to collect the item and any accrued interest have been abandoned.

(3) If the evidence sent by the presenting bank does not satisfy Treasury that refund of the amount demanded is not required under section 240.5(a), Treasury will notify the presenting bank in writing of its decision that the bank is liable for the amount demanded. If the presenting bank fails to send the amount demanded within 30 days of the date of Treasury's decision, Treasury shall proceed to collect the amount owed in accordance with section 240.7.

§ 240.7 Offset.

(a) If an item, and/or accrued interest relating to that item remains unpaid for 120 days after the reclamation date and the presenting bank has been sent at least one monthly interest billing statement informing it that Treasury intends to collect that item by offset, Treasury may refer the matter to any federal agency and request that agency to offset the indebtedness and other applicable charges against amounts owed by the federal agency to the presenting bank. Monthly interest billing statements will identify those items that are to be referred to an agency for offset. If an agency to which an indebtedness is referred in accordance with this paragraph is unable to effect offset in whole or in part within 30 days of the date that the matter is referred to it, it shall so inform Treasury and terminate its efforts to offset. Treasury may then refer the debt to any other agency and request offset in accordance with this paragraph as its designee for the sole purpose of effecting offset. No such designee shall be liable to any party for any loss resulting from its action under this paragraph.

(b) If Treasury is unable to collect an amount owed by use of the offset described in paragraph (a), Treasury shall take such action against the presenting bank as may be necessary to protect the interests of the United States, including referral to the Department of Justice.

(c) The procedures provided for in section 240.5, 240.6(b), and this section shall apply to demands for refund bearing reclamation dates on or after May 26, 1981.

(d) If Treasury effects offset under this section and it is later determined that the presenting bank paid the amount of the reclamation and accrued interest thereon, or that a presenting bank which had timely filed a protest was not liable for the amount of the reclamation, Treasury shall promptly refund to the presenting bank the amount of its payment.

Date May 23, 1983.

Michael D. Serlin,

Acting Commissioner, Bureau of Government Financial Operations.

[FR Doc. 83-14490 Filed 5-27-83; 8:45 am]

BILLING CODE 4810-35-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD 82-025]

Drawbridge Regulations; Navigable Waterways of the United States

AGENCY: Coast Guard, DOT.

ACTION: Supplementary notice of proposed rulemaking.

SUMMARY: The Coast Guard published a notice of proposed rulemaking in the July 12, 1982 **Federal Register** revising its regulations for drawbridges across the navigable waters of the United States. As a result of many changes based upon comments received, the Coast Guard is issuing a second notice of proposed rulemaking for additional public comment. The proposed revision is intended to improve the organization and clarity of the initial proposal and to facilitate the use of these regulations by drawbridge owners, drawtenders, boaters, and other interested parties.

DATE: Comments must be received on or before July 29, 1983.

ADDRESS: Comments should be submitted to and are available for examination at the Marine Safety Council (G-CMC), Room 4402, Coast Guard Headquarters, 2100 Second Street, S.W., Washington, D.C. 20593. Between the hours of 7:00 a.m. and 5:00 p.m., Monday through Friday, comments may be delivered to, and are availabe for inspection and copying at the Marine Safety Council (G-CMC).

FOR FURTHER INFORMATION CONTACT: Frank L. Teuton, Jr., 202–426–0942.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their name and address, idenify the bridge, and give reasons for concurrence with or any recommended change in the proposal. Persons desiring acknowledgement that their comments have been received should enclose a self-address stamped postcard or envelope.

The Chief, Office of Navigation, U.S. Coast Guard Headquarters, Washington, D.C., will evaluate all communications received before taking final action on this proposal. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. The proposed regulations may be changed in light of comments received. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

In addition to publication in the **Federal Register**, copies of the printed proposal will be mailed to a list of persons and organizations who have expressed a continued interest in drawbridge operation regulations and have requested that copies of proposed changes in the regulations be furnished them. After the supply of copies of this printed document is exhausted, copies will be available for reading of copying in Room 1420, Coast Guard Headquarters, and at the offices of the Coast Guard District Commanders.

Drafting Information

The principal persons involved in drafting this proposal are: Mr. Frank L. Teuton, Jr., Project Manager, and Stephen H. Barber, Project Attorney.

Discussion of the Proposed Regulations

On July 12, 1982, the Coast Guard published a Notice of Proposed Rulemaking ("original proposal") in the **Federal Register** (47 FR 30176) proposing to revise 33 CFR Part 117 concerning drawbridge requirements. Fifty-nene comments were received from various Coast Guard Districts, bridge owners, marine, highway, and railroad interests, and individuals. Based on the comments received, the Coast Guard has revised its original proposal and is now soliciting comments on the changes made.

The initial reasons for revising Part 117 were twofold. The first was to consolidate into a separate subpart (proposed Subpart A) all of the requirements which are common to most drawbridges. Presently, these requirements are repeated throughout Part 117. For example, the requirement that drawdridge operation regulations be posted on the waterway for the benefit of boaters (proposed § 117.55) appears in 145 section of the existing regulations.

The second initial reason for revising Part 117 was to reorganize all of the regulations relating to particular drawbridges (proposed Subpart B). The present and the original proposals list the bridges by State and waterway, rather than by bridge or waterway as in the existing regulations. Under both proposals, one could locate the specific regulations, if any, for a particular bridge by referring to the alphabetical listing of States and waterways, rather than by having to scan the entire index.

However, as result of the many comments received, the Coast Guard now has decided to revise the original proposal for further clarification and consolidation. The scope ofthis revision is limited to the subjects already addressed in one manner or another in the existing regulations but is not intended to amend the provisions specifying the opening and closing times of particular bridges now listed in proposed Subpart. B. Comments recommending changes to the specific requirements applicable to a particular bridge, for example, a provision which permits a bridge to remain closed from 6 a.m. to 8 a.m., should be submitted to the Commander of the Coast Guard District in which the bridge is located for consideration under a separate rulemaking project.

Changes to the Original Proposal

(a) *Subpart A.* Proposed Subpart A combines into a single subpart all of the general requirements relating to drawbridges. Specific requirements for a particular bridge which are in addition to, or differ from, the general requirements in proposed Subpart A are placed in proposed Subpart B.

Proposed Subpart A has been extensively revised since the date of the original proposal to eliminate minor inconsistencies and to organize the material into a more logical progression.

Certain provisions which appeared in Subpart A of the original proposal actually apply only to the bridges in Subpart B. These provisions, concerning posting of requirements (§ 117.55) and advance notice (§ 117.57), have been transferred to proposed Subpart B.

Three recently promulgated regulations have been included in proposed Subpart A. Section 117.9 (Delaying opening of a draw), § 117.11 (Appurtenances unessential to navigation), and § 117.45 (Process of violations) came into effect on January 3, 1983 (47 FR 54297; December 2, 1982). These provisions have been renumbered and added to Subpart A without further change.

Several final rules amending the specific requirements for certain drawbridges in the existing regulations have been published since the date of the original proposal and are now in effect. All of the amendments as of April 30, 1983 have been included in this proposal for the benefit of the reader. When the final rule is published under the present rulemaking, that rule will contain all amendments of this nature which are in effect on the date of final publication.

Section 117.7 in the original proposal concerning the expedited passage of public vessels, commercial vessels, and vessels in distress has been deleted from Subpart A. Expedited passage is addressed in the existing regulations in the list of requirements applicable to particular bridges. Those provisions were deleted in the original proposal and summarized in its Subpart A. However, because of the controversy surrounding this issue, this proposal deletes the summary and restores the expedited passage provisions to the bridges to which they now apply. This

matter will be considered under a separate rulemaking in the future.

Proposed § 117.23, concerning the installation of radiotelephones on drawbridges, is basically the same provision that appeared in § 117.15 of the original proposal. Both of these proposed sections place the authority to require the installation of a radiotelephone in the Coast Guard District Commanders. The existing regulations specify the Commandant of the Coast Guard (33 CFR 117.1(e)). However, the general authority of the Commandant to regulate the operation of drawbridges has been delegated to the District Commanders under 33 CFR 1.05–1(g)(3). Therefore, the proposed change from Commandant to District Commander is commensurate with this general delegation.

(b) *Subpart B.* This subpart prescribes specific requirements applicable to the drawbridges listed in this subpart. These provisions are in addition to, or differ from, the general requirements in Subpart A. Proposed Subpart B has been changed as follows since the original proposal was published.

As mentioned above, several provisions in Subpart A of the original proposal apply only to the bridges in Subpart B. These provisions have been placed at the beginning of Subpart B in this proposal.

The drawbridges with specific requirements listed in proposed Subpart B have been renumbered without substantive change. The proposed index to Part 117 now lists the waterways alphabetically, as well as the states. To locate the specific requirements for a particular bridge, look up in the index to proposed Part 117 the state and waterway where the bridge is located. Then refer to the section indicated. The bridges in that section are listed in order from the mouth of the waterway moving upstream. Bridges on the Altantic Intracoastal Waterway are listed north to south and on the Gulf Intracoastal Waterway, east to west.

Regulatory Evaluation

This regulatory action is considered to be "non-major" under Executive Order 12291 (46 FR 13193; February 19, 1982) and "nonsignificant" under the Department of Transportation Order 2100.5, "Policies and Procedures for Simplification, Analysis, and Review of Regulations," dated May 22, 1980. These orders require an evaluation of the estimated costs of the proposed regulations to the private sector, consumers, and governments, as well as the anticipated benefits and impacts of the proposals.

This regulatory action proposes a reorganization of the existing drawbridge operation regulations without, for the most part, adding new requirements. The only additional cost this proposal may impose would be in the area of posting of requirements. Proposed § 117.55 would require the owners of drawbridges listed in Subpart B, other than removable span bridges, to post a sign upstream and downstream of the bridge. The signs would summarize the specific requirements in Subpart B applicable to the bridge in question. These signs need not list the requirements in Subpart A or those in §§ 117.55 through 117.59 of Subpart B. Many bridges are already required to post this information under the existing regulations. The existing regulations contain 145 references to posting. Still other bridges currently post signs as a benefit to vessel operators and as a measure to provide for the safety of the bridge. Nevertheless, this provision would affect bridges in proposed Subpart B not already posting this information. It is estimated that 25 bridges would have to install signs at a cost of $200 per bridge (two signs) for a total of $5,000 nationwide.

Because the impact of this proposal, as discussed above, is considered to be minimal, a full Regulatory Evaluation is not considered necessary and none has been prepared.

Regulatory Flexibility Act

The proposed reorganization of Part 117 is intended primarily to simplify and clarify the existing regulations without substantive change. The only change which would impose new costs would be the posting requirement discussed in the Regulatory Evaluation section above. The cost per bridge for bridges not already required to post or not already doing so voluntarily would be approximately $200. These bridges are owned by railroads or governmental entities and the costs imposed for each would be relatively minimal. Therefore, for the above reasons, it is certified, in accordance with section 605(d) of the Regulatory Flexibility Act (94 Stat. 1164; 5 U.S.C. 601), that these rules will not, if promulgated, have a significant economic impact on a substantial number of small entities.

Reporting and Recordkeeping Requirements

There are no reporting or recordkeeping requirements in the proposed regulations which fall under the Paperwork Reduction Act of 1980 (Pub. L. 96–511; 94 Stat. 2812; December 11, 1980). The signs required to be posted under proposed § 117.55 merely summarize the specific regulations for the bridge listed in proposed Subpart B and, therefore, do not qualify as the type of disclosure addressed by the Act.

Environmental Assessment

The Coast Guard has considered the environmental impact of the proposed regulation and concluded that preparation of an environmental impact statement does not appear necessary. An environmental assessment with a proposed finding of no significant impact has been prepared and is on file in the rulemaking docket.

List of Subjects in 33 CFR Part 117

Bridges.

In consideration of the foregoing, it is proposed that Part 117 of Title 33 of the Code of Federal Regulations be amended to read as follows:

PART 117—DRAWBRIDGE REQUIREMENTS

Subpart A—General Requirements

Sec.

117.1 Purpose.
117.3 Applicability.
117.5 When the draw must open.
117.7 General duties of drawbridge owners and tenders.
117.9 Delaying opening of a draw.
117.11 Appurtenances unessential to navigation.
117.15 Signals.
117.17 Signalling for contiguous drawbridges.
117.19 Signalling when two or more vessels are approaching a drawbridge.
117.21 Signalling for opened drawbridge.
117.23 Installation of radiotelephones.
117.31 Closure of draw for emergency vehicles.
117.33 Closure of draw for natural disasters or civil disorders.
117.35 Operations during repair or maintenance.
117.37 Opening or closure of draw for public interest concerns.
117.41 Discontinuance of drawtender service.
117.43 Changes in draw operation requirements for regulatory purposes.
117.45 Process of violations.

Subpart B—Specific Requirements

117.51 Purpose.
117.53 Applicability.
117.55 Posting of requirements.
117.57 Advance notice.
117.59 Special requirements due to hazards.

Alabama

117.101 Alabama River.
117.103 Bayou Labatre.
117.105 Bayou Sara.
117.107 Chattahoochee River.
117.109 Coosa River.
117.111 Mobile River and Chickasaw Creek.
117.113 Tensaw River.

Sec.
117.115 Three Mile Creek.

Arkansas

117.121 Arkansas River.
117.123 Arkansas and White Rivers—Automated Railroad Bridges.
117.125 Black River.
117.127 Current River.
117.129 Little Red River.
117.131 Little River.
117.133 Ouachita River.
117.135 Red River.
117.137 St. Francis River.
117.139 White River.

California

117.140 General.
117.141 American River.
117.143 Burns Cutoff.
117.145 Cerritos Channel.
117.147 China Basin, Mission Creek.
117.149 Cordelia Slough (a tributary of Suisun Bay).
117.151 Corte Madera Creek.
117.153 Eureka Slough.
117.155 Georgiana Slough.
117.157 Grant Line Canal.
117.159 Honker Cut.
117.161 Islais Creek (Channel).
117.163 King Island Cut.
117.165 Lindsey Slough.
117.167 Little Potato Slough.
117.169 Mare Island Strait, Napa River, and their tributaries.
117.171 Middle River.
117.173 Miner Slough.
117.175 Mokelumne River.
117.177 Mud Slough.
117.179 Newark Slough.
117.181 Oakland Inner Harbor Tidal Canal.
117.183 Old River.
117.185 Pacheco Creek.
117.187 Petaluma River.
117.189 Sacramento River.
117.191 San Joaquin River.
117.193 San Leandro Bay.
117.195 Snodgrass Slough.
117.197 Sonoma Creek.
117.199 Steamboat Slough.
117.201 Sutter Slough.

Connecticut

117.207 Housatonic River.
117.209 Mianus River.
117.211 Mystic River.
117.213 New Haven Harbor, Quinnipiac and Mill Rivers.
117.215 Niantic River.
117.217 Norwalk River.
117.219 Pequonnock River.
117.221 Saugatuck River.
117.223 Shaws Cove.
117.225 Yellow Mill Channel.

Delaware

117.231 Brandywine River.
117.233 Broad Creek (River).
117.235 Chesapeake and Delaware Canal.
117.237 Christina River.
117.239 Lewes and Rehoboth Canal.
117.241 Mispillion River.
117.243 Nanticoke River.
117.245 Smyrna River.
117.247 St. Johns River.

District of Columbia

117.253 Anacostia River.
117.255 Potomac River.

Florida

117.261 Atlantic Intracoastal Waterway from Jacksonville to Miami.
117.263 Banana River.
117.265 Bayou Chico.
117.267 Big Carlos Pass.
117.269 Biscayne Bay.
117.271 Blackwater River.
117.273 Canaveral Harbor Barge Canal.
117.275 Choctawhatchee River.
117.277 Clearwater Pass.
117.279 Coffee Pot Bayou.
117.281 Dead River.
117.283 Dunns Creek.
117.285 Garrison Channel.
117.287 Gulf Intracoastal Waterway, Caloosahatchee River to Perdido River.
117.289 Hillsboro Inlet.
117.291 Hillsborough River.
117.293 Indian Creek.
117.295 Kissimmee River.
117.297 Little Manatee River.
117.299 Longboat Pass.
117.301 Manatee River.
117.303 Matlacha Pass.
117.305 Miami River.
117.307 Miami River, North Fork.
117.309 Nassau Sound.
117.311 New Pass.
117.313 New River.
117.315 New River, South Fork.
117.317 Okeechobee Waterway.
117.319 Oklawaha River.
117.321 Orange River.
117.323 Peace River.
117.325 St. Johns River.
117.327 St. Marks River.
117.329 St. Marys River.
117.331 Steinhatchee River.
117.333 Suwanee River.
117.335 Taylor Creek.
117.337 Trout River.
117.339 West Palm Beach Canal.
117.341 Whitcomb Bayou.

Georgia

117.351 Altamaha River.
117.353 Atlantic Intracoastal Waterway, Savannah River to St. Marys River.
117.355 Back River.
117.357 Black River.
117.359 Chattahoochee River.
117.361 Fling River.
117.363 Ocmulgee River.
117.365 Oconee River.
117.367 Ogeechee River.
117.369 Satilla River.
117.371 Savannah River.
117.373 St. Marys River.

Hawaii

117.377 Honolulu Harbor, Sand Island.

Idaho

117.381 Clearwater River.
117.383 Pend Oreille River.
117.385 Snake River.

Illinois

117.389 Calumet River.
117.391 Chicago River.
117.393 Illinois River.
117.395 Illinois Waterway.
117.397 Wabash River.

Indiana

117.401 Trail Creek.
117.403 Wabash River.

Iowa

117.407 Missouri River.

Kansas

117.411 Missouri River.

Kentucky

117.415 Green River.
117.417 Ohio River.

Louisiana

117.421 Algers Alternate Route.
117.423 Amite River.
117.425 Black Bayou.
117.427 Black River.
117.429 Boeuf Bayou.
117.431 Boeuf River.
117.433 Bonfouca Bayou.
117.435 Caddo Lake.
117.437 Colyell Bayou.
117.439 Des Allemands Bayou.
117.441 D'Inde Bayou.
117.443 DuLarge Bayou.
117.445 Franklin Canal.
117.447 Grand Cabahanosse Bayou.
117.449 Grosse Tete Bayou.
117.451 Gulf Intracoastal Waterway.
117.453 Gulf Intracoastal Waterway, Houma Navigation Canal, Bayou La Carpe, and Bayou Terrebonne, Houma.
117.455 Houma Canal.
117.457 Houston River.
117.459 Inner Habor Navigation Canal, New Orleans.
117.461 Lacassine Bayou.
117.463 Lacombe Bayou.
117.465 Lafourche Bayou.
117.467 Lake Pontchartrain.
117.469 Liberty Bayou.
117.471 Little Black Bayou.
117.473 Little River.
117.475 Little (Petit) Caillou Bayou.
117.477 Lower Atchafalaya River.
117.479 Macon Bayou.
117.481 Nazpique Bayou.
117.483 Ouachita River.
117.485 Patout Bayou.
117.487 Plaquemine Bayou.
117.489 Plaquemine Brule Bayou.
117.491 Red River.
117.493 Sabine River.
117.495 Superior Oil Canal.
117.497 Stumpy Bayou.
117.499 Tante Phine Pass.
117.501 Teche Bayou.
117.503 Tensas River.
117.505 Terrebonne Bayou.
117.507 Tigre Bayou.
117.509 Vermilion River.
117.511 West Pearl River.

Maine

117.521 Back Cove.
117.523 Back River.
117.525 Kennebec River.
117.527 Kennebunk River.
117.529 Narraguagus River.
117.531 Presumpscot River.
117.533 Sheepscot River.
117.535 Taunton River.

Sec.

Maryland

117.541 Baltimore Harbor-Patapsco River.
117.543 Bear Creek.
117.545 Bohemia River.
117.547 Bush River.
117.549 Cambridge Harbor.
117.551 Chester River.
117.553 Choptank River.
117.555 Curtis Creek.
117.557 Dorsey Creek.
117.559 Kent Island Narrows.
117.561 Marshyhope Creek.
117.563 Miles River.
117.565 Patuxent River.
117.567 Pocomoke River.
117.569 Sinepuxent Bay.
117.571 Spa Creek.
117.573 Stoney Creek.
117.575 Susquehanna River.
117.577 Weems Creek.
117.579 Wicomico River (North Prong).

Massachusetts

117.585 Achushnet River.
117.587 Apponaganset River.
117.589 Cape Code Canal.
117.591 Charles River.
117.593 Chelsea River.
117.595 Danvers River.
117.597 Dorchester Bay.
117.599 Fort Point Channel.
117.601 Malden River.
117.603 Manchester Harbor.
117.605 Merrimack River.
117.607 Mitchell River.
117.609 Mystic River.
117.611 Neponset River.
117.613 North River.
117.615 Plum Island River.
117.617 Reserve Channel.
117.619 Taunton River.
117.621 Weymouth Fore River.

Michigan

117.625 Black River.
117.627 Cheboygan River.
117.629 Crooked River.
117.631 Detroit River (Trenton Channel).
117.633 Grand River.
117.635 Keweenaw Waterway.
117.637 Manistee River.
117.639 Ontonagon River.
117.641 Pine River (Charlevoix).
117.643 Pine River (St. Clair).
117.645 Rouge River (Short Cut Channel).
117.647 Saginaw River.
117.649 St. Joseph Harbor.
117.651 St. Joseph River.
117.653 St. Mary's Fall Canal.
117.655 Thunder Bay River.

Minnesota

117.661 Duluth Ship Canal (Duluth-Superior Harbor).
117.663 Minnesota River.
117.665 Red River of the North.
117.667 St. Croix River.
117.669 St. Louis River.
117.671 Upper Mississippi River.

Mississippi

117.675 Back Bay of Biloxi.
117.677 Big Sunflower River.
117.679 Escatawpa River.
117.681 Old Fort Bayou.
117.683 Pascagoula River.

Sec.

117.685 Yazoo River.

Missouri

117.687 Missouri River.
117.689 Osage River.

Nebraska

117.691 Missouri River.

New Hampshire

117.695 Bellamy River.
117.697 Hampton River.
117.699 Little Harbor.

New Jersey

117.701 Alloway Creek.
117.703 Bass River.
117.705 Beaver Dam Creek.
117.707 Cape Island Creek.
117.709 Cheesequake Creek.
117.711 Cohansey River.
117.713 Cooper River.
117.715 Debbies Creek.
117.717 Delaware River (Back Channel).
117.719 Elizabeth River.
117.721 Great Channel.
117.723 Hackensack River and Overpeck Creek.
117.725 Manantico Creek.
117.727 Manasquan River.
117.729 Mantua Creek.
117.731 New Jersey Intracoastal Waterway.
117.733 Oceanport Creek.
117.735 Oldmans Creek.
117.737 Passaic River.
117.739 Raccoon Creek.
117.741 Rahway River.
117.743 Rancocas River (Creek).
117.745 Raritan River and Arthur Kill and their tributaries.
117.747 Salem River.
117.749 Shark River (South Channel).
117.751 Ship Channel, Great Egg Harbor Bay.
117.753 Shrewsbury River (South Branch).
117.755 Tuckahoe River.
117.757 Wading River.
117.759 Woodbridge Creek.

New York

117.771 Bronx River.
117.773 Buffalo River.
117.775 Coney Island Creek.
117.777 Dutch Kills.
117.779 Eastchester Bay (Arm of).
117.781 East River.
117.783 Flushing Creek.
117.785 Genessee River.
117.787 Gowanus Canal.
117.789 Harlem River.
117.791 Hudson River.
117.793 Hutchinson River.
117.795 Jamaica Bay and connecting waterways.
117.797 Lake Champlain.
117.799 Long Island, New York Inland Waterway from East Rockaway Inlet to Shinnecock Canal.
117.801 Newtown Creek (East Branch).
117.803 Niagara River.
117.805 Peekskill (Annsville) Creek.
117.807 Richmond Creek.
117.809 Tonawanda Creek.
117.811 Tonawanda Harbor.
117.813 Wappinger Creek.
117.815 Westchester Creek.

Sec.

North Carolina

117.821 Atlantic Intracoastal Waterqay, Bogue Sound to Wrightsville Beach.
117.823 Neuse River.
117.825 Newport River.
117.827 New River.
117.829 Northeast River.
117.831 Pamlico and Tar Rivers.
117.833 Pasquotank River.
117.835 Perquimans River.
117.837 Roanoke River.
117.839 Souppernong River.
117.841 Smiths Creek.
117.843 Trent River.
117.845 Wrightsville Beach (AIWW).

Ohio

117.847 Ashtabula River.
117.849 Muskingham River (Zanesville Canal).
117.851 Portage River.
117.853 Sundusky Bay.

Oregon

117.861 Blind Slough.
117.863 Catching Slough.
117.865 Clatskanie River.
117.867 Coalbank Slough.
117.869 Columbia River.
117.871 Coos Bay
117.873 Coos River.
117.875 Coquille River.
117.877 Dean Creek.
117.879 Isthmus Slough.
117.881 John Day River.
117.883 Little Nestucca River.
117.885 Nehalem River.
117.887 Oregon Slough.
117.889 Siuslaw River.
117.891 Umpqua River.
117.893 Walluski River.
117.895 Willamette River.
117.897 Youngs Bay, Lewis and Clark River, and Skipanon River.

Pennsylvania

117.901 Chester Creek.
117.903 Darby Creek.
117.905 Schuylkill River.

Rhode Island

117.907 Providence River.

South Carolina

117.911 Atlantic Intracoastal Waterway, Little River to Savannah River.
117.913 Ashepoo River.
117.915 Ashley River.
117.917 Battery Creek.
117.919 Black River.
117.921 Broad River.
117.923 Congaree River.
117.925 Cooper River.
117.927 Coosaw River (Whale Branch).
117.929 Durham Creek.
117.931 Harbor River (a tidal estuary in St. Helena Sound).
117.933 Pee Dee River.
117.935 Rantowles Creek.
117.937 Savannah River.
117.939 Wando River.

Tennessee

117.943 Cumberland River.
117.945 Hatchie River.
117.947 Obion River.

Sec.
117.949 Tennessee River.

Texas

117.951 Arroyo-Colorado River.
117.953 Brazos River (Diversion Channel).
117.955 Buffalo Bayou.
117.957 Cedar Bayou.
117.959 Chocolate Bayou.
117.961 Clear Creek.
117.963 Colorado River.
117.965 Cow Bayou.
117.967 Greens Bayou.
117.969 Lavaca River.
117.971 Neches River.
117.973 Nueces Bay.
117.975 Old Brazos River.
117.977 Pelican Island Causeway.
117.979 Sabine Lake.
117.981 Sabine River.
117.983 Sabine River (Old Channel) behind Orange Harbor Island
117.985 Taylor's Bayou.
117.987 Trinity River.
117.989 Victoria Channel.

Vermont

117.993 Lake Champlain.

Virginia

117.995 Appomattox River.
117.997 Atlantic Intracoastal Waterway, South Branch of the Elizabeth River to the Albemarle and Chesapeake Canal.
117.999 Blackwater River.
117.1001 Cat Point Creek.
117.1003 Chickahominy River.
117.1005 Chuckatuck Creek.
117.1007 Elizabeth River—Eastern Branch.
117.1009 Elizabeth River—Western Branch.
117.1011 Great Wicomico River.
117.1013 Kinsale Creek.
117.1015 Mattaponi River.
117.1017 Nansemond River.
117.1019 Nansemond River—Western Branch.
117.1021 North Landing River.

Washington

117.1031 Chehalis River.
117.1033 Columbia River.
117.1035 Columbia and Snake Rivers in the vicinity of Pasco.
117.1037 Cowlitz and Lewis Rivers.
117.1039 Deep River.
117.1041 Duwamish Waterway at Seattle.
117.1043 Grays Harbor.
117.1045 Hood Canal.
117.1047 Hoquiam River (Grays Harbor tributary).
117.1049 Lake Washington.
117.1051 Lake Washington Ship Canal.
117.1053 Skagit River.
117.1055 Skamokawa Creek.
117.1057 Snohomish River, Steamboat Slough and Ebey Slough.

Tacoma Harbor Waterway

117.1059 City Waterway.
117.1061 Puyallup Waterway and River.
117.1063 Blair Waterway.
117.1065 Hylebos Waterway.
117.1067 Willapa Harbor.
117.1069 Wishkam River.

Wisconsin

117.1081 Black River.
117.1083 Duluth-Superior Harbor (St. Louis River).

Sec.
117.1085 East River.
117.1087 Fox River.
117.1089 Manitowoc River.
117.1091 Menomonee River.
117.1093 Milwaukee, Menomonee, and Kinnickinnic Rivers, and South Menomonee Canal, Milwaukee.
117.1095 Root River.
117.1097 Sheboygan River.
117.1099 St. Croix River.
117.1101 Sturgeon Bay.
117.1103 Upper Mississippi River.
117.1105 Wisconsin River.
117.1107 Wolf River.

Authority: 33 U.S.C. 499; 49 U.S.C. 1655(g)(2); 49 CFR 1.46(c)(5).

Subpart A—General Requirements

§ 117.1 Purpose.

This subpart prescribes general requirements relating to the use and operation of drawbridges across the navigable waters of the United States.

Note.—The primary jurisdiction to regulate drawbridges across the navigable waters of the United States is vested in the Federal Government. Laws, ordinances, regulations, and rules which purport to regulate these bridges and which are not promulgated by the Federal Government have no force and effect.

§ 117.3 Applicability.

The provisions of this subpart not in conflict with the provisions of Subpart B apply to each drawbridge.

Note.—For all of the requirements applicable to a drawbridge listed in Subpart B, one must review the requirements in Subpart A and §§ 117.51 through 117.99 of Subpart B, as well as the requirements in Subpart B applicable to the particular drawbridge in question.

§ 117.5 When the draw must open.

Except as otherwise required by this subpart, drawbridges must open promptly and fully for the passage of vessels when a request to open is given in accordance with this subpart.

§ 117.7 General duties of drawbridge owners and tenders.

(a) Drawbridge owners and tenders shall operate the draw in accordance with the requirements in this part.

(b) Except for drawbridges not required to open for the passage of vessels, owners of drawbridges shall ensure that:

(1) The necessary drawtenders are provided for the safe and prompt opening of the draw;

(2) The operating machinery of the draw is maintained in a serviceable condition; and

(3) The draws are operated at sufficient intervals to assure their satisfactory operation.

§ 117.9 Delaying opening of a draw.

No person shall unreasonably delay the opening of a draw after the signals required by § 117.15 have been given.

Note.—Trains are usually controlled by the block method. That is, the track is divided into blocks or segments of a mile or more in length. When a train is in a block with a drawbridge, the draw may not be able to open until the train has passed out of the block and the yardmaster or other manager has "unlocked" the drawbridge controls.

§ 117.11 Appurtenances unessential to navigation.

No vessel owner or operator shall signal a drawbridge to open for any nonstructural vessel appurtenance which is not essential to navigation, or which is easily lowered.

§ 117.15 Signals

(a) *General.* (1) The operator of each vessel requesting a drawbridge to open must signal the drawtender and the drawtender must acknowledge that signal.

(2) The signals used to request the opening of the draw and to acknowledge that request must be sound signals, visual signals, or radiotelephone communications described in this subpart.

(3) The means of signalling used depends upon whichever means is sufficient to alert the party being signalled.

(b) *Sound signals.* (1) Sound signals must be made by whistle, horn, megaphone, hailer, or other device capable of producing the described signals loud enough to be heard by the drawtender.

(2) As used in this section, "prolonged blast" means a blast of four to six seconds duration and "short blast" means a blast of approximately one second duration.

(3) The sound signal to request the opening of a draw is one prolonged blast followed by one short blast sounded not more than three seconds after the prolonged blast.

(4) When the draw can be opened immediately, the sound signal to acknowledge a request to open the draw is one prolonged blast followed by one short blast sounded not more than 30 seconds after the requesting signal.

(5) When the draw cannot be opened immediately, or is open and must be closed promptly, the sound signal to acknowledge a request to open the draw is five short blasts sounded in rapid succession not more than 30 seconds after the vessel's opening signal. The signal must be repeated until acknowledged in some manner by the requesting vessel.

(c) *Visual signals.* (1) The visual signal to request the opening of a draw is—

(i) A white flag raised and lowered vertically; or

(ii) A white, amber, or green light raised and lowered vertically.

(2) When the draw can be opened immediately, the visual signal to acknowledge a request to open the draw, given not more than 30 seconds after the vessel's opening signal, is—

(i) A white flag raised and lowered vertically;

(ii) A white, amber, or green light raised and lowered vertically; or

(iii) A fixed or flashing white, amber, or green light or lights.

(3) When the draw cannot be opened immediately, or is open and must be closed promptly, the visual signal to acknowledge a request to open the draw is—

(i) A red flag or red light swung back and forth horizontally in full sight of the vessel given not more than 30 seconds after the vessel's opening signal; or

(ii) a fixed or flashing red light or lights given not more than 30 seconds after the vessel's opening signal.

(4) The acknowledging signal when the draw cannot open immediately or is open and must be closed promptly must be repeated until acknowledged in some manner by the requesting vessel.

(d) *Radiotelephone communications.* (1) Radiotelephones may be used to communicate the same information provided by sound and visual signals.

(2) The vessel and the drawtender shall monitor the frequency used until the vessel has cleared the draw.

(3) When radiotelephone contact cannot be initiated or maintained, sound or visual signals under this section must be used.

§ 117.17 Signalling for contiguous drawbridges.

When a vessel must pass two or more drawbridges close together, the opening signal is given for the first bridge. After acknowledgment from the first bridge that it will promptly open, the opening signal is given for the second bridge, and so on until all bridges that the vessel must pass have been given the opening signal and have acknowledged that they will open promptly.

§ 117.19 Signalling when two or more vessels are approaching a drawbridge.

When two or more vessels are approaching the same drawbridge at the same, or nearly the same time, and from the same or opposite directions, each vessel must signal independently for the opening of the draw and the drawtender shall reply in turn to the signal of each vessel.

§ 117.21 Signalling for an opened drawbridge.

When a vessel approaches a drawbridge with the draw in the open position, the vessel must give the opening signal. If no acknowledgment is received within 30 seconds, the vessel may proceed, with caution, through the open draw.

§ 117.23 Installation of radiotelephones.

(a) When the District Commander deems it necessary for reasons of safety or navigation, the District Commander may require the installation and operation of a radiotelephone on or near a drawbridge.

(b) The District Commander gives written notice of the proposed requirement to the bridge owner.

(c) All comments the owner wishes to submit must be submitted to the District Commander within 30 days of receipt of the notice under paragraph (b) of this section.

(d) If, upon consideration of the comments received, the District Commander determines that a radiotelephone is necessary, the District Commander notifies the bridge owner that a radiotelephone must be installed and gives a reasonable time, not to exceed six months, to install the radiotelephone and commence operation.

§ 117.31 Closure of draw for emergency vehicles.

When a drawtender is informed by a reliable source that an emergency vehicle is due to cross the draw, the drawtender shall take all reasonable measures to have the draw closed at the time the emergency vehicle arrives at the bridge.

§ 117.33 Closure of draw for natural disasters or civil disorders.

Drawbridges need not open for the passage of vessels during periods of natural disasters or civil disorders declared by the appropriate authorities unless otherwise provided for in Subpart B or directed to do so by the District Commander.

§ 117.35 Operations during repair or maintenance.

(a) When operation of the draw must deviate from the regulations in this part for scheduled repair or maintenance work, the drawbridge owner must request approval from the District Commander at least 30 days before the date of the intended change. The request must include a brief description of the nature of the work to be performed and the times and dates of requested changes. The District Commander's decision is forwarded to the applicant within five working days of the receipt of the request. If the request is denied, the reasons for the denial are forwarded with the decision.

(b) When the draw is rendered inoperative because of damage to the structure or when vital, unscheduled repair or maintenance work must be performed without delay, the drawbridge owner shall immediately notify the District Commander and give the reasons why the draw is or should be rendered inoperative and the expected date of completion of the repair or maintenance work.

(c) All repair or maintenance work under this section must be performed with all due speed in order to return the draw to operation as soon as possible.

(d) If the operation of the draw will be affected for periods of less than 60 days, the regulations in this part will not be amended. Where practicable, the District Commander publishes notice of the temporary deviations from the regulations in this part in the **Federal Register** and Local Notices to Mariners. If operation of the draw is expected to be affected for more than 60 days, the District Commander publishes temporary regulations covering the repair period.

§ 117.37 Opening or closure of draw for public interest concerns.

(a) For reasons of public health or safety or for public functions, such as street parades and marine regattas, the District Commander may authorize the opening or closure of a drawbridge for a specified period of time.

(b) Requests for opening or closure of a draw must be submitted to the District Commander at least 30 days before the proposed opening or closure and include a brief description of the proposed event or other reason for the request, the reason why the opening or closure is required, and the times and dates of the period the draw is to remain open or closed.

(c) Approval by the District Commander depends on the necessity for the opening or closure, the reasonableness of the times and dates, and the overall effect on navigation and users of the bridge.

§ 117.41 Discontinuance of drawtender service.

(a) Upon written request by the owner or operator of a drawbridge, the District Commander may permit the draw to be closed and untended due to infrequency of use of the draw by vessels. The

District Commander may condition approval on the continued maintenance of the operating machinery.

(b) Authorization under paragraph (a) of this section is not required if the draw is maintained in the fully open position to permit the passage of vessels and the District Commander is notified in advance. The draw must remain in the fully open position until drawtender service is restored or the authorization is given under paragraph (a) of this section for the draw to remain closed and untended.

§ 117.43 Changes in draw operation requirements for regulatory purposes.

In order to evaluate suggested changes to the drawbridge operation requirements, the District Commander may authorize temporary deviations from the regulations in this part for periods not to exceed 60 days. Notice of these deviations will be disseminated in the Local Notices to Mariners and published in the **Federal Register.**

§ 117.45 Process of violations.

(a) Complaints of alleged violations under this part are submitted to the District Commander of the Coast Guard District in which the drawbridge is located.

(b) Penalties for violations under this part are assessed and collected under Subpart 1.07 of Part 1 of this chapter.

Subpart B—Specific Requirements

§ 117.51 Purpose.

This subpart prescribes specific requirements relating to the operation of certain drawbridges.

Note.—The drawbridges under this subpart are listed by the waterway the cross and by the state in which they are located. Waterways are arranged alphabetically by state. The drawbridges listed under a waterway are generally arranged in order from the mouth of the waterway moving upstream. The drawbridges on the Atlantic Intracoastal Waterway are listed from north to south and on the Gulf Intracoastal Waterway from east to west.

§ 117.53 Applicability.

(a) The requirements in this subpart apply to the bridges listed and are in addition to, or vary from, the general requirements in Subpart A.

(b) A requirement in this subpart which varys from a general requirement in Subpart A supersedes the general requirement.

(c) All other requirements in Subpart A not at variance apply to the bridges listed in this subpart.

§ 117.55 Posting of requirements.

(a) The owner of each drawbridge under this subpart, other than removable span bridges, shall ensure that a sign summarizing the requirements in this subpart applicable to the bridge is posted both upstream and downstream of the bridge. The requirements to be posted need not include those in Subpart A or §§ 117.51 through 117.99.

(b) The signs must be of sufficient size and so located as to be easily read at any time from an approaching vessel.

(c) If advance notice is required to open the draw, the signs must also state the name, address, and telephone number of the person to be notified.

§ 117.57 Advance notice.

Owners and tenders of drawbridges requiring advance notice to open shall use all reasonable means to open the draw at the requested time and give due regard to the possibility that a brief delay may be experienced by the vessel giving the advance notice.

§ 117.59 Special requirements due to hazards.

For the duration of occurrences hazardous to safety or navigation, such as floods, freshets, and damage to the bridge or fender system, the district Commander may require the owner of an operations drawbridge listed in this subpart to have the bridge attended full time and open on signal.

Alabama

§ 117.101 Alabama River.

(a) The draw of the St. Louis and San Francisco railroad bridge, mile 105.3 at Coy, shall open on signal if at least 48 hours notice is given.

(b) The draw of the Illinois Central Gulf railroad bridge, mile 277.8 near Montgomery, shall open on signal if at least 24 hours notice is given.

(c) The draw of the US31 and 82 bridge, mile 278.2 near Montgomery, shall open on signal if at least 24 hours notice is given.

(d) The draw of the Seaboard System Railroad bridge, mile 293.3 near Montgomery, shall open on signal if at least 24 hours notice is given.

§ 117.103 Bayou La Batre.

The draw of the S188 bridge, mile 2.3 at Bayou La Batre, shall open on signal, except that the draw need not open from 7:30 a.m. to 8:30 a.m., and 3 p.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

§ 117.105 Bayou Sara.

The draw of the Seaboard System Railroad bridge, mile 0.1 at Saraland, shall open on signal except that from 6 a.m. to 10 p.m. From 10 p.m. to 6 a.m., the draw shall open on signal if at least four hours notice is given. During periods of severe storms or hurricanes, from the time the National Weather Service sounds an "alert" for the area until the "all clear" is sounded, the draw shall open on signal.

§ 117.107 Chattahoochee River.

The draws of the Seaboard System Railroad bridge, mile 117.1 near Omaha, GA, shall open on signal if at least six hours notice is given.

§ 117.109 Coosa River.

The draw of the Seaboard System Railroad bridge, mile 175.0 at Gadsden, shall open on signal if at least six hours notice is given.

§ 117.111 Mobile River and Chickasaw Creek.

The draws of the US90 bridge, mile 2.9 Mobile River, and the Seaboard System Railroad bridge, mile 0.0 Chickasaw Creek, both at Mobile, shall open on signal, however, the following special signals shall be used to request openings:

(a) Vessels proceeding either up or down the Mobile River and desiring the US90 bridge to open shall sound three prolonged blasts.

(b) Vessels proceeding down the Mobile River and desiring to proceed up Chickasaw Creek, requiring an opening of the railroad bridge, shall sound one prolonged blast, wait one minute, and then sound three prolonged blasts.

(c) Vessels proceeding up the Mobile River and desiring to proceed up Chickasaw Creek, requiring an opening of both bridges, shall sound three prolonged blasts, wait one minute, and then sound one prolonged blast followed by three prolonged blasts.

§ 117.113 Tensaw River.

The draw of the Seaboard System Railroad bridge, mile 15.0, at Hurricane, shall open on signal from 8 a.m. to midnight. The draw need not open from midnight to 8 a.m. During periods of severe storms or hurricanes, from the time the National Weather Service sounds an "alert" for the area until the "all clear" is sounded, the draw shall open on signal.

§ 117.115 Three Mile Creek.

(a) The draw of the US90 bridge, mile 1.0, at Mobile, need not open from 7 a.m. to 9 a.m. and from 4:30 p.m. to 6:30 p.m. daily. At all other times the draw shall open on signal if at least 12 hours notice is given.

(b) The draw of the Southern Railway bridge, mile 1.1, at Mobile, shall open on signal if at least five days notice is given.

Arkansas

§ 117.121 Arkansas River.

The draw of the Missouri Pacific Railroad bridge, mile 23.1 near Yancopin, shall open on signal if at least 96 hours notice is given.

§ 117.123 Arkansas and White Rivers—Automated Railroad Bridges.

(a) The draws of the St. Louis and San Francisco railroad bridge, mile 300.8, Arkansas River, at Van Buren, and the Missouri Pacific railroad bridge, mile 7.5, White River, at Benzal, are maintained in the open position with a minimum vertical clearance of 52 feet, except as follows:

(1) When a train approaches either bridge, amber lights attached to the bridge begin to flash and an audible signal on the bridge sounds. At the end of six minutes the amber light continues to flash, however, the audible signal stops and the draw lowers and locks, if the photoelectric boat detection system detects no obstruction under the span. If there is an obstruction, the draw will raise to its full height until the obstruction is cleared.

(2) After the train clears the bridge, the draw will raise to its full height, the amber flashing light will stop, and the midchannel lights will change from red to green indicating the navigation channel is open for the passage of vessels.

(b) Across the Arkansas River the draws of the Cotton Belt railroad (Rob Roy) bridge, mile 67.4, the Chicago, Rock Island, and Pacific railroad (Junction) bridge, mile 116.2, at Little Rock, and the Missouri Pacific railroad (Baring Crossing) bridge, mile 118.7, at Little Rock, are maintained in the closed position. The following signals are used:

(1) The opening signal from the vessel for each of these bridges is three short blasts.

(2) The acknowledging signal is flashing white lights visible upstream and downstream. When the operator of the vessel sights the acknowledging signal, one prolonged blast shall be sounded.

(3) This signal is acknowledged by the bridge controller when the draw is to open by changing the flashing white lights to continuous white lights, and sounding one blast on a horn. When the span is fully raised to a maximum clearance of 52 feet, the navigation lights at midchannel shall be changed from red to green, indicating that the draw is ready for passage.

(4) If the draw cannot open, flashing amber warning lights shall start and four blasts will sound, indicating that a train is approaching or that maintenance work is in progress.

(5) The vessel shall acknowledge that there will be a delay by sounding five blasts.

(6) When the draw will open (after the train crosses or when maintenance work permits), the amber lights are turned off, the continuous white lights turned on, and one blast sounded, to indicate the draw is ready for passage.

(7) The vessel acknowledges with one blast and, after the draw is fully open, shall proceed through the draw.

(8) When the vessel clears the draw, the midchannel navigation light will change from green to red, the amber warning lights will flash, and, after one minute the draw will lower and lock.

§ 117.125 Black River.

The following draws need not open for the passage of vessels:

(a) Missouri Pacific railroad bridge, mile 3.4 at Paroquet.

(b) St. Louis and San Francisco railroad bridge, mile 68.4 at Black Rock.

(c) Arkansas State Highway Department bridge, mile 90.1 at Pocahontas.

(d) St. Louis and San Francisco railroad bridge, mile 90.4 at Pocahontas.

(e) Missouri Pacific railroad bridge, mile 144.4 at Corning.

(f) Arkansas State Highway Department bridge, mile 152.2 at Corning.

§ 117.127 Current River.

The draws of the Arkansas highway bridge, mile 10.2, and the St. Louis and San Francisco railroad bridge, mile 12.2, both at Biggers, need not open for the passage of vessels.

§ 117.129 Little Red River.

The draws of the St. Louis and San Francisco railroad bridge, mile 25.0, and Arkansas highway bridge, mile 25.2, both at Judsonia, need not open for the passage of vessels.

§ 117.131 Little River.

The draw of the St. Louis and San Francisco railroad bridge, mile 7.1 near Fulton, need not open for the passage of vessels.

§ 117.133 Ouachita River.

(a) The draw of the Chicago, Rock Island and Pacific railroad bridge, mile 291.7 at Calion, shall open on signal if at least 24 hours notice is given, except as follows:

(1) Any vessel that requires the opening of the draw and that intends to return within 24 hours shall inform the drawtender of the probable time of return. The draw shall open for the returning vessel without further notice.

(2) When the pool stage is above 21 feet on the upper gauge at Lock and Dam No. 8, the Commander, Second Coast Guard District will notify the bridge owner, who will then have one day in which to place a drawtender in constant attendance and open the draw on signal.

(b) The draw of the St. Louis Southwestern railroad bridge, mile 331.4, near Camden, shall open on signal if at least 48 hours notice is given.

§ 117.135 Red River.

The draws of the bridges from mile 66.0 through mile 283.1 shall open on signal if at least 48 hours notice is given. The draws of any of these bridges need not open for a vessel that arrives later than two hours after the time specified in the notice, unless a second notice of at least 48 hours is given. The draws of the bridges above mile 283.1 need not open for the passage of vessels.

§ 117.137 St. Francis River.

(a) The draw of the Arkansas highway bridge, mile 29.6 at Cody, shall open on signal if at least 72 hours notice is given. Any vessel that requires the opening of the draw and that intends to return within 72 hours shall inform the drawtender of the probable time of return. The draw shall open for the returning vessel without further notice.

(b) The draws of the Chicago, Rock Island and Pacific railroad bridge, mile 59.7 at Madison, and all drawbridges above that point, need not open for the passage of vessels.

§ 117.139 White River.

(a) The draws of the St. Louis Southwestern railroad bridge, mile 98.9 at Clarendon, the US70 highway bridge, mile 121.7 at Duvalls Bluff, the Chicago, Rock Island and Pacific Railroad bridge, mile 122.0 at Duvalls Bluff, the Missouri Pacific railroad bridge, mile 196.3, at Augusta, and the Missouri Pacific railroad bridge, mile 254.8 at Newport, shall open on signal if at least eight hours notice is given. When a vessel has failed to arrive within two hours after the time specified in the notice, at any of these bridges, a second eight hour notice is required.

(b) The draws of the Arkansas highway bridge, mile 300.1 at Batesville, and Missouri Pacific Railroad Company bridge, mile 401.9 at Cotter, need not open for the passage of vessels.

California

§ 117.140 General.

In California, when fog prevails by day or night the drawtender, after sounding the opening signal, shall toll a bell continuously during the approach and passage of a vessel.

§ 117.141 American River.

The draws of the Jiboom Street bridge, mile 0.1 at Sacramento, need not open for the passage of vessels.

§ 117.143 Burns Cutoff.

The draw of the Daggett Road bridge, mile 3.0 at Stockton, shall open on signal if at least 48 hours notice is given to the U.S. Naval Communications Station at Stockton.

§ 117.145 Cerritos Channel.

(a) The draw of the Commodore Schuyler F. Heim highway bridge, mile 4.5 at Long Beach, shall open on signal, except that from 6:30 a.m. to 8 a.m. and 3:30 p.m. to 6 p.m., Monday through Friday, except Federal holidays, the draws need not open for the passage of vessels. The opening signal for the Commodore Schuyler Heim bridge is three prolonged blasts. The acknowledging signal is two prolonged blasts followed by one short blast when the draw will open immediately, and five short blasts when the draw cannot open immediately. Channel 13 (156.65 MHZ) or other assigned frequencies may be used.

(b) The draw of the Henry Ford Avenue railroad bridge, mile 4.4 at Long Beach, shall be maintained in the open to navigation position except when a train is crossing or when maintenance work is being performed.

(c) If the draw of the Henry Ford Avenue railroad bridge is in the closed position, the opening signal is two short blasts followed by one prolonged blast. The acknowledging signal is two prolonged blasts followed by one short blast when the draw will open immediately, and five short blasts when the draw cannot open immediately. Channel 13 (156.65 MHZ) or other assigned frequencies may be used.

§ 117.147 China Basin, Mission Creek.

The draws of the 3rd Street bridge, mile 0.0, and the 4th Street bridge, mile 0.2, both at San Francisco, shall open on signal if at least one hour notice is given.

§ 117.149 Cordelia Slough (a tributary of Suisun Bay)

The draws of the Southern Pacific railroad bridge, mile 1.5 at Suisun, shall open on signal if at least 24 hours notice is given.

§ 117.151 Corte Madera Creek.

The draw of the Northwestern Pacific railroad bridge, mile 0.5 near Greenbrae, shall be maintained in the fully open position except for the passage of trains or for rail maintenance equipment.

§ 117.153 Eureka Slough.

The draws of the Northwestern Pacific railroad bridge, mile 0.5 at Eureka, shall open on signal if at least 24 hours notice is given.

§ 117.155 Georgiana Slough.

The draws of the Sacramento County highway bridges, mile 4.5 near Isleton, and mile 12.4 near Walnut Grove, shall open on signal from 6 a.m. to 10 p.m. from May 1 through October 31. The draws shall open on signal from November 1 through April 30 from 9 a.m. to 5 p.m. At all other times, the draws of these bridges shall open on signal if at least four hours notice is given to the drawtender at the Rio Vista bridge.

§ 117.157 Grant Line Canal.

The draw of the San Joaquin County highway bridge, mile 5.5 at Tracy, shall open on signal if at least 12 hours notice is given to the San Joaquin County Department of Public Works at Stockton.

§ 117.159 Honker Cut.

The draw of the San Joaquin County bridge, mile 0.3 between Empire Tract and King Island at Stockton, shall open on signal if at least 12 hours notice is given to the San Joaquin County Department of Public Works at Stockton.

§ 117.161 Islais Creek (Channel).

The draw of the 3rd Street bridge, mile 0.4 at San Francisco, shall open on signal if at least one hour notice is given.

§ 117.163 King Island Cut.

The draw of the San Joaquin County highway bridge, mile 1.0 between King Island and Bishop Tract, shall open on signal if at least 12 hours notice is given to the San Joaquin County Department of Public Works at Stockton.

§ 117.165 Lindsey Slough.

The center span of the Hastings Farms highway bridge, mile 2.0 between Egbert and Lower Hastings Tracts, shall be removed for the passage of maintenance vessels if at least 72 hours notice is given to the Hastings Farms Office at San Francisco.

§ 117.167 Little Potato Slough.

The draw of the California highway bridge, mile 0.1 at Terminous, shall open on signal from May 1 through October 31 from 6 a.m. to 10 p.m. At all other times the draw shall open on signal if at least four hours notice is given to the drawtender at the Rio Vista bridge.

§ 117.169 Mare Island Strait, Napa River, and their tributaries.

(a) The draw of the U.S. Navy bridge (Mare Island Causeway), mile 2.8, at Vallejo:

(1) Shall open on signal from 7:30 a.m. to 3:45 p.m., and 4:45 p.m. to 10 p.m., Monday through Friday, except Federal holidays, and from 6:30 a.m. to 10 p.m. on Saturdays, Sundays, and holidays.

(2) Need not open for the passage of vessels, other than public vessels of the United States, from 6:30 a.m. to 7:30 a.m and 3:45 p.m. to 4:45 p.m., except Saturdays, Sundays, and Federal holidays.

(3) Shall open on signal from 10 p.m. to 6:30 a.m. daily, if at least two hours notice is given, and as soon as possible for public vessels of the United States.

(b) The draw of the Southern Pacific railroad bridge, mile 7.8 at Brazos, shall be maintained in the fully open position except for the passage of trains or for maintenance. When the draw is closed and visibility at the drawtender's station is less than one mile, up or down the channel, the drawtender shall sound two prolonged blasts every minute. When the draw is to be opened the drawtender shall sound three short blasts.

(c) The draw of the Maxwell highway bridge, mile 14.8 near Imola, shall open on signal if at least 72 hours notice is given to the California Department of Transportation office at Napa.

§ 117.171 Middle River.

(a) The draw of the San Joaquin County highway bridge, mile 8.6, between Bacon Island and Lower Jones Tract, shall open on signal from May 15 through September 15 from 9 a.m. to 5 p.m. From September 16 through May 14 the draw shall open on signal from 9 a.m. to 5 p.m. from Thursday through Monday. At all other times the draw shall open on signal if at least 12 hours notice is given to the San Joaquin County Department Public Works at Stockton.

(b) The draw of the Atchison, Topeka and Santa Fe railroad bridge, mile 9.8 near Middle River Station, shall open on signal if at least 12 hours notice is given the Atchison, Topeka and Santa Fe Railway Yardmaster at Stockton.

§ 117.173 Miner Slough.

The draw of the California highway bridge, mile 5.5 between the northerly end of Ryer Island and Holland Tract, shall open on signal if at least 12 hours

notice is given to the drawtender at the Rio Vista bridge.

§ 117.175 Mokelumne River.

(a) The draw of the California highway bridge, mile 3.0, at East Isleton, shall open on signal from May 1 through October 31 from 6 a.m. to 10 p.m., and from November 1 through April 30 from 9 a.m. to 5 p.m. At all other times, the draw shall open on signal if at least four hours notice is given to the drawtender at the Rio Vista bridge. Emergency vessels of the United States, state or commercial vessels engaged in rescue or emergency salvage operations, or vessels in distress shall be passed as soon as possible but no longer than one hour after notice is given.

(b) The draw of the Sacramento and San Joaquin Counties highway bridge, mile 12.1 over the North Fork of the Mokelumne River near Walnut Grove, shall open on signal from May 1 through October 31, from 9 a.m. to 5 p.m. At all other times the draw shall open on signal if at least 12 hours notice is given to the San Joaquin County Department of Public Works at Stockton.

(c) The removable span of the San Joaquin County highway bridge over the South Fork of the Mokelumne River, mile 18.0 at New Hope Landing, shall be operated as provided for in Section 117.61.

(d) The draws of the bridges above New Hope Landing need not open for the passage of vessels.

§ 117.177 Mud Slough.

The draw of the Southern Pacific railroad bridge, mile 0.7 near Alviso, shall open on signal if at least 24 hours notice is given.

§ 117.179 Newark Slough.

The draw of the Southern Pacific railroad bridge, mile 0.5 near Newark, shall open on signal if at least 24 hours notice is given to the Superintendent, Southern Pacific Transportation Company, at Oakland.

§ 117.181 Oakland Inner Harbor Tidal Canal.

The draws of the Alameda County highway bridges at Park Street, mile 7.3; Fruitvale Avenue, mile 7.7; and High Street, mile 8.1; and the U.S. Army Corps of Engineers railroad bridge, mile 7.7, at Fruitvale Avenue, shall open on signal, except that from 7:30 a.m. to 8:30 a.m. and 3:45 p.m. to 5:45 p.m., Monday through Friday, except Federal holidays, the draws need not open for the passage of vessels. However, the draw shall open during the above closed periods for vessels which must, for reasons of safety, move on a tide or slack water, if at least two hours notice is given. The draw shall open as soon as possible for vessels in distress, and emergency vessels, including commercial vessels engaged in rescue or emergency salvage operations.

§ 117.183 Old River.

The draw of the California highway bridge, mile 14.8 between Victoria Island and Byron Tract, shall open on signal from May 1 through October 31 from 6 a.m. to 10 p.m., and from November 1 through April 30 from 9 a.m. to 5 p.m. At all other times, the draw shall open on signal if at least four hours is given to the drawtender at the Rio Vista bridge.

§ 117.185 Pacheco Creek.

The draw of the Contra Costa County highway bridge, mile 0.5, and Southern Pacific railroad bridge, mile 0.5, both near Martinez, shall open on signal if at least 24 hours notice is given.

§ 117.187 Petaluma River.

(a) The draws of the Northwestern Pacific railroad bridges, mile 0.8 at Blackpoint, and mile 12.4 at Haystack Landing, shall be maintained in the fully open position except for the passage of trains or for maintenance. When the draw is closed and visibility from the drawtender's station is less than one mile, up or down the channel, the drawtender shall sound two long blasts every minute. When the draw is reopened, the drawtender shall sound three short blasts.

(b) The draw of the Petaluma highway bridge at "D" Street, mile 13.7 at Petaluma, shall open on signal if at least four hours notice is given.

§ 117.189 Sacramento River.

(a) The draws of each bridge from Isleton to American River junction shall open on signal from May 1 through October 31 from 6 a.m. to 10 p.m., and from November 1 through April 30 from 9 a.m. to 5 p.m. At all other times, the draws shall open on signal if at least four hours notice is given to the drawtender at the Rio Vista bridge.

(b) The draw of the S20 bridge, mile 135.5 at Meridian shall open on signal if at least 12 hours notice is given to the State Division of Highways Office at Marysville.

(c) The draws of the bridges above Chico Landing need not open for the passage of vessels.

§ 117.191 San Joaquin River.

(a) The draw of the Port Director railroad bridge, mile 39.7 at Stockton, shall open on signal if at least 12 hours notice is given to the Port Director.

(b) The draws of all other bridges across the San Joaquin River, including those above the Old River Junction, need not open for the passage of vessels.

§ 117.193 San Leandro Bay.

The draw of the California highway bridge, mile 0.0 between Alameda and Bay Farm Island, shall open on signal except that from 5 a.m. to 8 a.m. and 5 p.m. to 9 p.m. the draw shall open on signal if at least 12 hours notice is given. Notice shall be given to the drawtender of the Bayfarm Island bridge from 6 a.m. to 5 p.m., and to the drawtender of the Park Street bridge at Alameda at all other times. The draw need not open for the passage of vessels from 9 p.m. to 5 a.m.

§ 117.195 Snodgrass Slough.

(a) The draw of the Southern Pacific railroad bridge, mile 3.5 at Walnut Grove, shall be maintained in the fully open position except for the passage of trains or for maintenance. When the draw is closed, a drawtender shall be present and the draw shall open on signal.

(b) The draw of the Sacramento County bridge, mile 4.4 at Walnut Grove, shall open on signal if at least 24 hours notice is given to the Sacramento County Highway Office at Sacramento.

§ 117.197 Sonoma Creek.

The draw of the Northwestern Pacific railroad bridge, mile 5.4 at Wingo, shall open on signal if at least 24 hours notice is given.

§ 117.199 Steamboat Slough.

The draw of the California highway bridge, mile 11.2 at the head of Grand Island, shall open on signal from May 1 through October 31 from 6 a.m. to 10 p.m. At all other times the draw shall open on signal if at least four hours notice is given to the drawtender at the Rio Vista bridge.

§ 117.201 Sutter Slough.

The draw of the Sacramento County highway bridge, mile 6.4 near Courtland, need not open for the passage of vessels.

Connecticut

§ 117.207 Housatonic River.

(a) The draw of the US 1 bridge, mile 3.5 at Stratford, shall open on signal except that from 7 a.m. to 9 a.m. and 4 p.m. to 5:45 p.m., Monday through Friday, the draw need not open for the passage of vessels.

(b) The draw of the CONRAIL bridge, mile 3.9 at Stratford, shall open on signal from 5 a.m. to 9 p.m. except that:

(1) The draw need not open from 7 a.m. to 9 a.m., and from 4 p.m. to 5:45

p.m., Monday through Friday, except Federal holidays or an emergency.

(2) The draw need not open more than once in any 60-minute period from 5:30 a.m. to 7 a.m.; and from 5:45 p.m. to 8:15 p.m., except on Saturdays, Sundays, and Federal holidays.

(3) The draw shall open on signal from 9 p.m. to 5 a.m. if notice is given before 4 p.m. on the day of the intended passage.

§ 117.209 Mianus River.

The draw of the CONRAIL bridge, mile 1.0 at Greenwich, shall open on signal from 5 a.m. to 9 p.m. The draw need not open from 9 p.m. to 5 a.m., however, public vessels of the United States and foreign vessels shall be passed as soon as possible during this period.

§ 117.211 Mystic River.

(a) The draw of the AMTRAK railroad bridge, mile 2.4 at Mystic, shall open on signal from April 1 through October 31 and November 1 through March 31 from 5 a.m. to 9 p.m. The draw shall open on signal from November 1 through March 31 from 9 p.m. to 5 a.m. if at least eight hours notice is given.

(b) The draw of the US 1 bridge, mile 2.8 at Mystic, shall open on signal on the quarter hour from 8:15 a.m. to 7:15 p.m., and the draw shall open on signal from May 1 through October 31 from 7:15 p.m. to 8:15 a.m. The draw shall open on signal from November 1 through April 30 from 7:15 p.m. to 8:15 a.m. if at least one hours notice is given.

(c) Public vessels of the United States, state and local vessels used for public safety and in an emergency, the draws of each bridge shall open as soon as possible.

§ 117.213 New Haven Harbor, Quinnipiac and Mill Rivers.

(a) The draws of the Tomlinson bridge, mile 0.0, the Ferry Street bridge, mile 0.7, and the Grand Avenue bridge, mile 1.3, across Quinnipiac River and the Chapel Street bridge, mile 0.4, across Mill River shall open on signal except that:

(1) From 7:30 to 8:30 a.m., noon to 12:15 p.m., 12:45 to 1 p.m. and 4:45 to 5:45 p.m., the draws need not open.

(2) From 9 p.m. to 5 a.m. from October 1 through April 30, the draws of the Ferry Street bridge, Quinnipiac River, shall open on signal unless the drawtender is at the Grand Avenue or Chapel Street bridges, in this event a delay of one hour can be expected.

(3) From 11 p.m. to 7 a.m., the draw of the Grand Avenue bridge, Quinnipiac River, shall open on signal if at least one hour notice is given to the drawtender at the Ferry Street bridge. In the event that the drawtender is at the Chapel Street bridge, an additional hour delay can be expected.

(4) From 9 p.m. to 5 a.m., the draw of the Chapel Street bridge, Mill River, shall open on signal if at least one hour notice is given to the drawtender at Ferry Street bridge. In the event that the drawtender is at the Grand Avenue bridge, an additional hour delay can be expected.

(b) The sound signals for requesting the opening of each bridge are:

(1) The Tomlinson bridge, two short blasts of a whistle or horn.

(2) The Ferry Street bridge, one short blast of a whistle or horn.

(3) The Grand Avenue bridge, one prolonged blast of a whistle or horn.

(4) The Chapel Street bridge, three short blasts of a whistle or horn.

(c) The drawtender shall acknowledge sound signals in the following manner:

(1) When the draw will open immediately, with the same signal as the requesting signal.

(2) When the draw cannot open immediately, or is open and must close, with four short blasts of a whistle or horn, to be repeated until acknowledged by the vessel by the same signal.

(3) When the draw can be reopened, the drawtender shall sound the opening signal and open the draw if any vessels are waiting to pass.

(d) The following visual signals may be used in addition to sound signals for requesting the opening of each bridge when sound signals may not be heard. A white flag by day or a white light by night shall be swung in full circles at arm's length in full sight of the bridge and facing the draw.

(e) The drawtender shall acknowledge visual signals in the following manner:

(1) When the draw will open immediately, a white flag by day or a green light by night swung up and down vertically a number of times in full sight of the vessel.

(2) When the draw cannot open immediately, or is open and must close, a red flag by day or a red light by night, swung back and forth horizontally in full sight of the vessel, to be repeated until acknowledged by the vessel by the same signal.

(f) Public vessels of the United States, state or local vessels used for public safety, commercial vessels and vessels in distress, shall notify the operator of the Ferry Street bridge, and shall be passed as soon as possible.

§ 117.215 Niantic River.

(A) The draw of the AMTRAK bridge, mile 0.0 at Niantic, shall open on signal, except that from April 1 through October 31 from 8 p.m. to 4 a.m., and from November 1 through March 31 from 6 p.m. to 6 a.m., the draw shall open on signal if at least one hours notice is given.

(b) The draw of the S156, mile 0.1 at Niantic, shall open on signal, except that from 7 a.m. to 8 a.m., and from 4 p.m. to 5 p.m., Monday through Friday, except holidays, the draw shall open only for the passage of commercial vessels.

§ 117.217 Norwalk River.

(a) The draw of the Washington Street S136 bridge, mile 0.0 at Norwalk, shall open on signal, except that from 7 a.m. to 8:45 a.m., 11:45 a.m. to 1:15 p.m., and 4 p.m. to 6 p.m., Monday through Friday, except holidays, the draw need not open for the passage of vessels that draw less than 14 feet of water. The opening signal is three short blasts. Vessels drawing 14 feet of water or more shall add one prolonged blast after the three short blasts.

(b) The draw of the CONRAIL bridge, mile 0.1 at Norwalk, shall open on signal:

(1) From 5 a.m. to 9 p.m., except that from Monday through Friday, excluding holidays or an emergency, the draw need not open from 7 a.m. to 8:45 a.m. and 4 p.m. to 6 p.m.

(2) Only once in any 60-minute period from 5:45 a.m. to 7 a.m. and 6 p.m. to 7:45 p.m.

(3) From 9 p.m. to 5 a.m. if at least four hours notice is given.

§ 117.219 Pequonnock River.

(a) The draws of the Stratford Avenue bridge, mile 0.1, and the Congress Street bridge, mile 0.4, both at Bridgeport, shall open on signal, except that the draws of these bridges need not open for passage of vessels from 6:45 a.m. to 7:15 a.m., 7:45 a.m. to 8:15 a.m., 11:45 a.m. to 1:15 p.m., and 4:30 p.m. to 6:10 p.m. Public vessels of the United States and vessels in distress shall be passed through each draw at any time.

(1) The opening signal for the Stratford Avenue bridge is one prolonged blast followed by one short blast.

(2) The opening signal for the Congress Street bridge is two prolonged blasts followed by two short blasts.

(b) The draw of the CONRAIL bridge, mile 0.3 at Bridgeport, shall open on the signal of three short blasts from 5:45 a.m. to 9 p.m., except that:

(1) From Monday through Friday, excluding holidays, or an emergency, the draws need not open from 6:45 a.m. to 7:15 a.m., 7:45 a.m. to 8:15 a.m., and 4:30 p.m. to 6:10 p.m.

(2) From Monday through Friday, excluding holidays, or an emergency, the

draws need not open more than once during the periods 5:45 a.m. to 6:45 a.m., 7:15 a.m. to 7:45 a.m., 8:15 a.m. to 9 a.m., and 6:10 p.m. to 8:15 p.m.

(3) From 9 p.m. to 5:45 a.m. the draws shall open on signal if at least eight hours notice is given.

(c) The draw of the East Washington Street bridge shall open on the signal of one prolonged blast followed by two short blast if at least 24 hours notice is given.

(d) The draw of the Grand Street bridge, mile 0.9 at Bridgeport, need not open for the passage of vessels.

§ 117.221 Saugatuck River.

The draw of the CONRAIL bridge, mile 1.1 at Saugatuck, shall open on signal from June 1 through September 30 from 5 a.m. to 9 p.m. and from October 1 through May 31 from 8 a.m. to 4 p.m. The draw shall open on signal from October 1 through May 31 from 5 a.m. to 8 a.m., and from 4 p.m. to 9 p.m., if at least eight hours notice is given. The draw need not open at all other times.

§ 117.223 Shaws Cove.

The draw of the AMTRAK bridge, mile 0.0 at New London, shall open on signal from December 1 through March 31 from 8 a.m. to 5 p.m., Monday through Friday. From December 1 through March 31 from 5 p.m. to 8 a.m. and on Saturdays and Sundays, the draw shall open on signal if at least eight hours notice is given. From April 1 through November 30, from 5 a.m. to 10 p.m., the draw shall open on signal, and from 10 p.m. to 5 a.m. the draw shall open on signal if at least one hours notice is given. When a vessel is in an emergency that may endanger life or property, the draw shall open as soon as possible.

§ 117.225 Yellow Mill Channel.

The draw of the Stratford Avenue bridge, mile 0.3 at Bridgeport, shall open on signal if at least 24 hours notice is given. Public vessels of the United States and vessels in distress shall be passed as soon as possible.

Delaware

§ 117.231 Brandywine River.

(a) The draw of the Seventh Street bridge, mile 0.1 at Wilmington, shall be maintained in the open to navigation position at all times.

(b) The draws of the CONRAIL bridge, mile 1.1, the Church Street bridge, mile 1.3, and the Sixteenth Street bridge, mile 1.7, all at Wilmington, need not open for the passage of vessels.

§ 117.233 Broad Creek (River).

The draws of the CONRAIL bridge, mile 8.0, the Poplar Street bridge, mile 8.2, and the US13A bridge, mile 8.2, all at Laurel, shall open on signal if at least four hours notice is given.

§ 117.235 Chesapeake and Delaware Canal.

(a) The draw of the CONRAIL bridge, mile 7.7, shall open on signal.

(b) The signals listed in § 117.15 shall be supplemented by the following light signals in the center of the drawspan on both sides of the bridge.

(1) When the drawspan is to be opened immediately; one fixed amber light.

(2) When the drawspan is not ready to be opened; one flashing red light.

§ 117.237 Christina River.

(a) The draws of the CONRAIL bridge, mile 1.4, the CONRAIL bridge, mile 4.1, the CONRAIL railroad bridge, mile 4.2, and the CONRAIL bridge, mile 5.4, all at Wilmington, shall open on signal from 6 a.m. to 8 p.m., if at least 24 hours notice is given. From 8 p.m. to 6 a.m. the draws need not open for the passage of vessels.

(b) The draws of the Third Street bridge, mile 2.3, the Walnut Street bridge, mile 2.8, and the Market Street bridge, mile 3.0, all at Wilmington, shall open on signal except that from 7 a.m. to 8 a.m. and 4:30 p.m. to 5:30 p.m., Monday through Saturday, except legal holidays, the draws need not open for the passage of vessels. Any vessel which has passed through one or more of these three bridges immediately prior to a closed period and which requires passage through the other bridge or bridges in order to continue to its destination shall be passed through the draw or draws of such bridge or bridges without delay.

(c) The draw of the SH141 bridge, mile 7.5, at Wilmington, shall open on signal if at least 24 hours notice is given.

§ 117.239 Lewes and Rehoboth Canal.

The draw of the Delaware highway bridge, mile 7.0 at Rehoboth, shall open on signal from May 1 through October 31 from 7 a.m. to 8 p.m. and from 8 p.m. to 7 a.m. if at least two hours notice is given. From November 1 through April 30 the draw shall open on signal if at least 24 hours notice is given.

§ 117.241 Mispillion River.

The draw of the S14 bridge, mile 11.0 at Milford, shall open on signal if at least two hours notice is given.

§ 117.243 Nanticoke River.

The draw of the CONRAIL bridge, mile 39.4 at Seaford, shall open on signal from May 1 through September 30 from 8 a.m. to 8 p.m., and need not open from 8 p.m. to 8 a.m. From October 1 through April 30 the draw shall open on signal if at least four hours notice is given.

§ 117.245 Smyrna River.

The draw of the Delaware highway bridge, mile 4.0 at Fleming Landing, shall open on signal if at least 24 hours notice is given.

§ 117.247 St. Jones River.

The draw of the Delaware highway bridge, mile 4.5 at Barkers Landing, shall open on signal if at least 24 hours notice is given.

District of Columbia

§ 117.253 Anacostia River.

(a) The draw of the Frederick Douglas Memorial (South Capitol Street) bridge, mile 1.2, shall open on signal if at least 24 hours notice is given. The draw will be closed on each Presidential Inauguration Day and may occasionally be closed to the passage of vessels, without advance notice, to permit uninterrupted transit of dignitaries across the bridge.

(b) The draw of the CONRAIL bridge, mile 3.4 shall:

(1) Open on signal on Saturdays, Sundays and Federal holidays, and on weekdays from 10 a.m. to 8 p.m. from April 1 through September 30.

(2) Open on signal on the hour from April 1 through September 30, Monday through Friday, except Federal holidays, from 8 p.m. to 10 a.m. and from October 1 through March 31, on Saturdays, Sundays, and Federal holidays, from 10 a.m. to 6 p.m.

(3) At all other times, the draw shall open on signal if at least two hours notice is given.

(4) Public vessels of the United States and vessels of Maryland or the District of Columbia used for public safety, shall be passed as soon as possible.

§ 117.255 Potomac River.

(a) The draw of the Woodrow Wilson (I–495) bridge, mile 103.8, shall open on signal except that from 6:30 a.m. to 9 a.m. and 4 p.m. to 6:30 p.m., Monday through Friday, except Federal holidays, the draw need not open for the passage of vessels.

(b) Public vessels of the United States, vessels in distress, and vessels engaged exclusively in the tourist trade on the Potomac River from Washington, D.C., when the vertical clearance is less than 50 feet, shall be passed at any time.

(c) The draws of all other bridges need not open for the passage of vessels.

Florida

§ 117.261 Atlantic Intracoastal Waterway from Jacksonville to Miami.

(a) The draw of the Bridge of Lions (SR A–1–A) bridge, mile 777.9, at St.

Augustine, shall open on signal, except that:

(1) From 7 a.m. to 6 p.m., Monday through Friday, except legal holidays, the draw need open only on the hour and half hour, however, the draw need not open at 8 a.m., 12 noon, and 5 p.m.

(2) From 7 a.m. to 6 p.m. on Saturdays, Sundays and legal holidays, the draw need open only on the hour and half hour.

(3) Public vessels of the United States, tugs with tows, and vessels in distress, shall be passed at any time.

(b) The draws of the Seabreeze Boulevard bridge, mile 829.1 at Daytona Beach, and the SR A-1-A bridge, mile 835.5 at Port Orange, shall open on signal, except that from 7:30 a.m. to 8:30 a.m. and 4:30 p.m. to 5:30 p.m., Monday through Saturday, except Federal and Florida State holidays, the draws need not open for the passage of vessels. However, the draws shall open at 8 a.m. and 5 p.m. if any vessels are waiting to pass. During periods when storm signals are displayed in the Daytona Beach area, the draws of these bridges shall open on signal. Storm signals are displayed upon notification by the National Weather Service that winds of up to 33 knots or more and/or sea conditions considered dangerous to small craft are expected. Public vessels of the United States, tugs with tows, and vessels in distress, shall be passed at any time.

(c) The draw of the Memorial bridge, mile 830.6 Halifax River at Daytona Beach, shall open on signal, except that from 7:45 a.m. to 8:45 a.m. and 4:45 p.m. to 5:45 p.m., Monday through Saturday, except Federal and Florida State holidays, the draw need not open for the passage of vessels. However, the draw shall open at 8:15 a.m. and 5:15 p.m. if any vessels are waiting to pass. During periods when storm signals are displayed in the Daytona Beach area, the draws of these bridges shall open on signal. Storm signals are displayed upon notification by the National Weather Service that winds of up to 33 knots or more and/or sea conditions considered dangerous to small craft are expected. Public vessels of the United States, tugs with tows, and vessels in distress, shall be passed at any time.

(d) The draw of the Harris Saxon bridge, mile 846.5 at New Smyrna Beach, shall open on signal, except that from March 15 through October 15 on Saturdays, Sundays, and Federal holidays from 3 p.m. to 6 p.m., the draw need open only on the hour and half hour. Public vessels of the United States, tugs with tows, and vessels in distress, shall be passed at any time.

(e) The draw of the Florida East Coast railroad bridge, mile 876.6 near Jay Jay, shall open as follows:

(1) The bridge will not be manned by a regular attendant.

(2) The bascule span will normally be in the open position, displaying flashing green signals, to allow the movement of water traffic.

(3) When a train approaches the bridge, the navigation signals will go to flashing red, and a horn starts four blasts, pauses and then continues four blasts, etc.

(4) After an eight-minute time delay, the bridge will lower and lock providing the scanning equipment reveals nothing under the bridge. Train crews can hold the bridge down by pushing a hold button, and the bridge will remain down for a period of eight minutes or while the approach track circuit is occupied.

(5) After the train has cleared, the bridge will raise and the signals will return to flashing green for navigation.

(f) The draw of the SR402 bridge, mile 878.9 at Titusville, shall open on signal except that from 6:45 a.m. to 7:45 a.m. and 4:15 p.m. to 5:45 p.m., Monday through Friday, the draw need not open for the passage of vessels. Public vessels of the United States, tugs with tows, and vessels in distress, shall be passed at any time.

(g) The draw of the John F. Kennedy Space Center (SR405), bridge, mile 885.0 at Addison Point, shall open on signal except that from 6:45 a.m. to 8 a.m. and 4:15 p.m. to 5:45 p.m., Monday through Friday, the draw need not open for the passage of vessels.

(h) The draw of the SR518 bridge, mile 914.4 at Eau Gallie, shall open on signal, except that from 6:45 a.m. to 8:15 a.m. and 4:15 p.m. to 5:45 p.m., Monday through Friday, except legal holidays, the draw need not open for the passage of vessels. However, the draws shall open at 8:15 a.m. and 4:15 p.m. if any vessels are waiting to pass. From 8:15 a.m. to 4:15 p.m., Monday through Friday, except legal holidays, the draw need open only on the quarter and three-quarter hour. Public vessels of the United States, tugs with tows, and vessels in distress, shall be passed at any time.

(i) The draw of the SR60 bridge, mile 951.9 at Vero Beach shall open on signal, except that from 7:45 a.m. to 9 a.m., 12 noon to 1:15 p.m. and 4 p.m. to 5:15 p.m., Monday through Friday, except Federal holidays, the draw need not open for the passage of vessels; however, the draw shall open at 8:30 a.m., 12:30 p.m., and 4:30 p.m. if any vessels are waiting to pass. During periods when storm signals are displayed in the Vero Beach area, the draw shall open on signal. Storm signals are displayed upon notification by the National Weather Service that winds of up to 33 knots or more and/or sea conditions considered dangerous to small craft are expected. Public vessels of the United States, state or local vessels used for public safety, tugs with tows, and vessels in distress, shall be passed at any time.

(j) The draw of the Parker (US1) bridge, mile 1013.7 at North Palm Beach, shall open on signal except that from November 15 through April 15, from 7 a.m. to 7 p.m., the draw need open only on the hour and half hour. From April 16 through November 14, from 9 a.m. to 5 p.m. the draw need open only on the hour, 20 minutes after the hour and 40 minutes after the hour on Saturdays, Sundays, and legal holidays to pass accumulated vessels. Public vessels of the United States, tugs with tows, regularly scheduled cruise boats, and vessels in distress shall be passed at any time.

(k) The draw of the Flagler Memorial (SRA-1-A) bridge, mile 1021.9 at Palm Beach, shall open on signal, except that from November 1 to May 31, Monday through Friday, except Federal holidays, the draw need not open from 8 a.m. to 9:30 a.m. and from 4 p.m. to 5:45 p.m.; however, the draw shall open at 8:30 a.m. and 4:45 p.m., if any vessels are waiting to pass. From 9:30 a.m. to 4 p.m., the draw need open only on the hour and half hour. Public vessels of the United States, tugs with tows, and vessels in distress, shall be passed at any time.

(l) The draw of the Royal Park (SR704) bridge, mile 1022.6 at Palm Beach, shall open on signal, except that from November 1 through May 31, Monday through Friday, except Federal holidays, the draw need not open from 8 a.m. to 9:30 a.m. and from 3:30 p.m. to 5:45 p.m.; however, the draw shall open at 8:45 a.m., at 4:15 p.m. and 5 p.m., if any vessels are waiting to pass. From 9:30 a.m. to 3:30 p.m., the draw need open only on the quarter and three-quarter hour. Public vessels of the United States, tugs with tows, and vessels in distress, shall be passed at any time.

(m) The draw of the Southern Boulevard (SR700/80) bridge, mile 1024.7 at Palm Beach, shall open on signal, except that from November 1 through May 31, Monday through Friday, except Federal holidays, the draw need not open from 7:30 a.m. to 9:00 a.m. and from 4:30 p.m. to 6:30 p.m.; however, the draw shall open at 8:15 a.m. and 5:30 p.m. if any vessels are waiting to pass. Public vessels of the United States, tugs with tows, and vessels in distress, shall be passed at any time.

(n) The draw of the Lantana Avenue bridge, mile 1031.0 at Lantana, shall open on signal except that from 1 December to 30 April, on Saturdays, Sundays, and legal holidays, from 10 a.m. to 6 p.m., the bridge need open only on the hour, quarter hour, half hour, and three-quarter hour to allow all accumulated vessels to pass. Public vessels of the United States, tugs with tows, and vessels in distress, shall be passed at any time.

(o) The draw of the Atlantic Avenue (SR806) bridge, mile 1039.6 at Delray Beach, shall open on signal except that from November 1 to May 31 from 10 a.m. to 6 p.m., Monday through Friday, the draw need open only on the hour and half hour. Public vessels of the United States, tugs with tows, and vessels in distress, shall be passed at any time.

(p) The draw of the SR810 bridge, mile 1050.0 at Deerfield Beach, shall open on signal except that from November 1 through May 31 from 11 a.m. to 5 p.m. on Saturdays, Sundays and legal holidays, the draw need not open except on the hour, quarter hour, half hour, and three-quarter hour. Public vessels of the United States, tugs with tows, and vessels in distress, shall be passed at any time.

(q) The draw of the N.E. 14th Street bridge, mile 1055.0 at Pompano, shall open on signal, except that from 7 a.m. to 6 p.m. the draw need open only on the quarter and three-quarter hour. Public vessels of the United States, tugs with tows and vessels in distress shall be passed at any time.

(r) The draw of the Atlantic Boulevard (SR814) bridge, mile 1056.0 at Pompano, shall open on signal, except that from 7 a.m. to 6 p.m. the draw need open only on the hour and half hour. Public vessels of the United States, tugs with tows, regularly scheduled cruise vessels and vessels in distress, shall be passed at any time.

(s) The draw of the Commercial Boulevard bridge, mile 1059.0 at Lauderdale-by-the-Sea, shall open on signal, except that from November 1 through May 15 from 12 noon to 6 p.m., Monday through Saturday, and from 9 a.m. to 6 p.m. on Sunday, the draw need open only on the hour, quarter hour, half hour, and three-quarter hour. Public vessels of the United States, tugs with tows and vessels in distress, shall be passed at any time.

(t) The draws of the Sunrise Boulevard (SR838) bridge, mile 1062.6, and the Las Olas Boulevard bridge, mile 1063.2, both at Fort Lauderdale, shall open on signal, except that from November 15 through May 15 from 7:15 a.m. to 6:15 p.m., the draws need open only on the quarter and three-quarter hour.

(u) The draw of the Brooks Memorial (S.E. 17th Street) bridge, mile 1065.9 at Fort Lauderdale, shall open on signal, except that from 7 a.m. to 7 p.m. the draw need not reopen for a period of 15 minutes after each closure. The owner of or agency controlling the bridge will display on both sides thereof a time clock acceptable to the District Commander, which will indicate to approaching vessels the number of minutes remaining before the draw will be available for opening. Public vessels of the United States, tugs with tows, sailing vessels, regularly scheduled cruise boats and vessels in distress shall be passed at any time.

(v) The draw of the Hollywood Beach Boulevard (SR820) bridge, mile 1072.2 at Hollywood, shall open on signal except that:

(1) From November 15 through May 15 from 10 a.m. to 6 p.m. the draw need open only on the hour and half hour and;

(2) From May 16 through November 14 on Saturdays, Sundays, Memorial day, Independence Day, Labor Day and Veterans Day from 9 a.m. to 7 p.m., the draw need open only on the hour and half hour.

(3) Public vessels of the United States, tows, sailing vessels, regularly scheduled cruise boats and vessels in distress, shall be passed at any time.

(w) The draw of the Hallandale Beach Boulevard (SR834) bridge, mile 1074.0 at Hallandale, shall open on signal, except that from 7:15 a.m. to 6:15 p.m. the draw need open only on the quarter and three-quarter hour. Public vessels of the United States, tugs with tows, regularly scheduled cruise vessels and vessels in distress, shall be passed at any time.

(x) The draw of the N.E. 163rd Street (SR826) bridge, mile 1078.0 at Sunny Isles, shall open on signal, except that from 7 a.m. to 6 p.m., Monday through Friday, and 10 a.m. to 6 p.m., Saturdays, Sundays, and holidays the draw need open only on the quarter and three-quarter hour. Public vessels of the United States, tugs with tows, regularly scheduled cruise vessels and vessels in distress shall be passed at any time.

(y) Biscayne Bay. (1) The draw of the Broad Causeway bridge, mile 1081.4 Bay Harbor Islands, shall open on signal, except that from 8 a.m. to 6 p.m. the draw need open only on the hour and half hour.

(2) The draw of the West Span of the Venetian Causeway, mile 1088.6 at Miami, shall open on signal, except that from November 1 through April 30 from 7 a.m. to 9 a.m. and 4:30 p.m. to 6:30 p.m. the draw need open only on the hour and half hour. The draw shall open on signal at any time on Thanksgiving, Christmas, New Year's Day, and Washington's birthday.

(3) The draw of the MacArthur Causeway bridge, mile 1088.8 at Miami, shall open on signal, except that from November 1 through April 30 from 7 a.m. to 9 a.m. and 4:30 p.m. to 6:30 the draw need open only on the hour and half hour.

(4) The draws of the Dodge Island bridges, mile 1089.4 at Miami, shall open on signal, except that from 7:15 a.m. to 5:45 p.m., Monday through Saturday, except legal holidays, the draws need open only on the quarter and three-quarter hour.

(5) The draw of the Rickenbacker Causeway bridge, mile 1091.6 at Miami, shall open on signal except, that from 7:30 a.m. to 9 a.m. and 4:30 p.m. to 6 p.m., Monday through Friday, except legal holidays, and 11 a.m. to 6 p.m. on Saturdays, Sundays, and legal holidays the draw need open only on the hour and half hour. However, during the display of small craft warnings or warnings for winds of greater force by the National Weather Service affecting the area, the draw shall open for the passage of vessels at any time.

(6) The draws of each Biscayne Bay bridge shall open at any time for the passage of public vessels of the United States, tugs with tows, regularly scheduled cruise boats and vessels in distress.

§ 117.263 Banana River.

The draw of the NASA Causeway bridge, mile 27.6 at Cape Kennedy, shall open on signal if at least four hours notice is given to the NASA Security Office by telephone or in person.

§ 117.265 Bayou Chico.

The draw of the highway bridge, mile 0.3 at Pensacola, shall open on signal, except that from 7:30 a.m. to 8:30 a.m., 3:30 p.m. to 4:30 p.m., and 5 p.m. to 5:30 p.m., Monday through Friday, except Federal holidays the draw need not open for the passage of vessels. However, tugs with tows, or a vessel in an emergency involving danger to life or property, shall be passed at any time.

§ 117.267 Big Carlos Pass.

The draw of the SR865 bridge, mile 0.0 between Estero Island and Black Island, shall open on signal except that the draw need not open from 7 p.m. to 8 a.m.

§ 117.269 Biscayne Bay.

The draw of the East Span of the Venetian Causeway bridge, mile 1088.6 between Miami and Miami Beach, shall open on signal, except that from November 1 through April 30 from 7:15

a.m. to 8:45 a.m. and 4:45 p.m. to 6:15 p.m., Monday through Friday, the draw need not open; however, the draws shall open at 7:45 a.m., 8:15 a.m., 5:15 p.m. and 5:45 p.m., if any vessels are waiting to pass. The draw shall open on signal on Thanksgiving, Christmas, New Year's Day and Washington's Birthday.

§ 117.271 Blackwater River.

(a) The draw of the Seaboard System Railroad bridge, mile 0.8 at Milton, shall open on signal except that from 8 p.m. to 4 a.m. the draw shall open on signal if at least eight hours notice is given.

(b) The draw of the US90–S10 bridge, mile 0.9 at Milton, shall open on signal if at least 12 hours notice is given.

§ 117.273 Canaveral Harbor Barge Canal.

(a) The draw of the SR3 bridge, mile 1.0 near Indianola, shall open on signal, except that from 6:45 a.m. to 7:45 a.m. and 4:15 p.m. to 5:45 p.m., Monday through Friday, except Federal holidays, the draw need not open for the passage of vessels. From 10 p.m. to 6 a.m. the draw shall open on signal if at least three hours notice is given.

(b) The draw of the SR401 bridge, mile 5.5 at port Canaveral, shall open on signal, except that from 6:30 a.m. to 8 a.m. and 3:30 p.m. to 5:15 p.m. Monday through Friday, except Federal holidays, the draw need not open for the passage of vessels. From 10 p.m. to 6 a.m. the draws shall open on signal if at least three hours notice is given.

(c) The draws of either bridge shall open as soon as possible for the passage of public vessels of the United States, tugs with tows and vessels in distress.

§ 117.275 Choctawhatchee River.

The draw of the SR20 bridge, mile 20.0 at Ebro, shall open on signal if at least 12 hours notice is given.

§ 117.277 Clearwater Pass.

The draw of the SR699 bridge, mile 0.0 at Clearwater Beach, shall open on signal except that from 11 p.m. to 7 a.m. a delay of up to 10 minutes may be expected.

Note.—To avoid delay, notice should be given to the toll booth attendant.

§ 117.279 Coffee Pot Bayou.

The draw of the Snell Isle Boulevard bridge, mile 0.4 at St. Petersburg, need not open for the passage of vessels.

§ 117.281 Dead River.

The draw of the Seaboard System Railroad bridge, mile 0.3 at Tavares, shall open on signal except that from 10 p.m. to 6 a.m. the draw need not open for the passage of vessels.

§ 117.283 Dunns Creek.

The draw of the US17 bridge, mile 0.9 neat Satsuma, shall open on signal if at least three hours notice is given.

§ 117.285 Garrison Channel.

The draw of the Seaboard System Railroad bridge, mile 0.2 at Tampa, shall open on signal if at least 48 hours notice is given.

§ 117.287 Gulf Intracoastal Waterway, Caloosahatchee River to Perdido River.

(a) The draw of the US41 bridge, mile 56.9 at Venice, shall open on signal except that from 7:30 a.m. to 6 p.m. the draw need open only on the hour, quarter hour, half hour, and three-quarter hour.

(b) The draw of the Ringling Causeway (SR780) bridge, mile 73.6 at Sarasota, shall open on signal except that from 7:30 a.m. to 6 p.m. the draw need open only on the hour and half hour. Public vessels of the United States, tugs with tows, and vessels in distress, shall be passed at any time.

(c) The draws of the Cortez (SR684) bridge, mile 87.4, and the Santa Maria (SR64) bridge, mile 89.2, both to Santa Maria Key, shall open on signal, except that from 10 a.m. to 5 p.m. on Saturday, Sundays, and legal holidays, the draws need open only on the hour, quarter hour, half hour, and three-quarter hour.

(d) *Boca Ceiga Bay.* (1) The draw of the Corey Causeway (SR693) bridge, mile 117.7 at South Pasadena, shall open on signal except that from 8 a.m. to 7 p.m., Monday through Friday, and 10 a.m. to 7 p.m., Saturdays, Sundays, and Federal holidays, the draw need open only on the hour, 20 minutes after the hour and 40 minutes after the hour.

(2) The draw of the Treasure Island Causeway bridge, mile 119.0 at Central Avenue, shall open on signal, except that from 3 p.m. to 6 p.m., Monday through Friday, and from 11 a.m. to 6 p.m., Saturdays, Sundays, and Federal holidays, the draw need open only on the hour, quarter hour, half hour, and three-quarter hour.

(3) The draw of the Welch Causeway (SR699) bridge, mile 122.8 at Madiera Beach, shall open on signal, except that from 9:30 a.m. to 6 p.m., on Saturdays, Sundays, and Federal holidays, the draw need open only on the hour, 20 minutes after the hour and 40 minutes after the hour.

(e) *Clearwater Harbor.* (1) The draw of the Bellaire Causeway bridge, mile 131.8 at Clearwater, shall open on signal, except that from 12 noon to 6 p.m., on Saturdays, Sundays, and legal holidays, the draw need open only on the hour, quarter hour, half hour, and three-quarter hour.

(2) The draw of the Clearwater Memorial Causeway (SR60) bridge, mile 136.0 at Clearwater, shall open on signal except that from 9 a.m. to 6 p.m., the draw need not open except on the hour, 20 minutes past the hour, and 40 minutes past the hour. From 2 p.m. to 6 p.m. Saturdays, Sundays, and Federal holidays, the draw need open only on the hour and half hour.

(f) Public vessels of the United States, tugs with tows, and vessels in distress, shall be passed through the draw of each bridge listed in this section at any time.

§ 117.289 Hillsboro Inlet.

(1) The draw of the SR A–1–A bridge, mile 0.3 at Hillsboro Beach, shall open on signal except that from 7 a.m. to 6 p.m. the draw need open only on the hour, quarter hour, half hour, and three-quarter hour.

§ 117.291 Hillsborough River.

(a) The draws of the bridges at Platt Street, mile 0.0; Brorein Street, mile 0.16, Kennedy Boulevard, mile 0.4; Cass Street, mile 0.7; and Laurel Street, mile 1.0, shall open on signal from 9 a.m. to 4 p.m., Monday through Friday, and from 8 a.m. to 6 p.m. Saturday, Sunday, and Federal holidays. At all other times the draws shall open on signal if at least two hours advance notice is given.

(b) The draw of the Seaboard System Railroad bridge at Cass Street, mile 0.7, shall open on signal from 4 p.m. to 12 midnight, Monday through Friday. At all other times, the draw shall be maintained in an open position for the passage of vessels.

(c) The draws of the City of Tampa highway bridge at West Columbus Drive, mile 2.3, and the State of Florida highway bridge at West Hillsborough Avenue, mile 4.8, shall open on signal except that from 8 a.m. to 6 p.m. the draws shall open on signal if at least one hour advance notice is given.

(d) Public vessels and vessels in distress. From 4 p.m. to 9 a.m., Monday through Friday, and from 6 p.m. to 8 a.m., Saturdays, Sundays and Federal holidays, the draws of the bridges listed in paragraph (a) of this section shall open on signal as soon as possible but not longer than one hour after a request by a public vessel of the United states, vessels owned and operated by the state, county, or local governments used for public safety purposes, or any vessels in distress. The opening signal from such vessels is five short blasts of a whistle, horn or other similar sound producing device, or by shouting.

§ 117.293 Indian Creek.

The draw of the 63rd Street bridge, mile 4.0 at Miami Beach, shall open on signal except that from December 1 through April 15 from 11 a.m. to 6 p.m. the draw need open only on the hour. Public vessels of the United States, regularly scheduled cruise boats, and vessels in an emergency involving life or property shall be passed at any time.

§ 117.295 Kissimmee River.

(a) The removable span of the SR78 bridge, mile 0.5, and the removable span of the SR70 bridge, mile 19.5, both at or near Okeechobee, shall be removed if at least 72 hours notice is given.

(b) The draw of the Seaboard System Railroad bridge, mile 37.0 at Fort Bassinger, shall open, if at least 72 hours notice is given, for passage of floating equipment employed in flood control work under the jurisdiction of the Central and South Florida Water Management District or the U.S. Army Corps of Engineers. The draw need not open for other vessels.

(c) The removable span of the SR98 bridge, mile 39.0 at Fort Bassinger, shall be removed if at least 96 hours notice is given.

§ 117.297 Little Manatee River.

The draw of the Seaboard System Railroad bridge, mile 2.4 at Ruskin, shall open on signal if at least three hours notice is given.

§ 117.299 Longboat Pass.

The draw of the SR 789 bridge, mile 0.0 between Longboat Key and Anna Maria Key, shall open on signal except that from 6 p.m. to 6 a.m., the draw shall open on signal if at least three hours notice is given.

§ 117.301 Manatee River.

The draw of the US 41 bridge, mile 4.3 at Manatee, shall open on signal from 6 a.m. to 7 a.m. and 9 a.m. to 4 p.m. the draw need not open for the passage of vessels from 7 a.m. to 9 a.m. and 4 p.m. to 6 p.m. The draw shall open at 6 p.m. if any vessels are waiting to pass. From 6 p.m. to 6 a.m. the draw shall open on signal if at least three hours notice is given. Public vessesl of the United States, tugs with tows, and vessels in distress, shall be passed as soon as possible. During a hurricane alert issued by the National Weather Service, the draw shall open on signal.

§ 117.303 Matlacha Pass.

The draw of the SR 78 bridge, mile 6.0 at Fort Myers, shall open on signal except that from 7 p.m. to 8 a.m. the draw need not open for the passage of vessels.

§ 117.305 Miami River.

The draw of each bridge from the mouth to and including the bridge at N.W. 27th Avenue, shall open on signal except that from 7:30 a.m. to 9 a.m. and 4:30 p.m. to 6 p.m., Monday through Friday, except New Year's Day, Independence Day, Labor Day, Veteran's Day, Thanksgiving and Christmas, the draws need not open for the passage of vessels. During the period of a hurricane alert issued by the National Weather Bureau all bridges shall open on signal. Public vessels of the United States, tugs with tows, and a vessel in an emergency involving danger to life or property, shall be passed at any time.

§ 117.307 Miami River, North Fork.

The draw of the Seaboard System Railroad bridge, mile 5.3 at Hialeah, shall open on signal from 8:30 a.m. to 5:30 p.m., Monday through Friday. At all other times the draw shall open on signal if at least three hours notice is given.

§ 117.309 Nassau Sound.

The draw of the Fernandina Port Authority bridge, SR A-1-A, mile 0.4 between Amelia Island and Talbot Island, shall open on signal from 6 a.m. to 6 p.m. if at least six hours notice is given. The draw need not open from 6 p.m. to 6 a.m.

§ 117.311 New Pass.

The draw of the SR 789 bridge, Sarasota County, shall open on signal except that from 7:30 a.m. to 6 p.m. the draw need open only on the hour, quarter hour, half hour and three-quarter hour. Public vessels of the United States, tugs with tows, and vessels in distress, shall be passed at any time.

§ 117.313 New River.

(a) The draw of the S.E. Third Avenue bridge, mile 1.4 at Fort Lauderdale, shall open on signal except that from 7:30 a.m. to 8:30 a.m. and 4:30 p.m. to 5:30 p.m., Monday through Friday, the draw need not open for the passage of vessels. Public vessels of the United States, regularly scheduled cruise boats, tugs with tows, and vessels in distress shall be passed at any time.

(b) The draw of the Andrews Avenue bridge, mile 2.3 at Fort Lauderdale, shall open on signal, however, the draw need not open for an upbound vessel when the draws of the Florida East Coast railroad bridge, mile 2.5, are in the closed to navigation position to allow the passage of a train.

§ 117.315 New River, South Fork.

(a) The draw of the Southwest 12th Street bridge, mile 0.9 at Fort Lauderdale, shall open on signal, except that from 7:30 a.m. to 8:30 a.m. and 4:30 p.m. to 5:30 p.m., Monday through Friday, the draws need not open for the passage of vessels.

(b) The draw of the SR 84 bridge, mile 4.4 at Fort Lauderdale, shall open on signal if at least 24 hours notice is given.

(c) Public vessels of the United States, regularly scheduled cruise boats, tugs with tows, and vessels in distress, shall be passed through each draw as soon as possible.

§ 117.317 Okeechobee Waterway.

(a) The draws of the Roosevelt (US1) bridge, mile 7.5 at Stuart, shall open on signal, except that from 7:30 a.m. to 9 a.m., 12 noon to 2 p.m., and 4:30 p.m. to 6 p.m., Monday through Friday, the draw need open only on the hour and half hour. Public vessels of the United States, state or local vessels used for public safety, tugs with tows, and vessels in distress, shall be passed at any time.

(1) When the adjacent Florida East Coast Railway bridge is in a closed position on the hour or half hour, during the restricted periods, the draw need not open for eastbound vessels. When the railway bridge opens, the draw shall open upon signal to pass all accumulated vessels.

(b) The draws of the Florida East Coast railroad bridges across the Loxahatchee River, mile 1.2 at Jupiter; the St. Lucie River, mile 7.5 at Stuart; and the St. Lucie Canal, mile 38.0 at Port Mayaca, shall open as follows:

(1) The bridges will not be manned by a regular attendant.

(2) The spans will normally be in the open to navigation position, displaying flashing green signals, to allow the movement of water traffic.

(3) When a train approaches one of the bridges, the navigation signals will go to flashing red, and a horn starts four blasts, pauses and then continues four blasts.

(4) After an eight-minute time delay, the bridge will lower and lock, providing the scanning equipment reveals nothing under the bridge. Train crews can hold the bridge down by pushing a hold button, and the bridge will remain down for a period of eight minutes or while the approach track circuit is occupied.

(5) After the train has cleared, the bridge will raise and the signals will return to flashing green for navigation.

(c) The draw of the Seaboard System Railroad bridge, mile 28.5 at Indiantown, shall open on signal except that from 10 p.m. to 6 a.m. the draw shall open on signal if at least three hours notice is given.

(d) The draw of the Belle Glade Dike (SR71) bridge, mile 60.7 between Torry Island and Lake Shore, shall open on signal from 7 a.m. to 6 p.m., Monday through Thursday, and from 7 a.m. to 7 p.m., Friday through Sunday. At all other times the draw need not open for the passage of vessels.

(e) The draws of the Seaboard System Railroad bridge, mile 78.3 at Moorehaven, shall open on signal except that from 10 p.m. to 6 a.m. the draw need not open for the passage of vessels.

(f) The draw of the US 27 bridge, mile 78.4 at Moorehaven, the SR29 bridge, mile 103.0 at LaBelle, the SR78A bridge, mile 108.2 at Denaud, the SR78A bridge, mile 116.0 at Alva, and the SR78A bridge, mile 126.3 near Olga, all across the Caloosahatchee Canal and River, shall open on signal except that from 10 p.m. to 6 a.m. the draws shall open on signal if at least three hours notice is given.

(g) The draw of the Edison Memorial (US41) bridge, mile 134.5 at Fort Myers, shall open on signal, except that from 7:30 a.m. to 8:30 a.m. and from 5 p.m. to 6 p.m., Monday through Friday, except Federal holidays, the draw need not open for the passage of vessels. However, public vessels of the United States, tugs with tows, and vessels in distress shall be passed at any time.

§ 117.319 Oklawaha River.

The draws of the Sharpes Ferry (SR40) bridge, mile 55.1, Muclan Farms bridge, Southwest Florida Water Management District, mile 63.9, Moss Bluff (SR46) bridge, mile 66.0, and the Starkes Ferry (SR42) bridge, mile 73.0, shall open on signal if at least three hours notice is given.

§ 117.321 Orange River.

The draw of the SR80 bridge, mile 0.9 between Fort Myers Shores and Tice, shall open on signal if at least 24 hours notice is given. During a hurricane alert for the Caloosahatchee and Orange Rivers area issued by the National Weather Service the draw shall open at any time.

§ 117.323 Peace River.

The draw of the Barron Collier (US41) bridge, mile 2.0 at Punta Gorda, shall open on signal except that from 10 p.m. to 6 a.m. the draws shall open on signal if at least two hours notice is given.

§ 117.325 St. Johns River.

(a) The draws of the Main Street (US17) bridge, mile 24.7, the Acosta bridge, mile 24.9, and the Fuller Warren (I95–I10) bridge, mile 25.4, all at Jacksonville, shall open on signal, except that from 7:30 a.m. to 9 a.m. and 4:30 p.m. to 6 p.m., Monday through Saturday, except legal holidays, the draw need not open for the passage of vessels. The draws shall open at any time for vessels in an emergency involving life or property.

(b) The draw of the Florida East Coast automated railroad bridge, mile 24.9, shall be operated as follows:

(1) The bridge shall be constantly manned by a bridge supervisor who has a mechanical override capability for the automated operation.

(2) The bridge will normally be in the open position displaying flashing green lights to indicate that water traffic may pass.

(3) When a train approaches the bridge, large signs on both the upstream and downstream sides of the bridge will flash "bridge coming down," the navigational lights will go to flashing red, and the siren signals will sound.

(4) After an eight-minute delay, the bridge will lower and lock if there are no vessels under the bridge. Train crews can hold the bridge down by pushing a hold button, and the bridge will remain down for a period of eight minutes or while the approach track circuit is occupied.

(5) After the train has cleared, the bridge will open and the light signals will retrun to flashing green.

(6) A radiotelephone will be maintained at the bridge for the safety of navigation.

§ 117.327 St. Marks River.

The draw of the US98 bridge, mile 9.0 at St. Marks, shall open on signal if at least 48 hours notice is given to the State Road Department Maintenance Office, Tallahassee, Florida.

§ 117.329 St. Marys River.

The draws of the US17 bridge, mile 23.0, and the Seaboard System Railroad bridge, mile 23.1, both at Kingsland, shall open on signal if at least 48 hours notice is given.

§ 117.331 Steinhatchee River.

The draw of the SR358 bridge, mile 2.3 at Stevensville, shall open on signal if at least three hours notice is given.

§ 117.333 Suwanee River.

The draw of the Seaboard System Railroad bridge, mile 35.0 at Old Town, shall open on signal if at least five days notice is given.

§ 117.335 Taylor Creek.

The draw of US441 bridge, mile 0.3 at Okeechobee, shall open on signal if at least two hours notice is given.

§ 117.337 Trout River.

The draw of the Seaboard System Railroad bridge, mile 0.9 at Panama Park, shall open on signal from 6 a.m. to 10 p.m. to 10 p.m. to 6 a.m. the draw shall open on signal if at least 12 hours notice is given.

§ 117.339 West Palm Beach Canal.

The draw of the US 1 bridge, mile 0.1 at West Palm Beach, shall open on signal if at least 24 hours notice is given.

§ 117.341 Whitcomb Bayou.

The draw of the highway bridge, mile 0.5 at Tarpon Springs, shall open on signal from 9 a.m. to 6 p.m. on Saturdays and Sundays. The draw shall open on signal if at least two hours notice is given at all other times.

Georgia

§ 117.351 Altamaha River.

The draws of all bridges, except the Seaboard System Railroad bridge at Doctortown, shall open on signal if at least 24 hours notice is given. The draw of the Seaboard System Railroad bridge, mile 59.4 at Doctortown, shall open on signal if at least seven days notice is given.

§ 117.353 Atlantic Intracoastal Waterway, Savannah River to St. Marys River.

(a) The draw of the Causton Bluff (SR26) bridge across the Wilmington River, mile 579.9 near Causton Bluff, shall open on signal, however, from 7:30 a.m. to 9 a.m. and 4:30 p.m. to 6 p.m., Monday through Friday, except legal holidays, the draw need not open, except at 8:10 a.m. and 5:20 p.m., if any vessels are waiting to pass. Public vessels of the United States, tugs with tows, regularly scheduled cruise boats, and vessels in distress, shall be passed through the draw at any time.

(b) The draw of the SR 80 bridge across the Wilmington River, mile 582.8 at Thunderbolt, shall open on signal, however, from 7:45 a.m. to 9:15 a.m. and 5 p.m. to 6:30 p.m., Monday through Friday, except legal holidays, the draw need not open, except at 8:30 a.m. and 5:45 p.m., if any vessels are waiting to pass. Public vessels of the United States, tugs with tows, regularly scheduled cruise boats, and vessels in distress, shall be passed through the draw at any time.

(c) The draw of the Torres Causeway bridge across the Frederica River, mile 675.5, near St. Simons, shall open on signal, except that from 7:30 a.m. to 9:30 a.m. and 4:30 p.m., to 6:30 p.m. Monday through Friday, except holidays, the draw need open only on the hour and half hour. Public vessels of the United

States, tugs with tows, and vessels in distress, shall be passed at any time.

§ 117.355 Back River.

The draw of the St. Simon's Island causeway bridge, mile 1.5 between Brunswick and St. Simon's Island, shall open on signal except that from 6 a.m. to 9 a.m. and from 4 p.m. to 6 p.m. the draw need open only on the hour. Public vessels of the United States, tugs with tows, and vessels in distress, shall be passed at any time.

§ 117.357 Black River.

The draw of the Torres Causeway bridge, mile 1.5 near Brunswick, shall open on signal, except that from 6 a.m. to 9 a.m. and 4 p.m. to 6 p.m. the draw need not open for the passage of vessels; however, the draw shall open at 7 a.m., 8 a.m., and 5 p.m., if any vessels are waiting to pass.

§ 117.359 Chattahoochee River.

The draw of the Central of Georgia railroad bridge, mile 117.1 at Omaha, shall open on signal if at least six hours notice is given.

§ 117.361 Flint River.

The draws of the Seaboard System Railroad bridges, miles 28.0 and 28.7, both at Bainbridge, shall open on signal if at least 15 days notice is given.

§ 117.363 Ocmulgee River.

The draws of each bridge shall open on signal if at least 24 hours notice is given.

§ 117.365 Oconee River.

(a) The draw of the SR 46 bridge, mile 44.3 near Soperton, shall open on signal if at least 24 hours notice is given.

(b) The draw of the Central of Georgia railroad bridge, mile 106.6 at Oconee, shall open on signal if at least seven days notice is given.

§ 117.367 Ogeechee River.

(a) The draw of the Seaboard System Railroad bridge, mile 30.7 at Richmond Hill, shall open on signal if at least 15 days notice is given.

(b) The draw of the highway bridge, mile 37.8 near Richmond Hill, need not open for the passage of vessels.

§ 117.369 Satilla River.

The draw of the Seaboard System Railroad bridge, mile 25.7 at Woodbine, shall open on signal if at least 24 hours notice is given.

§ 117.371 Savannah River.

(a) The draw of the Seaboard System Railroad bridge, mile 60.9 at Clyo, shall open on signal from 6 a.m. to 11 a.m. and from 12 noon to 3 p.m. At all other times the draw shall open on signal if at least three hours notice is given. Contact may be made by VHF radiotelephone maintained at the bridge tender's house and the dispatcher's office in Savannah.

(b) The draw of the Seaboard System Railroad bridge, mile 135.4, near Augusta shall open on signal if at least three hours notice is given.

§ 117.373 St. Marys River.

The draws of the US 17 bridge, mile 23.0, and the Seaboard System Railroad bridge, mile 23.1, both at Kingsland, shall open on signal if at least 48 hours notice is given.

Hawaii

§ 117.377 Honolulu Harbor, Sand Island.

(a) The draw of the Slattery (Kalihi Channel) bridge, mile 1.8, shall open on signal from 5 a.m. to 6 a.m. and 6 p.m. to 7 p.m., Monday through Friday, except Federal holidays. On Saturdays, Sundays, and legal holidays from 5 a.m. on Saturdays through 5 a.m. on Mondays or on Federal holidays, the draw shall open on signal if at least six hours notice is given to the Honolulu Harbor Control Unit at Aloha Tower. In the event of emergencies during the closed periods specified above, the Control Unit will be called for clearance. In the event that a seismic sea-wave (tidal wave) is imminent, the bridge shall be opened to full horizontal and vertical clearances upon orders of the Harbor Master, Port of Honolulu. Emergency ship movements or imminence of wave arrival may require the bridge to be opened even though all persons have not evacuated the Sand Island area. Every effort shall be made to keep the bridge in the down position as long as reasonably possible; however, the Harbor Master may open the bridge within thirty (30) minutes of estimated time of wave arrival if he deems it necessary to protect life and property.

(b) The following visual signals shall be mounted on the bridge control tower:

(1) A flashing green light to indicate that the draw can be opened immediately. The light shall be exhibited during the time the draw is opening and until the draw is to be closed.

(2) A flashing red light to indicate that the draw cannot be opened immediately, or being opened, is to be closed immediately. The light shall be exhibited during the time the draw is closing.

(3) Two amber lights in a vertical line, one over the other, six feet apart with the uppermost six feet below the flashing red light. The uppermost amber light shall be flashing and when exhibited, shall indicate incoming traffic only. The lowermost amber light shall be fixed and, when exhibited, shall indicate outgoing traffic only. When both lights are exhibited, the harbor is closed to all traffic.

(4) The flashing red and green lights shall be mounted on a mast on the bridge control tower at a height of six feet above the water plan at mean lower low water datum, shall be visible between 50 degrees and 245 degrees true from seaward and visible for a distance of approximately three miles. The fixed and flashing amber lights shall conform to the bearings and visibility as prescribed for the red and green lights.

(5) In addition, two shapes shall be exhibited from a yardarm on the mast at a distance of 60 feet above the water plane at mean lower low water datum. One shape shall be an orange ball two feet in diameter. The other shape shall be an orange cone two feet in diameter across the base.

(c) When a vessel requires an opening of the draw, two prolonged blasts followed immediately by two short blasts shall be sounded.

(1) If the draw can be opened immediately, the bridge tender shall exhibit the flashing green light. The orange ball will be exhibited to indicate an inbound vessel; the cone will be exhibited to indicate an outbound vessel.

(2) During daylight hours when the drawbridge cannot be opened immediately, the bridge tender shall exhibit the flashing red light and hoist the ball and cone simultaneously to the yardarm. If for some reason the drawbridge cannot be opened after the tender has signified immediate opening by the flashing green light and either the ball or cone, he shall immediately exhibit the rescinding signal of the flashing red light and hoist the ball and cone simultaneously to the yardarm.

(3) As soon as the exigency which prevented opening has been removed, the tender shall promptly exhibit the flashing green light and either the ball or cone as the case may require to advise vessels that the drawbridge can be opened at once and he shall thereupon proceed to open the drawbridge if there is a vessel waiting to pass through. No vessel shall attempt to navigate the drawbridge when the visual signals indicate the bridge cannot be opened.

(4) During the period of darkness when the drawbridge cannot be opened immediately, the bridge tender shall exhibit the flashing red light and the fixed and flashing amber lights simultaneously. If for any reason the draw cannot be opened after the tender has signified immediately opening by the flashing green light and either the

flashing amber light or fixed amber light, he shall immediately exhibit the rescinding signal of the flashing amber lights simultaneously.

(5) As soon as the exigency which prevented opening has been removed, the tender shall promptly exhibit the flashing green light and either the flashing or fixed amber lights as the case may require to advise vessels that the drawbridge can be opened at once. He shall thereupon proceed to open the drawbridge if there is a vessel waiting to pass through. No vessel shall attempt to navigate through the drawbridge when the visual signals indicate that the bridge cannot be opened.

Idaho

§ 117.381 Clearwater River.

The draws of the Union Pacific (Camas Prairie) railroad bridge, mile 0.6 at Lewiston, shall open on signal if at least three hours notice is given to the Camas Prairie Railroad in Lewiston.

§ 117.383 Pend Oreille River.

The draw of the Burlington Northern railroad bridge, mile 111.3 near Sandpoint, need not open for the passage of vessels.

§ 117.383 Snake River.

(a) The draw of the US12 bridge, mile 140.0, between Lewiston, Idaho and Clarkston, Washington, shall open at the following times if at least two hours notice is given to the Washington State Department of Transportation.

(1) From March 15 through November 15—6 a.m., 10 a.m., 3 p.m., 7 p.m., and 9 p.m.

(2) From November 16 through March 14—9 a.m., 10 a.m., 2 p.m., and 3 p.m.

(3) The draw need not open at all other times.

Illinois

§ 117.389 Calumet River.

(a) The draws of the CONRAIL bridges, miles 1.4 and 1.5 at Chicago, shall open on signal. However, the draws need not open if either one of the bridges is inoperable because of equipment breakdown.

(b) In addition to the signals prescribed in § 117.13, the following special visual signals shall be used:

(1) When draw cannot open promptly or when draw is open and is to be closed for any reason. Two red lights will be flashed alternately.

(2) When draw will open promptly. Two amber lights will be flashed alternately.

(3) When draw is open for passage. Two green lights will be flashed alternately.

The two red, amber and green light units will be arranged in horizontal planes approximately 48 inches apart; flashed for about two seconds duration; provided with candlepower sufficient to be readily visible at least one-half mile; placed on the upstream and downstream sides of each bridge, except at the five railroad bridges, where one unit will be placed on the upstream (lakeward) side of the Baltimore & Ohio railroad bridge and the other on the downstream side of the southernmost CONRAIL bridge; and located so as to be readily visible to approaching navigation as will be determined by the District Commander.

§ 117.391 Chicago River.

(a) The draws of the bridges across the Chicago River from its mouth to the junction of the North and South Branches; the South Branch from the junction to and including the West Roosevelt Road; and the North Branch to and including North Kinzie Street and the Northwest Expressway Feeder bridge; shall open on signal from April 1 through December 31, except that from Monday through Friday, 7:30 a.m. to 10 a.m. and 4 p.m. to 6:30 p.m. the draws need not open for the passage of vessels.

(b) The draws of the bridges across the North Branch of the Chicago River at Grand Avenue and all bridges north of the Northwest Expressway Feeder bridge to and including North Halsted Street; and the bridges across the South Branch of the Chicago River south of South Halsted Street; shall open on signal, except that from 7 a.m. to 8 a.m., and 5:30 p.m. to 6:30 p.m. the draws need not open for the passage of vessels.

(c) From January 1 through March 31, the draws of the highway bridges across the Chicago River, the North Branch of the Chicago River, North Branch Canal and the South Branch of the Chicago River shall open on signal if at least 12 hours notice is given.

(d) The Randolph Street, Cermak Road, Throop Street and Loomis Street bridges across the South Branch of the Chicago River, the North Halsted Street bridge across the North Branch Canal and the West Kinzie Street bridge across the North Branch of the Chicago River shall open on signal from April 1 through December 31.

(e) The draw of the Milwaukee Line railroad bridge across the North Branch Canal need not open for the passage of vessels.

(f) Constant attendance is not required at the following City of Chicago bridges:

Chicago River, South Branch

Washington Street
Madison Street
Monroe Street
Adams Street
Jackson Street
Van Buren Street
Congress Street (Eisenhower Expressway)
Harrison Street
Roosevelt Road
Eighteenth Street
Canal Street
South Halsted Street

West Fork of the South Branch

South Ashland Avenue
South Damen Avenue

Chicago River, North Branch

Grand Avenue
Chicago Avenue
North Halsted Street
Ogden Avenue
Division Street

North Branch Canal

Ogden Avenue
Division Street

Roving drawtenders shall open these bridges not more than 30 minutes after notification to the Port Director's Office.

(g) The draws of bridges across the North Branch Canal that have a vertical clearance of less than 17 feet above Low Water Datum for Lake Michigan shall open at any time to permit the passage of tugs and tugboats.

(h) The draws of any of the bridges listed in this section shall be open as soon as possible for the passage of emergency vessels of the City of Chicago or public vessels of the United States.

(i) The draw of the Lake Shore Drive bridge across Ogden Slip need not open for the passage of vessels.

(j) The draws of the North Avenue, Cortland Street, Webster Avenue, North Ashland Avenue, Chicago and Northwestern railroad, North Damen Avenue, and Belmont Avenue bridges across the North Branch of the Chicago River need not open for the passage of vessels.

(k) The opening signal for all Chicago River bridges is three short blasts or by shouting, except that four short blasts is the opening signal for the Chicago and Northwestern railroad bridge near West Kinzie Street and the Milwaukee Road bridge near West North Avenue and five short blasts is the opening signal when approaching the Lake Short bridge from the north.

§ 117.393 Illinois River.

(a) The draw of the automated Burlington Northern railroad bridge, mile 88.8 at Beardstown, Illinois will normally be maintained in the open position, providing a minimum vertical clearance of 68.4 feet above normal pool.

(b) When a vessel is approaching, and the liftspan is in the open position, contact shall be established by radiotelephone to assure that the liftspan will remain open until passage has been completed.

(c) When a vessel is approaching and the liftspan is in the closed position, contact shall be established by radiotelephone with the remote operator. If the liftspan CANNOT open promptly, alternate flashing red lights shall be displayed. If the liftspan will open promptly, flashing amber lights shall be displayed.

(d) When a train approaches the bridge and the liftspan is in the open position, alternate flashing red lights on top of the drawspan shall commence flashing and a horn shall sound four short blasts. The remote operator shall scan the river on radar to determine whether any vessels are approaching the bridge. The remote operator shall also broadcast his intentions to lower the liftspan. If a vessel or vessels are approaching the bridge within one mile, as determined by radar scanning, response to radio broadcast, or electronic detector, the flashing red lights shall be changed to flashing amber and the liftspan remain in the fully open position until such vessel or vessels have cleared the bridge. If no vessels are approaching the bridge or are beneath the liftspan, the alternate flashing red lights shall continue to flash and the liftspan shall be lowered and locked in place.

(e) After the train has cleared the bridge, the draw shall be raised to its full height and locked in place; the red flashing lights will stop and drawspan lights changed from red to green indicating the navigation channel is clear for the passage of vessels.

§ 117.395 Illinois Waterway.

The draws of the highway bridges in Joliet listed below shall open on signal except that they need not open from 7:30 a.m. to 8:30 a.m. and from 4:15 p.m. to 5:15 p.m., Monday through Saturday:

McDonough Street, Mile 287.3
Jefferson Street, Mile 287.9
Cass Street, Mile 288.1
Jackson Street, Mile 288.4
Ruby Street, Mile 288.7

§ 117.397 Wabash River.

The draws of each bridge across the Wabash River shall open on signal if at least 72 hours notice is given.

Indiana

§ 117.401 Trail Creek.

The draw of the CONRAIL bridge, mile 0.9 at Michigan City, shall open on signal from 6:30 a.m. to 2:30 p.m. daily, except Sunday, from February 16 through December 14. The draw will not be manned at all other times. If passage is desired, the Chief Dispatcher, CONRAIL at Chicago shall be notified by collect telephone and he shall arrange to have the draw open within 20 minutes.

§ 117.403 Wabash River.

The draws of each bridge shall open on signal if at least 72 hours notice is given.

Iowa

§ 117.407 Missouri River.

The draws of the bridges across the Missouri River from the mouth to Sioux City, shall open on signal except that from December 16 through the last day of February, the draws shall open on signal if at least 24 hours notice is given.

Kansas

§ 117.411 Missouri River.

The draws of the bridges across the Missouri River from the mouth to Sioux City, Iowa, shall open on signal except that from December 16 through the last day of February, the draws shall open on signal if at least 24 hours notice is given.

Kentucky

§ 117.415 Green River.

(a) The draw of the Seaboard System Railroad bridge, mile 8.3 at Spottsville, shall open on signal when there is 40 feet or less of vertical clearance beneath the draw. When the vertical clearance is more than 40 feet at least four hours notice shall be given. During this period if a vessel Captain informs the drawtender during his passage through the draw that the vessel will return within four hours, the drawtender shall remain on duty until the vessel returns but shall not be required to remain for longer than four hours.

(b) The draws of the Seaboard System Railroad bridges, miles 71.2 and 79.6, at Livermore and Smallhouse, are normally maintained in the fully open position and a vessel may pass through the draw without further signals. When the draws are in the closed position they shall open on signal.

(c) The owners of or agencies controlling the Seaboard System Railroad bridges at miles 8.3, 71.2, and 79.6, shall arrange for ready telephone communication with the authorized representative at any time from the bridges or their immediate vicinity. Brief resumes of these regulations shall be conspicuously posted at Green River Navigation Locks Nos. 1, 2, 3, and 4.

(d) The Illinois Central Gulf railroad bridge, mile 95.8 at Rockport, is operated as follows:

(1) When the stage of the river permits a vertical clearance of 34 feet or more under the closed draw, as determined from gauges suitably marked to indicate the minimum clearance and attached to the upstream and downstream sides of the bridge, the draw shall open on signal if at least eight hours notice is given. If for any reason the vessel is delayed and cannot arrive for passage at the time specified, the authorized representative shall be promptly notified of the estimated delay for opening the draw.

(2) When the stage of the river does not permit a vertical clearance of 34 feet or more under the closed draw, the draw will normally be maintained in the open to navigation position. Automatic closing for passing of trains will be in effect. The owner of the bridge shall arrange for ready telephone communication with the authorized representative at any time from the bridge or its immediate vicinity. A brief resume of these regulations and the automatic operating procedure shall be conspicuously posted at Green River Navigation Locks Nos. 1, 2, 3 and 4.

§ 117.417 Ohio River.

The draw of the Southern Railway railroad bridge, mile 607.4 at New Albany, Indiana, need not be open for the passage of vessels.

Louisiana

§ 117.421 Algers Alternate Route.

The draw of the S23 bridge, mile 3.8 at Belle Chasse, shall open on signal, except that from 3:30 p.m. to 5:30 p.m., Monday through Friday, except Federal holidays, the draw need not open for the passage of vessels.

§ 117.423 Amite River.

(a) The draw of the S22 bridge, mile 6.0 at Clio, shall open on signal except that from 5 p.m. to 9 a.m., the draw shall open on signal if at least 12 hours notice is given.

(b) The draws of the S16 bridge, mile 21.4 near French Settlement, and the S42 bridge, mile 32.0 at Port Vincent, shall open on signal if at least 48 hours notice is given.

§ 117.425 Black Bayou.

The draws of the US90–S20 bridge, mile 7.0 near Gibson, and Terrebonne Parish Police Jury bridges, miles 7.5, 15.0, 18.7, and 22.5, between Gibson and Houma, shall open on signal if at least 24 hours notice is given.

§ 117.427 Black River.

The draw of the US84 bridge, mile 41.0 at Jonesville, shall open on signal if at least a one hour notice is given.

§ 117.429 Boeuf Bayou.

The draw of the S307 bridge, mile 1.3 at Kraemer, shall open on signal except that from 9 p.m. to 5 a.m., the draw shall open on signal if at least 12 hours notice is given.

§ 117.431 Boeuf River.

The draw of the S4 bridge, mile 32.3 near Mason, shall open on signal if at least 48 hours notice is given.

§ 117.433 Bonfouca Bayou.

The draw of the S433 bridge, mile 7.0 at Slidell, shall open on signal except that from 9 p.m. to 5 a.m., the draw shall open on signal if at least 12 hours notice is given.

§ 117.435 Caddo Lake.

The draw of the Kansas City Southern railroad bridge, mile 26.4 near Mooringsport, shall open on signal if at least 24 hours notice is given.

§ 117.437 Colyell Bayou.

The Louisiana highway removable span bridge, mile 1.0 near Port Vincent, shall be removed for the passage of a vessel if at least 48 hours notice is given.

§ 117.439 Des Allemands Bayou.

The draws of the S631 bridge, mile 13.9 at Des Allemands, shall open on signal except that from 9 p.m. to 5 a.m., the draw shall open on signal if at least 12 hours notice is given.

§ 117.441 D'Inde Bayou.

The draw of the Southern Pacific railroad bridge, mile 4.3 Defense Plant Corporation, Cities Service Refining Corporation Agent, shall open on signal if at least 72 hours notice is given.

§ 117.443 DuLarge Bayou.

The draw of the Terrebonne Parish bridge, mile 23.2 near Theriot, shall open on signal except that from 9 p.m. to 5 a.m., the draw shall open on signal if at least 12 hours notice is given.

§ 117.445 Franklin Canal.

The draw of the Chatsworth bridge, mile 4.8 at Franklin, shall open on signal from 5 a.m. to 9 p.m. From October 1 through January 31 from 9 p.m. to 5 a.m., the draw shall open on signal if at least three hours notice is given. From February 1 through September 30 from 9 p.m. to 5 a.m., the draw shall open on signal if at least 12 hours notice is given.

§ 117.447 Grand Cabahanosse Bayou.

The draw of the S70 bridge, mile 7.6 near Paincourtville, shall open on signal if at least 24 hours notice is given.

§ 117.449 Grosse Tete Bayou.

(a) The draw of the Texas and Pacific railroad bridge, mile 14.7 at Grosse Tete, need not open for the passage of vessels.

(b) The removable span of the S377 bridge, mile 15.3 near Rosedale, shall be removed for the passage of a vessel if at least 48 hours notice is given.

§ 117.451 Gulf Intracoastal Waterway.

(a) The draw of the Harvey Canal Route, mile 2.8 at Harvey, shall open on signal except that from 6:30 a.m. to 8:30 a.m. and from 3:45 p.m. to 5:45 p.m., Monday through Friday excluding holidays, the draw need not open for the passage of vessels.

(b) The draw of the Louisiana highway bridge, mile 243.8 west of Harvey Canal Locks, shall open on signal when more than 50 feet vertical clearance is required, if at least four hours notice is given to the Louisiana Department of Highways, District Maintenance Engineer at Lake Charles.

§ 117.453 Gulf Intracoastal Waterway, Houma Navigation Canal, Bayou La Carpe, and Bayou Terrebonne, Houma.

The draws of the bridges across the Gulf Intracoastal Waterway at East Part Avenue, mile 57.6, East Main Street, mile 57.7, and Bayou Dularge, mile 59.9, the Houma Navigation Canal at State Highway 661, mile 36.0, Bayou La Carpe at State Highway 661, mile 7.5, and Bayou Terrebonne, mile 35.5 at Daigleville, shall open on signal, except that the draw need not open for the passage of vessels, Monday through Friday, except holidays, from 7 a.m. to 8:30 a.m. and 4:30 p.m. to 6 p.m.

§ 117.455 Houma Canal.

The draw of the S3197 bridge, mile 1.7 at Houma, shall open on signal except that from 9 p.m. to 5 a.m., the draw shall open on signal if at least 12 hours notice is given.

§ 117.457 Houston River.

The draw of the Kansas City Southern Railroad bridge, mile 5.2 near Lake Charles, shall open on signal if at least 24 hours notice is given.

§ 117.459 Inner Harbor Navigation Canal, New Orleans.

The draws of the New Seabrook bridge, mile 3.4 and the Danziger bridge, mile 5.4, at Chef Menteur Highway (US90) shall open on signal except that from 7 a.m. to 8:30 a.m. and 5 p.m. to 6:30 p.m., Monday through Friday, the draws need not open.

§ 117.461 Lacassine Bayou.

The draws of S14 bridge, mile 17.0, and the Southern Pacific railroad bridge, mile 20.4, both near Hayes, shall open on signal if at least 24 hours notice is give.

§ 117.463 Lacombe Bayou.

The draw of the US190 bridge, mile 6.8 at Lacombe, shall open on signal if at least 48 hours notice it given.

§ 117.465 Lafourche Bayou.

(a) The draws of the US90–S1 bridge, mile 58.2, Lafourche Parish bridge, mile 58.7, all at Raceland; and the S649 bridge, mile 66.1 at Lafourche, shall open on signal if at least six hours notice is given.

(b) The draws of the Southern Pacific railroad bridge, mile 69.0 at Lafourche, shall open on signal if at least 48 hours notice is given.

(c) The draws of the S20 bridge, mile 73.4 at Thibodaux, and all bridges upstream thereof need not open for the passage of vessels.

§ 117.467 Lake Pontchartrain.

(a) The south draws of the S11 and the Southern Railway bridges near New Orleans, shall open on signal if at least 48 hours notice it given. In case of emergency, the draws shall open within 12 hours and shall be kept in condition for immediate operation until the emergency is over.

(b) The draws of the Greater New Orleans Expressway Commission causeway, north bascule spans, shall open on signal if at least three hours notice it given.

§ 117.469 Liberty Bayou.

The draw of the S433 bridge, mile 2.0 at Slidell, shall open on signal except that from 9 p.m. to 5 a.m. the draw shall open on signal if at least 12 hours notice is given.

§ 117.471 Little Black Bayou.

The draw of the Southern Pacific railroad bridge, mile 1.3 at Southdown, need not open for the passage of vessels.

§ 117.473 Little River.

The draw of the Louisiana and Arkansas railroad bridge, mile 12.1 at Archie, shall open on signal if at least 12 hours notice is given.

§ 117.475 Little (Petit) Caillou Bayou.

The draws of the S58 bridge, mile 25.7 at Sarah, the Terrebonne Parish (Smith River) bridge, mile 26.6 near Montegut, the Terrebonne Parish (Duplantis) bridge, mile 29.9 near Bourg, and the S24 bridge, mile 33.7 at Petit Caillou, shall open on signal except that from 9 p.m. to

5 a.m., the draws shall open on signal if at least 12 hours notice is given.

§ 117.477 Lower Atchafalaya River.

The draw of the St. Mary Parish bridge, mile 26.8 at Patterson, shall open on signal from 5 a.m. to 9 p.m., and from October 1 through January 31 from 9 p.m. to 5 a.m., if at least three hours notice is given, and from February 1 through September 30 from 9 p.m. to 5 a.m., the draw shall open on signal if at least 12 hours notice is given.

§ 117.479 Macon Bayou.

The draw of the S4 bridge, mile 44.8 near Winnsboro, shall open on signal if at least 24 hours notice is given.

§ 117.481 Nezpique Bayou.

The draw of the S97 bridge, mile 7.0 near Jennings, shall open on signal if at least 48 hours notice is given.

§ 117.483 Ouachita River.

The draws of the S8 bridge, mile 57.5 at Harrisonburg, and the US165 bridge, mile 110.1 at Columbia, shall open on signal if at least a one-hour notice is given.

§ 117.485 Patout Bayou.

The draw of the S83 bridge, mile 0.4 at Weeks, shall open on signal except that from 9 p.m., to 5 a.m., the draw shall open on signal if at least 12 hours notice is given.

§ 117.487 Plaquemine Bayou.

The draws of the Texas and Pacific railroad bridge, mile 10.5 at Plaquemine, and S1 bridge, mile 10.5 at Plaquemine, need not open for the passage of vessels.

§ 117.489 Brule Bayou.

(a) The draw of the Southern Pacific railroad bridge, mile 5.1 near Midland, shall open on signal if at least 24 hours notice is given.

(b) The draw of the S91 bridge, mile 8.0 at Estherwood, shall open on signal from 5 a.m. to 9 p.m., if at least four hour notice is given. From 9 p.m. to 5 a.m., the draw shall open on signal if at least 12 hours notice is given.

§ 117.491 Red River.

The draws of all bridges from mile 66.0 through mile 283.1 shall open on signal if at least 48 hours notice is given. The draws of the bridges need not open for a vessel that arrives at any of these bridges more than two hours after the time specified in the notice, unless a second notice of at least 48 hours is given. The draws of the bridges above mile 283.1 need not open for the pasage of vessels.

§ 117.493 Sabine River.

The draws of the Southern Pacific railroad bridge, mile 19.3 near Echo, the Kansas City Southern railroad bridge, mile 36.2 near Ruliff, and the S7 bridge, mile 40.8, at Starks shall open on signal if at least 24 hours notice is given.

§ 117.495 Superior Oil Canal.

The draw of the S82 bridge, mile 6.3 in Cameron Parish, shall open on signal except that from 9 p.m. to 5 a.m., the draw shall open if at least 12 hours notice is given.

§ 117.497 Stumpy Bayou.

The removable span of the Louisiana highway bridge, mile 1.0 near Weeks Island, shall be removed for the passage of a vessel if at least six days notice is given.

§ 117.499 Tante Phine Pass.

The draw of the Tidewater Associated Oil Company bridge, mile 7.6 near Venice, shall open on signal if at least 24 hours notice is given.

§ 117.501 Teche Bayou.

(a) The draws of all drawbridges, except those listed in paragraphs (d) and (e) of this section, shall open on signal from 5 a.m. to 9 p.m.

(b) The bridges listed in this paragraph shall open on signal from October 1 through January 31 from 9 p.m., to 5 a.m., if at least three hours notice is given and from February 1 through September 30, if at least 12 hours notice is given.

St. Mary Parish bridge, mile 3.9 at Calumet
St. Mary Parish bridge, mile 11.8 at Centerville
S3069 bridge, mile 17.2 at Franklin
S322 bridge, mile 19.8 at Sterling
S323 bridge, mile 22.3 at Oaklawn
St. Mary Parish bridge, mile 27.0 at Baldwin
S324 bridge, mile 32.5 at Charenton
S670 bridge, mile 37.0 at Adeline
St. Mary Parish bridge, mile 38.9 at Sorell
S671 bridge, mile 41.8 at Jeanerette
S671 bridge, mile 43.5 at Jeanerette
S320 bridge, mile 48.7 at Oliver
S37 bridge, mile 52.5 at New Iberia
S86 bridge, mile 53.0 at Loreauville
S3156 bridge, mile 53.3 at New Iberia
S344 bridge, mile 56.7 at New Iberia

(c) The bridges listed in this paragraph shall open on signal from 9 p.m. to 5 a.m., if at least 12 hours notice is given.

Iberia Parish bridge, mile 58.0 at New Iberia
Iberia Parish bridge, mile 60.0 at New Iberia
Missouri Pacific railroad bridge, mile 61.0 at Loreauville
S344 bridge, mile 62.5 at Loreauville
S86 bridge, mile 69.0 at Daspit
St. Martin Sugar Cooperative railroad bridge, mile 77.7 at Loreauville

(d) The draws of the S96 bridge, mile 75.2 at St. Martinville, and the S350 bridge, mile 82.0 at Parks shall open on signal if at least 24 hours notice is given.

(e) The draws of the S31 bridge, mile 87.5 at Ruth, and the S31 bridge, mile 90.5 at Breaux Bridge, and the Southern Pacific railroad bridge, mile 91.0 at Breaux Bridge, shall open on signal if at least 48 hours notice is given.

§ 117.503 Tensas River.

(a) The draw of the Missouri Pacific railroad bridge, mile 27.2 at Clayton, shall open on signal from May 1 through December 31 during normal river stages if at least 12 hours notice is given to the Dispatcher, Missouri Pacific Railroad Little Rock, Arkansas. During high-water periods the District Commander may require the constant attendance of a drawtender, and the draw shall open on signal during such periods.

(b) The draws of the S15 bridge, mile 27.3 at Clayton, and the S128 bridge, mile 61.0 at New Light, shall open on signal if at least 48 hours notice is given.

§ 117.505 Terrebonne Bayou.

(a) The draw of the S24 bridge, mile 28.8 near Presquille Isle, shall open on signal if at least 24 hours notice is given.

(b) The draw of the S3087 bridge, mile 33.9 at Prospect, shall open on signal except that from 9 p.m. to 5 a.m., the draw shall open on signal if at least 12 hours notice is given.

§ 117.507 Tigre Bayou.

The draw of the S330 bridge, mile 2.3 at Delcambre shall open on signal except that from 9 p.m. to 5 a.m. the draw shall open on signal if at least 12 hours notice is given.

§ 117.509 Vermilion River.

(a) The draws of the bridges listed below shall open on signal from 5 a.m. to 9 p.m. From 9 p.m. to 5 a.m., the draw shall open on signal if at least 12 hours notice is given.

S82 bridge, mile 22.4 at Perry
S14 bridge, mile 25.4 at Abbeville
S14 bridge, mile 26.0 at Abbeville
Vermilion Parish bridge, mile 34 2 three miles south of Milton
S92 bridge, mile 37.6 at Milton
S733 bridge, mile 41.0 at Eloi Broussard
S3073 bridge, mile 44.9 at New Flanders

(b) The draw of the S182 bridge, mile 49.0 at Lafayette, shall open on signal if at least 48 hours notice is given.

§ 117.511 West Pearl River.

(a) The draw of the Southern Railway bridge, mile 22.1 at Pearl River Station, shall open on signal if at least six hours notice is given.

(b) The draw of the US90 bridge, mile 7.9 near Pearlington, shall open on signal except that from 9 p.m. to 5 a.m. the draw shall open on signal if at least 12 hours notice is given.

Maine

§ 117.521 Back Cove.

The draw of the Canadian National railroad bridge, mile 0.2 at Portland, shall open on signal if at least 24 hours notice is given.

§ 117.523 Back River.

The draw of the Maine highway bridge, mile 4.6, between Hodgdon and Barter Island at Boothbay, shall open on signal from June 1 through October 31 except that from 5 p.m. to 8 a.m. the draw shall open on signal if notice was given to the drawtender from 8 a.m. to 5 p.m. From November 1 through May 31 the draw shall open on singal if at least 24 hours notice is given to the drawtender or to the Maine State Highway Commission at Augusta.

§ 117.525 Kennebec River.

(a) The draw of the highway-railroad bridge, mile 14.0, between Bath and Woolwich, shall open on signal:

(1) Except that from 6:30 a.m. to 7:30 am. and from 3:45 p.m. to 4:45 p.m., Monday trhough Friday, except legal holidays observed in the locality, the draw need not open. However, loaded commercial fishing vessels proceeding upstream shall be passed at any time.

(2) From 3 a.m. to 7 p.m., from April 15 through June 15 and from October 1 through November 15; and at all times from June 16 through September 30.

(3) From April 15 through June 15 and October 1 through November 15 if at least four hours notice is given from 7 p.m. to 3 a.m.

(4) From February 15 through April 14 and November 16 through December 15 if at least four hours notice is given.

(5) From December 16 through February 15 if at least 24 hours notice is given.

(b) The draw of the Maine highway bridge, mile 27.1, between Richmond and Dresden shall open on signal except from 9 p.m. to 5 a.m. the draw shall open on signal if notice is given to the drawtender from 5 a.m. to 9 p.m.

§ 117.527 Kennebunk River.

The draw of the Maine Dock Square highway bridge, mile 1.0, between Kennebunk and Kennebunkport, shall open on signal except that from 5 p.m. to 7 a.m. the draw shall open on signal if notice is given to the drawtender from 7 a.m. to 5 p.m.

§ 117.529 Narraguagus River.

The draw of the highway bridge, mile 1.8 at Milbridge, shall open on signal if at least 24 hours notice if given to the Maine State Highway Commission, Division Office at Ellsworth.

§ 117.531 Presumpscot River.

The draw of the US1 bridge, mile 0.0, between Portland and Falmouth, need not open for the passage of vessels.

§ 117.533 Sheepscot River.

The draws of the Maine highway bridge, mile 14, and the Maine Central railroad bridge, mile 15.0, both between Wiscasset and North Edgecombe, need not open for the passage of vessels.

§ 117.535 Taunton River.

The draw of the Maine highway bridge, mile 4.3, between Hancock and Sullivan, need not open for the passage of vessels.

Maryland

§ 117.541 Baltimore Harbor-Patapsco River.

(a) The draw of the Hanover Street S2 bridge, mile 12.0 across the Middle Branch of the Patapsco River at Baltimore, shall open on signal from 5 a.m. to 6:30 a.m., 9:30 a.m. to 4 p.m. and 6 p.m. to 9 p.m. The draw need not open from 6:30 a.m. to 9:30 a.m. and 4 p.m. to 6 p.m. When a vessel desires to pass the draw from 9 p.m. to 5 a.m., notice shall be given to the superintendent of the bridge by telephone or otherwise, either at the bridge before 9 p.m. or at this residence thereafter. If the notice is given between the hours of 5 a.m. and 9 p.m., or if at least one-half hour has elapsed since it was given, the draw shall open promptly at the time specified.

(b) The draw of the Western Maryland railroad bridge, mile 12.5 across the Middle Branch of the Patapsco River at Baltimore, shall open on signal from 7 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday, except legal holidays. At all other times the draw shall open if at least six hours notice is given.

(c) Marine firefighting equipment and pollution control vessels shall be passed as soon as possible but in no event more than 15 minutes after notification that such an opening is required.

§ 117.543 Bear Creek.

(a) The draws of the Baltimore Country Revenue Authority highway toll bridges, miles 1.5 and 2.1 between Dundalk and Sparrows Point, shall open on signal except that from April 16 through November 15 from 12 midnight to 8 a.m., except Saturdays, Sundays, and Federal and State holidays, at least a one-half hour notice is required.

(b) The draw of the Baltimore County highway bridge, mile 3.4 at Wise Avenue between Dundalk and Sparrows Point, shall open on signal if at least four hours notice is given.

§ 117.545 Bohemia River.

(a) The draw of the S213 bridge, mile 4.0 at Cayots, shall open on signal:

(1) From May 30 through September 30 from sunrise to sunset on Saturdays, Sundays, and Federal and State holidays.

(2) From May 30 through September 30 from sunrise to sunset and from October 1 through May 29 from 7 a.m. Monday through 7 p.m. Friday if at least three hours notice is given.

(3) From October 1 through May 29 from 7 p.m. Friday through 7 a.m. Monday, the draw need not open unless the request was made before 7 p.m. Friday.

§ 117.547 Bush River.

The draw of the AMTRAK bridge, mile 6.8 at Perryman, shall open on signal from June 1 through September 30 from 10 a.m. to 5 p.m., twice on Saturdays and twice on Sundays if at least 24 hours notice is given to the Bush River Boat Club. The draw need not open at all other times.

§ 117.549 Cambridge Harbor.

The draw of the S342 bridge, mile 0.1 at Cambridge, shall open on signal from 6 a.m. to 8 p.m., except that from 12 noon to 1 p.m., Monday through Friday, the draw need not open. The draw need not open from 8 p.m. to 6 a.m.

§ 117.551 Chester River.

The draw of the S213 bridge, mile 26l.8 at Chestertown, shall open on signal from April 1 through September 30 from 6 a.m. to 6 p.m. At all other times the draw shall open on signal if at least six hours notice is given.

§ 117.553 Choptank River.

The draw of the CONRAIL bridge, mile 50.9 at Denton shall open on signal from May 30 through September 30 from sunrise to sunset and at all other times if at least four hours notice is given.

§ 117.555 Curtis Creek.

The draw of the I-695 bridge, mile 0.9 at Baltimore, shall open on signal if at least a one-hour notice is given to the Maryland Transportation Authority in Baltimore.

§ 117.557 Dorsey Creek.

The draws of the Naval Academy highway bridge, mile 0.3 at Annapolis,

and the Maryland highway bridge, mile 0.4 at Annapolis, need not open for the passage of vessels.

§ 117.559 Kent Island Narrows.

(a) The draw of the US 301 bridge, mile 1.0 at Kent Island Narrows shall open on signal from November 1 through April 30, from 6 a.m. to 6 p.m. The draw need not open from 6 p.m. to 6 a.m.

(b) From May 1 through October 31:

(1) On Monday (except Monday holidays) through Thursday, the drawbridge shall open for the passage of vessel traffic on the hour from 7 a.m. to 7 p.m., but need not open at any other time.

(2) On Friday, the drawbridge shall open for the passage of vessel traffic on the hour from 6 a.m. to 3 p.m. and at 8 p.m., but need not open at any other time.

(3) On Saturday, the drawbridge shall open for the passage of vessel traffic at 6 a.m., 9 a.m., and 12 noon, and on the hour from 3 p.m. to 8 p.m., but need not open at any other time.

(4) On Sunday and legal holidays falling on Monday, the drawbridge shall open for the passage of vessel traffic on the hour from 6 a.m. to 1 p.m., and at 8 p.m., but need not open at any other time.

(5) The draw shall open at scheduled opening times only if vessels are waiting to pass, and at each opening the draw shall remain open for a sufficient period of time to allow passage of all waiting vessels.

(6) If a vessel is approaching the drawbridge and cannot reach the draw exactly on the hour, the drawtender may delay the hourly opening up to ten minutes past the hour for the passage of the approaching vessel and any other vessels that are waiting to pass.

(c) All public vessels of the United States, and those State or local vessels on public safety missions, shall be passed at any time. The opening signal from these vessels is five or more blasts of a whistle or horn.

§ 117.561 Marshyhope Creek.

The draw of the S14 bridge, mile 5.8 at Brookview, need not open for the passage of vessels. However, the operating machinery shall be maintained in a serviceable condition.

§ 117.563 Miles River.

The draw of the S370 bridge, mile 10.0 at Easton, shall open on signal from sunrise to sunset. A vessel wishing to pass the bridge between sunset and sunrise will notify the drawtender of the time at which it is desired to pass and the draw of the bridge shall open as soon as practicable thereafter.

§ 117.565 Patuxent River.

The draw of S231 bridge, mile 24.4 at Benedict, shall open on signal except that from 6 p.m. to 6 a.m. the draw shall open on signal if notice is given to the Toll Captan at the Administration Building at the east end of the bridge before 6 p.m.

§ 117.567 Pocomoke River.

(a) The draw of the US113 bridge, mile 15.6 at Pocomoke City, shall open on signal except that the draw need not open from 10 p.m. to 6 a.m.

(b) The draw of the S12 bridge, mile 29.9 at Snow Hill, shall open on signal if at least five hours notice is given.

§ 117.569 Sinepuxent Bay.

The draw of the US50 bridge, mile 0.5 at Ocean City, shall open on signal, except that from October 1 through April 30 at least three hours notice is required from 6 p.m. to 6 a.m., and from May 25 through September 15, from 9 a.m. to 10 p.m. the draw shall open at 25 minutes after and 55 minutes after the hour for a maximum of five minutes to permit accumulated vessels to pass.

§ 117.571 Spa Creek.

The draw of the S181 bridge, mile 0.4 at Annapolis, shall open on signal except that from 7:30 a.m. to 9 a.m. and 4:30 p.m. to 6 p.m., Monday through Friday, except Federal and State holidays, the draw need not open for the passage of vessels, and from May 1 through November 1, from 10 a.m. to 5 p.m. on Saturdays and Sundays, the draw need not open except on the hour and half hour if any vessels are waiting to pass. Public vessels of the United States and vessels in an emergency involving danger to life or property shall be passed at any time.

§ 117.573 Stoney Creek.

The draw of the S173 bridge, mile 0.9 at Riviera Beach, shall open on signal except that from 6:30 a.m. to 9 a.m. and from 4 p.m. to 6 p.m., Monday through Friday, except Federal and State holidays, the draw need open only at 7:30 a.m. and 5 p.m. if any vessels are waiting to pass. Public vessels of the United States and vessels in an emergency involving danger to life or property shall be passed at any time.

§ 117.575 Susquehanna River.

The draw of the bridge, mile 1.0 at Havre de Grace, shall open on signal if at least 24 hours notice is given.

§ 117.577 Weems Creek.

The draw of the S437 bridge, mile 0.7 at West Annapolis, shall open on signal from sunrise to sunset from May 1 through September 30. At all other times the draw shall open on signal if at least five hours notice is given.

§ 117.579 Wicomico River (North Prong).

The draw of the Main Street (US50) bridge, mile 22.4 at Salisbury, shall open on signal except that from 8 a.m. to 9 a.m., 12 noon to 1 p.m., and 4:30 p.m. to 5:30 p.m. the draw need not open for the passage of vessels.

Massachusetts

§ 117.585 Achushnet River.

The draws of the US6 bridge, mile 0.0, between New Bedford and Fairhaven, shall open on signal except that from 6:30 a.m. to 8:30 a.m., 11:30 a.m. to 1:30 p.m., and 4 p.m. to 6 p.m. on all days other than Sundays and legal holidays, the draws need not open for vessels drawing less than 15 feet of water. From May 1 through September 30 from 9 p.m. to 5 a.m. and from October 1 through April 30 from one hour after sunset to one hour before sunrise the draw shall open on signal if at least two hours notice is given. Public vessels of the United States and state and local vessels used for public safety shall be passed as soon as possible.

§ 117.587 Apponaganset River.

The draw of the Padanarum highway bridge, mile 1.0 at South Dartmouth, shall open on signal from May 1 through October 31 from sunrise to 7:30 a.m., 9:30 a.m., 11:30 a.m., 1 p.m., 4:30 p.m., 6:30 p.m. and one hour after sunset. At all other times the draw shall open on signal if at least six hours notice is given. Public vessels of the United States and state and local vessels used for public safety shall be passed as soon as possible.

§ 117.589 Cape Cod Canal.

(a) The lift span of the Buzzards Bay railroad bridge, mile 0.7 at Bourne, will normally be kept in the raised (open) position except for the passage of trains or for maintenance. No signal is required if the lift span is raised.

(b) If the lift span is in other than the raised position, the opening signal shall be one prolonged and one short blast.

(c) Signals to be sounded from the bridge are:

(1) Immediately preceding the raising of the drawspan: One prolonged blast.

(2) Immediately preceding the lowering of the drawspan: Two prolonged blasts.

(3) When a vessel has sounded the opening signal and the drawspan cannot be raised immediately: Five short blasts in a rapid succession.

(4) When the draw is closed and visibility is reduced in foggy weather:

Five short blasts in rapid succession every two minutes.

§ 117.591 Charles River.

(a) The draw of the Charlestown bridge, mile 0.4 at Boston, need not open for the passage of vessels.

(b) The draws of the Boston & Maine railroad bridge, mile 0.8 at Boston, shall open on signal except that from 6:15 a.m. to 9:10 a.m. and 4:15 p.m. to 7:40 p.m., except Sundays and legal holidays observed in the locality, the draws need not open for the passage of vessels.

(c) The draw of the Massachusetts Bay Transportation Authority (East Cambridge Viaduct) railroad bridge, mile 1.0 at Boston, need not open for the passage of vessels.

(d) The draw of the Metropolitan District Commission bridge, mile 1.0 at Boston, shall open on signal except that from 6:15 a.m. to 9:10 a.m. and 4:15 p.m. to 7:40 p.m., except Sundays and legal holidays observed in the locality, the draw need not open for the passage of vessels.

(e) The draw of the Commercial Avenue bridge across Lechmere Canal, mile 0.0 at Boston, need not open for the passage of vessels.

(f) The draw of the First Street bridge across Broad Canal, mile 0.0 at Boston, shall open on signal from October 1 through May 31, except that from Monday through Friday, except legal holidays, from 7:30 a.m. to 9 a.m., and 4:30 p.m. to 6 p.m. the draws need not open. From June 1 through September 30 the draw shall open on signal if at least 12 hours notice is given.

(g) The draws of the bridges across Broad Canal need not open for the passage of vessels.

(h) Public vessels of the United States and state and local vessels used for public safety shall be passed as soon as possible.

(i) When high tide occurs at the Charlestown Navy Yard within 45 minutes before or after 6:15 a.m to 9:10 a.m.; the draws of each bridge shall open for no longer than a 10-minute period for vessels which draw more than 12 feet of water. This 10-minute period is dictated by train traffic. Once a vessel has begun passage it shall be pased through each bridge, in turn, until it reaches its destination.

(j) Signals.

(1) The open signal is two prolonged blasts followed by two short blasts.

(2) The opening signal from vessels entitled to pass any bridge during a closed period is four prolonged blasts.

(3) The acknowledging signal when the draw shall open is three prolonged blasts.

(4) The acknowledging signal when the draw cannot open or is open and must close is two prolonged blasts.

§ 117.593 Chelsea River.

(a) All drawbridges across the Chelsea River shall open on signal. The opening signal for each drawbridge is two prolonged blasts followed by two short blasts and one prolonged blast.

(b) The acknowledging signal is three prolonged blasts when the draw shall open immediately.

(c) The acknowledging signal is two long blasts when the draw cannot open or is open and must close.

§ 117.595 Danvers River.

The draws of the US1 bridge, mile 0.0, the Boston and Maine railroad bridge, mile 0.0, and the Essex County bridge, mile 1.0, all at Salem, shall open on signal except that from 12 midnight to 8 a.m. the draws shall open as soon as possible after notice is given to the drawtenders, either at the bridges during the time the operators are on duty or at their residences thereafter.

§ 117.597 Dorchester Bay.

The draw of the William T. Morrisey Boulevard bridge, mile 0.0 at Boston, shall open on signal from April 16 through October 14, except that the draw need not open for the passage of vessels from 7:30 a.m. to 9 a.m., and from 4:30 p.m. to 6 p.m. except on Saturdays, Sundays, or legal holidays observed in the locality. From October 15 through April 15, the draw shall open on signal if at least 24 hours notice is given. Public vessels of the United States and state or local vessels used for public safety shall be passed as soon as possible.

§ 117.599 Fort Point Channel.

(a) The draws of the Northern Street bridge, mile 0.1 at Boston, shall open on signal, except that from 7 a.m. to 9 a.m., and 4:30 p.m. to 6:30 p.m., Monday through Friday, except legal holidays, the draw need not open except for vessels whose draft is less that 18 feet. From 8 p.m. to 6 a.m. the draw need not open for the passage of vessels. Public vessels of the United States and state or local vessels used for public safety shall be passed as soon as possible.

(b) The draws of the Congress Street bridge, mile 0.3, and the Sumner Street bridge, mile 0.4, both at Boston, need not open for the passage of vessels.

(c) The draws of the Dorchester Avenue bridge, mile 0.8, the Amtrak railroad bridge, mile 0.8, the Broadway bridge, mile 1.0, and the Dover Street bridge, mile 1.2, all at Boston, need not open for the passage of vessels.

§ 117.601 Malden River.

The draw of the US1 bridge, mile 0.3 between Medford and Everett, need not open for the passage of vessels.

§ 117.603 Manchester Harbor.

The draw of the Boston and Maine railroad bridge, mile 1.0 at Manchester, shall open on signal from April 1 through November 1 from 9 a.m. to 1 p.m., and 2 p.m. to 6 p.m. At all other times at least two hours notice is required from 6:45 a.m. to 3:45 p.m. and at least five hours notice is required from 3:45 p.m. to 6:45 a.m. The notice is to be given to the Chief Dispatcher, Boston and Maine railroad, Boston.

§ 117.605 Merrimack River.

(a) The draws of the US1 bridge, mile 3.4 at Newburyport, shall open on signal May 1 through October 31 from 6 a.m. to 10 p.m., and from November 1 through April 30 from 8 a.m. to 5 p.m. At all other times the draws shall open if at least a one-hour notice is given.

(b) The draw of the Boston and Maine railroad bridge, mile 3.4 at Newburyport, will nornmally be maintained in the open position. When the draw is in the closed position, a drawtender shall be on duty and the draw shall open on signal.

(c) The draws of the Essex County bridge, mile 5.8 at Newburyport, the Essex County bridge, mile 12.6 at Rocks Village, and Groveland bridge, mile 16.5 at Groveland, shall open on signal if at least two hours notice is given.

(d) Public vessels of the United States and state or local vessels used for public safety shall be passed through the draw of each bridge as soon as possible.

§ 117.607 Mitchell River.

(a) The draws of the US1 bridge, mile 1.4, and the Boston and Maine railroad bridge, mile 1.8, both at Boston, shall open on signal except that from 7:45 a.m. to 9 a.m., 9:10 a.m. to 10 a.m. and 5 p.m. to 6 p.m., except Sundays and on legal holidays, the draws need not open for the passage of vessels whose draft is less than 18 feet. Public vessels of the United States and state or local vessels used for public safety shall be passed at any time.

(b) The draws of the Wellington bridge, mile 2.5, and the General Lawrence bridge, mile 3.6, both at Boston, need not open for the passage of vessels.

§ 117.609 Mystic River.

The draw of the Granite Avenue bridge, mile 0.0 at Boston, shall open on signal from May 1 through October 31 and from November 1 through April 30

from 8 a.m. to 4 p.m. The draw shall open on signal from November 1 through April 30 from 4 p.m. to 8 a.m. if at least 24 hours notice is given. Public vessels of the United States and state or local vessels used for public safety shall be passed at any time.

§ 117.611 Neponset River.

The draws of the S3A bridge, mile 1.6 at Scituate, and the Plymouth County bridge, mile 3.0 at Norwell, shall open on signal from May 1 through October 31 if at least four hours notice is given. From November 1 through April 30 the draws shall open on signal if at least 24 hours notice is given.

§ 117.613 North River.

The draw of the US1 bridge, mile 0.1, between Newburyport and Plum Island, shall open on signal from April 1 through November 30 during daylight hours two hours before to two hours after each high tide. Daylight shall begin one half hour before sunrise and end one half hour after sunset and high tide shall occur one half hour later than the time of high tide for Portland as published by the National Oceanic and Atmoshperic Administration. At all other times the draws shall open on signal if at least three hours notice is given.

§ 117.615 Plum Island River.

The draw of the Summer (L) Street bridge, mile 0.2 at Boston, shall open on signal from 9:30 a.m. to 4 p.m., Monday through Saturday, and from 9:30 a.m. to 4 p.m. on Sunday from April 1 through October 3. At all other times the draw shall open on signal if at least 10 hours notice is given. Public vessels of the United States and state or local vessels used for public safety shall be passed as soon as possible.

§ 117.617 Reserve Channel.

The draw of the Bristol County bridge, mile 10.3 at Berkley, shall open on signal from May 1 through October 31 from 5 a.m. to 10 p.m. and from November 1 through April 30 from 6 a.m. to 6 p.m. At all other times the draw shall open on signal if at least a one-half hour notice is given.

§ 117.619 Taunton River.

The draw of the Bristol County bridge, mile 10.3, at Berkley shall open on signal from May 1 through October 31 from 5 a.m. to 10 p.m. and from November 1 through April 30 from 6 a.m. to 6 p.m. At all other times the draw shall open on signal if at least a one-half hour notice is given.

§ 117.621 Weymouth Fore River.

The draw of the S3 bridge, mile 3.5, between Quincy Point and Weymouth, shall open on signal, except that the draw need not open from 6:30 a.m. to 9 a.m. and 4:30 p.m. to 6:30 p.m., Monday through Friday, except legal holidays observed in the locality. However, the draw shall open at any time for public vessels of the United States, any vessel of state or municipal government vessels used for public safety and in case of emergency or during severe storm conditions.

Michigan

§ 117.625 Black River.

(a) The draws of the Military Street bridge, mile 0.3, and Seventh Street bridge, mile 0.5, both at Port Huron, shall open on signal:

(1) From May 1 through October 31 on Sundays and Federal holidays from 5:30 p.m. to 9 a.m.

(2) From May 1 through October 31, from 9 a.m. to 5:30 p.m., Monday through Saturday, except Federal holidays, only on the hour and half hour.

(3) From November 1 through November 30 and April 1 through April 30 from 8 a.m. to 4 p.m., and from 4 p.m. to 8 a.m., if at least three hours notice is given.

(4) From December 1 through March 31 if at least 24 hours notice is given.

(b) The draw of the Tenth Street bridge, mile 0.9 at Port Huron, shall open on signal:

(1) From May 1 through October 31 from 8 a.m. to 11 p.m. and from 11 p.m. to 8 a.m. if at least one hour notice is given.

(2) From April 1 through April 30 and November 1 through November 30 if at least three hours notice is given.

(3) From December 1 through March 31 if at least 24 hours notice is given.

(c) Notice requesting the opening of any of the Black River bridges may be given to the dispatcher of the Port Huron Police Department.

(d) Public vessels of the United States, state or local vessels used for public safety, and vessels in distress, shall be passed as soon as possible.

§ 117.627 Cheboygan River.

(a) The draw of the US23 bridge, mile 0.9 at Cheboygan, shall open on signal:

(1) From March 16 through May 15 and September 16 through December 14.

(2) From May 16 through September 15, Monday through Friday, from 6:12 p.m. to 7:18 a.m.; from 5:12 p.m. to 11:18 a.m. on Saturdays; and all day on Sundays.

(3) From May 16 through September 15, Monday through Friday, from 7:18 a.m. to 6:12 p.m., and on Saturdays from 11:18 a.m. to 5:12 p.m., the draw need open only from three minutes before to three minutes after the quarter hour and the three-quarters hour.

(4) From December 15 through March 15 if at least 24 hours notice is given to the Cheboygan Police Department.

(5) Public vessels of the United States, state or local vessels used public safety, and vessels in distress, shall be passed as soon as possible.

§ 117.629 Crooked River.

The draw of the S68 bridge, mile 29.6 at Alanson, shall open on signal except that from November 1 through May 15 the draw shall open on signal if at least eight hours notice is given. The draw may be left unattended in the open position.

§ 117.631 Detroit River (Trenton Channel).

The draw of the Wayne County bridge, mile 5.6 at Detroit, shall open on signal except that from December 15 through March 15 the draw shall open on signal if at least five hours notice is given.

§ 117.633 Grand River.

(a) The draw of the Grand Trunk Western railroad bridge, mile 2.8 at Grand Haven, shall open on signal except that from December 15 through March 15 the draw shall open on signal if at least 24 hours notice is given.

(b) The draw of the US31 bridge, mile 2.9, at Grand Haven shall open on signal:

(1) From March 16 through May 14, and from October 15 through December 14.

(2) From May 15 through October 14 from 9:03 p.m. to 6:03 a.m.

(3) From May 15 through October 14, from 6:03 a.m. to 9:03 p.m., from three minutes before to three minutes after the hour and half hour.

(4) From December 15 through March 15 if at least 24 hours notice is given.

(c) The draw of the Grand Trunk Western railroad bridge, mile 0.2 across the mouth of Spring Lake shall open on signal except that from December 15 through March 15 the draw shall open on signal if at least 24 hours notice is given.

(d) Public vessels of the United States, state or local vessels used for public safety, and vessels in distress shall be passed through the draw of each bridge as soon as possible.

§ 117.635 Keweenaw Waterway.

The draw of the US41 bridge, mile 16.0 between Houghton and Hancock, shall open on signal except that from January 1 through March 15 the draws shall open

on signal if at least 24 hours notice is given.

§ 117.637 Manistee River.

The draws of the Maple Street bridge, mile 1.1, the Smith Street bridge, mile 1.4 and the Chessie System railroad bridge, mile 1.5, all at Manistee, shall open on signal except that from January 1 through March 31 the draws shall open on signal if at least 24 hours notice is given.

§ 117.639 Ontonagon River.

The draw of the S64 bridge, mile 0.3 at Ontonagon, shall open on signal from March 16 through December 15 from 7 a.m. to 11 p.m., and from 11 p.m. to 7 a.m. if at least one hours notice is given. From December 16 through March 15 the draw shall open on signal if at least 24 hours notice is given.

§ 117.641 Pine River (Charlevoix).

The draw of the US31 bridge, mile 0.3 at Charlevoix, shall open on signal except that from 6 a.m. to 6 p.m. the draw shall open on signal from three minutes before to three minutes after the hour and half hour if any vessels are waiting to pass. Public vessels of the United States, state or local vessels used for public safety, and vessels in distress shall be passed through the draw of each bridge as soon as possible.

§ 117.643 Pine River (St. Clair).

The draw of the S29 bridge, mile 0.1 at St. Clair, shall open on signal from April 1 through November 30 from 2 a.m. to 8 a.m. and from 8 a.m. to 2 a.m. on the hour and one-half hour. From December 1 through March 31 the draw shall open on signal if at least 24 hours notice is given. Public vessels of the United States, state on local vesels used for public safety, and vessels in distress shall be passed through the draw of each bridge as soon as possible.

§ 117.645 Rouge River (Short Cut Canal).

(a) The draws of the Jefferson Avenue bridge, mile 1.1, and the Fort Street bridge, mile 2.2, both at Detroit, shall open on signal from March 16 through December 14 and from December 15 through March 15 from 8:30 a.m. to 4 p.m., 4:40 p.m. to 5 p.m., and 6 p.m.to 7:30 a.m., Monday through Friday, and on Saturday, Sundays, and Federal holidays.

(1) From December 15 through March 15 the draws need not open from 7:30 a.m. to 8:30 a.m., 4 p.m. to 4:40 p.m., and 5 p.m. to 6 p.m., Monday through Friday, except Federal holidays.

(2) Public vessels of the United States, state or local vessels used for public safety, and vessels in distress shall be passed through each draw as soon as possible.

§117.647 Saginaw River.

(a) The draws of the Detroit and Mackinac railroad bridge, mile 2.5 at Bay City, the CONRAIL railroad bridge, mile 4.4 at Bay City and the Chessie System railroad bridge, mile 18.0 at Saginaw, shall open on signal exept that from December 16 through March 15 the draws shall open on signal if at least 12 hours notice is given.

(b) The draws of the Independence Street bridge, mile 3.3, Third Street bridge, mile 4.7, Veterans Memorial bridge, mile 5.0, and Lafayette Street bridge, mile 6.2, all in Bay City, shall open on signal from March 16 thrugh December 15, execpt that:

(1) From 6:30 a.m. to 8:30 a.m. and 3:30 p.m. to 5:30 p.m., except Sundays, the draws need not open for the passage of vesseles of less than 50 gross tons.

(2) From 7:30 a.m. to 8:30 a.m. and 4:30 p.m. to 5:30 p.m., except on Sundays and Federal holidays, the draws need not open for the passage of downbound vessels of over 50 gross tons.

(3) From 8 a.m. to 8 p.m., on Saturdays, Sundays, and Federal holidays, the draws of the Independence Street, Veterans Memorial, and Lafayette Street bridges need not open for the passage of pleasure craft except on the hour and half hour.

(4) From December 16 through March 15 the draws of these bridges shall open on signal if at least 12 hours notice is given.

(c) The draw of the I–75 bridge, mile 14.5 at Zilwaukee, shall open on signal except that from December 16 through March 15 the draw shall open on signal if at least 12 hours notice is given.

(d) the draw of the Six Avenue bridge, mile 16.5, at Zilwaukee shall open on signal from April 1 through November 15 from 7 a.m. to 11 p.m., and at all other times if at least three hours notice is given.

(e) The draws of all bridges between the Sixth Avenue bridge, mile 17.1, and the Grand Trunk Western railroad bridge, mile 19.2, shall open on signal if at least three hours notice is given.

(f) Public vessels of the United States, state or local vessels used for public safety, and vessels in distress shall be passed through each draw as soon as possible.

(g) The draw of the Grand Trunk Western railroad bridge, mile 19.2, need not open for the passage of vessels.

§ 117.649 St. Joseph Harbor.

The draw of the US31 bridge, mile 0.9 at St. Joseph, shall open on signal except that from December 15 through March 1 the draw shall open on signal if at least 12 hours notice is given.

§ 117.651 St. Joseph River.

The draws of the US33 (Blossomland) bridge, mile 0.9, and the BL–94 (Bicentennial) bridge, mile 1.0, both at St. Joseph, shall open on signal:

(a) From March 1 through May 14, October 1 through December 15, and from 8 p.m. to 7 a.m. from May 15 through September 30.

(b) From 7 a.m. to 8 p.m. from May 15 through September 30.

(1) The draws of the Blossomland bridge need open only from three minutes before to three minutes after the hour and half hour.

(2) The draws of the Bicentennial bridge need open only from three minutes before to three minutes after the quarter and three-quarter hour.

(c) From December 16 through the last day of February both draws shall open on signal if at least 12 hours notice is given.

(d) Public vessels of the United States, state and local government vessels used for public safety, commercial vessels, and vessels in distress, shall be passed through either draw as soon as possible.

§ 117.653 St. Mary's Falls Canal.

The draw of the Sea Line railroad bridge, mile 1.0 at Sault Ste. Marie, shall be maintained in the open position during the navigation season, except when a train is approaching and crossing this bridge or for maintenance. Bridge operators shall not give precedence to railway traffic and shall not close the bridge against an upbound vessel after lock gates are open and the vessel is proceeding toward the bridge, nor against a downbound vessel, 1,200 feet or less west of the bridge, unless said vessel is moored at either canal pier awaiting its turn to take position at lock approaches.

§ 117.655 Thunder Bay River.

The draw of the US23 bridge, mile 0.3 at Alpena, shall open on signal if at least three hours notice is given to the Dispatcher, Police Department, City of Alpena, Michigan.

Minnesota

§ 117.661 Duluth Ship Canal (Duluth-Superior Harbor).

(a) The draw of the Duluth Ship Canal bridge, mile 0.1 at Duluth, shall open on signal except that from January 1 through March 15 the draw shall open on signal if at least 24 hours notice is given. The opening signal is one prolonged blast, one short blast, one prolonged blast, one short blast. All

other signals shall be those set forth in § 117.9.

(1) If the Duluth Ship Canal Bridge is disabled, the bridge authorities must give incoming and outgoing vessels timely and dependable notice, by tug service if necessary, so that they will not attempt to enter the canal.

(2) Vessels must be given precedence over highway or railway traffic at all times.

§ 117.663 Minnesota River.

The draws of the bridges from the mouth through LeSueur shall open on signal if at least 24 hours notice is given. The draws of the bridge above LeSueur need not open for the passage of vessels.

§ 117.665 Red River of the North.

The draws of the bridges need not open for the passage of vessels.

§ 117.667 St. Croix River.

(a) The draws of the Burlington Northern railroad bridge, mile 0.2, and the US–16–61 bridges, both at Prescott, and the Chicago and Northwestern bridge, mile 17.3, at Hudson, shall open on signal except that from December 15 through March 1 the draws shall open on signal if at least 24 hours notice is given.

(b) The draw of the S36 bridge, mile 23.3, at Stillwater, shall open on signal:

(1) From May 15 through October 15 from Monday through Friday, except Federal holidays, as follows:

8 a.m. to 11 a.m. every hour on the hour
11 a.m. to 3 p.m. every hour and half hour
3 p.m. to 6 p.m. every hour on the hour
6 p.m. to 10 p.m.every hour and half hour
10 p.m. to 8 a.m. if at least two hours notice is given.

(2) On Saturdays, Sundays, and Federal holidays, as follows:

8 a.m. to 11 a.m. every hour and half hour
11 a.m. to 8 p.m. every hour on the hour
8 p.m. to midnight every hour and half hour
Midnight to 8 a.m. if at least two hours notice is given.

(3) From October 16 through May 14 if at least 24 hours notice is given.

(c) The draw of the Soo Line railroad bridge, mile 40.7, at Otisville, need not open for the passage of vessels.

§ 117. St. Louis River.

(a) The draws of the Burlington Northern railroad bridges, Minnesota Draw, mile 5.7, and Wisconsin Draw, mile 5.7, the Grassy Point Bridge, mile 8.0, and the Arrowhead Bridge, mile 8.7, shall open on signal except that from January 1 through March 15 the draw shall open on signal if at least 24 hours notice is given.

(b) The draws of the Duluth Missabe and Iron Ridge Railway bridge (Transfer Bridge), mile 16.3, need not open for the passage of vessels.

§ 117.671 Upper Mississippi River.

(a) The draws of all bridges between Lock and Dam No. 2, mile 815.2, and Lock and Dam No. 10, mile 615.1, shall open on signal except that from December 15 through March 1 the draws shall open on signal if at least 24 hours notice is given.

(b) The draws of all bridges between Lock and Dam No. 1, mile 847.6, and Lock and Dam No. 2, mile 815.2, shall open on signal except that from December 15 through March 1 the draws shall open on signal if at least 12 hours notice is given.

Mississippi

§ 117.675 Back Bay of Biloxi.

The draw of the S15 bridge, mile 3.0 at Biloxi shall open on signal if at least six hours notice is given.

§ 117.677 Big Sunflower River.

The draw of the Columbus and Greenville railroad bridge, mile 96.1 at Baird, shall open on signal if at least four hours notice is given.

§ 117.679 Escatawpa River.

The draw of the S63 bridge, mile 1.0 at Moss Point, shall open on signal except that from 6 a.m. to 6:45 a.m., 7 a.m. to 7:30 a.m., 3:25 p.m. to 3:45 p.m., and 4 p.m. to 5 p.m., Monday through Friday, except Federal holidays, the draw need not open for the passage of vessels.

§ 117.681 Old Fort Bayou.

The draw of the US90 bridge, mile 1.6 at Ocean Springs, shall open on signal except that from 9 p.m. to 5 a.m. the draw shall open on signal if at least eight hours notice is given to the Old Fort Bayou drawtender. During periods of storm or hurricane warnings issued by the National Weather Service, the draw shall open on signal at any time.

§ 117.683 Pascagoula River.

The draw of the US90 bridge, mile 1.8 at Pascagoula, shall open on signal except that from 6:15 a.m. to 7:15 a.m., 7:25 a.m. to 8 a.m., 3:15 p.m. to 4:15 p.m., and 4:30 p.m. to 5:30 p.m., Monday through Friday, except Federal holidays, the draw need not open for the passage of vessels.

§ 117.685 Yazoo River.

(a) The draws of the Illinois Central Gulf railroad bridge, mile 16.7 at Redwood, and the Satartia highway (S433) bridge, mile 53.3 at Satartia, shall open on signal if at least two hours notice is given. When a vessel has given notice and fails to arrive within the two-hour period specified, the drawtender shall remain on duty for two additional hours and open the draw if the requesting vessel appears. After this time, an additional two-hour notice is required.

(b) The draws of the bridges upstream from the Satartia highway (S433) bridge shall open on signal if at least four hours notice is given. When a vessel has given notice and fails to arrive within the four-hour period specified, the drawtender shall remain on duty for two additional hours and open the draw if the requesting vessels appears. After this time, an additional four-hour notice is required.

Missouri

§ 117.687 Missouri River.

The draws of the bridges across the Missouri River from the mouth to St. Joseph, shall open on signal except that from December 16 through the last day of February, the draws shall open on signal if at least 24 hours notice is given.

§ 117.689 Osage River.

The draw of the Missouri Pacific Railroad bridge, mile 5.6 at Osage City, need not open for the passage of vessels.

Nebraska

§ 117.691 Missouri River.

(a) The draw of the Illinois Central Gulf railroad bridge, mile 618.3 at Omaha, shall open on signal except that from December 1 through March 1 the draw shall open on signal if at least 24 hours notice is given.

(b) The draw of the I29 highway bridge, mile 732.3 at Sioux City, need not open for the passage of vessels.

New Hampshire

§ 117.695 Bellamy River.

The draw of the state highway bridge, mile 0.2 at Dover, shall open on signal from April 1 through October 31 from 6 a.m. to 10 p.m. if at least four hours notice is given. At all other times the draw shall open as soon as possible only for emergencies.

§ 117.697 Hampton River.

The draw of the state highway bridge, mile 0.0 at Hampton, shall open on signal from April 1 through October 31 for the passage of vessels during the daylight portions of the periods beginning three hours before and ending three hours after each high water. For the purpose of this section, daylight is construed to begin 30 minutes before sunrise and to end 30 minutes after sunset, and high water shall be deemed to occur 30 minutes later than the time of high water for Portland, Maine, as

given in the tide tables for the United States published by the National Oceanic and Atmospheric Administration. At all other times the draw shall open on signal if at least three hours notice is given.

§ 117.699 Little Harbor.

The draw of the US1 bridge, mile 1.0 between New Castle and Rye, shall open on signal from April 1 through October 31 from 6 a.m. to 10 p.m. if at least four hours notice is given. At all other times the draw shall open as soon as possible only for emergencies.

New Jersey

§ 117.701 Alloway Creek.

(a) The draws of the Salem County bridges, miles 5.1 at Hancocks, and 6.5 at Upper Hancocks, shall open on signal if at least 24 hours notice is given.

(b) The draw of the S49 bridge, mile 9.5 at Quinton, need not open for the passage of vessels.

§ 117.703 Bass River.

The draw of the US9 bridge, mile 2.6 at New Gretna, shall open on signal from March 1 through November 30 from 7 a.m. to 11 p.m. From March 1 through November 30, from 11 p.m. to 7 a.m., and from December 1 through the last day of February, the draw shall open on signal if at least six hours notice is given.

§ 117.705 Beaver Dam Creek.

The draw of the Ocean County bridge, mile 0.5 at Point Pleasant, shall open on signal from June 1 through September 30 and from 8 a.m. to 4 p.m. during April, May, October, and November. At all other times the draw shall open on signal if at least 24 hours notice is given.

§ 117.707 Cape Island Creek.

The draw of the Cape May County bridge, mile 0.3 at Cape May, need not open for the passage of vessels.

§ 117.709 Cheesequake Creek.

(a) The draw of the S35 bridge, mile 0.0 at Morgan, South Amboy, shall open on signal except that from May 15 through October 15 from 7 a.m. to 7 p.m. the draw need only open on the hour, and from December 1 through March 31 from 11 p.m. to 7 a.m., the draw need not open for the passage of vessels.

(b) The draws of the railroad bridge, mile 0.2, shall open on signal, except at least four hours notice is required:

(1) From January 1 through March 1 from 6 p.m. to 6 a.m.

(2) From April 1 through April 30 and November 1 through November 30, from 10 p.m. to 6 a.m., Monday through Thursday, and midnight Sunday through 6 a.m. Monday.

(3) From December 1 through December 31 from 10 p.m. to 6 a.m.

§ 117.711 Cohansey River.

The draw of the Broad Street bridge, mile 18.2 at Bridgeton, need not open for the passage of vessels.

§ 117.713 Cooper River.

(a) The draws of the State Street bridge, mile 0.3, the CONRAIL bridge at North River Avenue, mile 0.9, and the Federal Street bridge, mile 1.0, all at Camden, shall open on signal if at least four hours notice is given.

(b) The draw of the Admiral Wilson Boulevard bridge, mile 1.1 at Camden, need not open for the passage of vessels.

§ 117.715 Debbies Creek.

The draw of the Monmouth County highway bridge, mile 0.4 at Manasquan, shall open on signal except that from Memorial Day through Labor Day from 7 a.m. to 8 p.m., the draw need open only on the hour and half hour if any vessels are waiting to pass.

§ 117.717 Delaware River (Back Channel).

The draw of the Cities Service Company bridge, mile 117.0 between Petty Island and Camden, need not open for the passage of vessels.

§ 117.719 Elizabeth River.

(a) The draws of the railroad bridge, mile 0.7, the Baltic Street bridge, mile 0.9, the Summer Street bridge, mile 1.3, the South Street bridge, mile 1.8, and the Bridge Street bridge, mile 2.1, all at Elizabeth, need not open for the passage of vessels.

(b) The draw of the South Front Street bridge, mile 0.0 at Elizabeth, shall open on signal except that from 12 midnight to 7 a.m. the draw shall open on signal if at least three hours notice is given.

(c) The draws of the South First Street bridge, mile 0.4 at Elizabeth, shall open on signal if at least three hours notice is given.

§ 117.721 Great Channel.

The draw of the Cape May County Bridge Commission bridge, mile 0.7, between Stone Harbor and Nummy Island shall open on signal except that from November 1 through April 30 the draw shall open on signal if at least 24 hours notice is given.

§ 117.723 Hackensack River and Overpeck Creek.

(a) The draws of each bridge shall open on signal except that:

(1) The draw of AMTRAK's Portal bridge, mile 5.0 at Snake Hill, need not open Monday through Friday, except Federal holidays from 7:20 a.m. to 9:20 a.m. and from 4:30 p.m. to 6:50 p.m. Outside of these closed periods, an opening may not be delayed for more than ten minutes unless the drawtender and the vessel, communicating by radiotelephone, agree to a longer delay.

(2) The draw of the S46 bridge, mile 14.0 at Little Ferry, shall open on signal if at least six hours notice is given.

(3) The draw of the Court Street bridge, mile 16.2 at Hackensack, shall open on signal if at least two hours notice is given from 8 a.m. to 12 midnight. From 12 midnight to 8 a.m. the draw shall open on signal if at least six hours notice is given.

(4) The draws of the CONRAIL and New York, Susquehanna and Western railroad bridges, mile 0.0 on Overpeck Creek, shall open on signal if at least 24 hours notice is given.

(5) Public vessels of the United States, state or local vessels used for public safety, and vessels in distress shall be passed through the draw of each bridge as soon as possible.

(6) The draws of the New York, Susquehanna, and Western railroad bridge, mile 16.3, and the Midtown bridge, mile 16.5, both at Hackensack, need not open for the passage of vessels.

§ 117.725 Manantico Creek.

The draw of the highway bridge, mile 0.5 at Millville, need not open for the passage of vessels.

§ 117.727 Manasquan River.

The draw of the S70 bridge, mile 3.4 at Brielle Township, shall open on signal from 7 a.m. to 11 p.m. The draw need not open from 11 p.m. to 7 a.m.

§ 117.729 Mantua Creek.

The draw of the highway bridge, mile 1.7 at Paulsboro, shall open on signal from 7 a.m. to 11 p.m. The draw shall open on signal from 11 p.m. to 7 a.m. if at least four hours notice is given.

§ 117.731 New Jersey Intracoastal Waterway.

(a) The draw of the S37 bridge, mile 14.1 at Seaside Heights, shall open on signal except that:

(1) From December 1 through March 31 from 11 p.m. to 7 a.m., the draw need not open to navigation.

(2) From Memorial Day through Labor Day from 10 a.m. to 2 p.m. Saturdays, Sundays, and Federal holidays, the draw need only open on the hour and half hour, except that it shall open at any time for the passage of vessels with tows during such periods.

(b) The draws of the New Jersey Rail Transit Corporation railroad bridge, mile 68.9 at Atlantic City, shall open on signal from 11 p.m. to 6 a.m. The draw

shall open on signal from 20 minutes to 30 minutes after each hour from 6 a.m. to 11 p.m. if any vessels are waiting to pass.

(c) The draw of the Albany Avenue (US 40–322) bridge, mile 70.0 at Atlantic City, shall open on signal from October 1 through May 30, and from June 1 through September 30 from 9 p.m. to 9 a.m. From June 1 through September 30 from 9 a.m. to 4 p.m., and from 6 p.m. to 9 p.m., the draw shall open on the hour and half hour. From June 1 through September 30 from 4 p.m. to 6 p.m., the draw need not open.

(d) The draw of the Dorset Avenue bridge, mile 71.2 at Ventnor City, shall open on signal from October 1 through May 30 and from June 1 through September 30 from 9:15 p.m. to 9:15 a.m. From June 1 through September 30 from 9:15 a.m. to 9:15 p.m., the draw need open only on the quarter and three-quarter hours for any vessels waiting to pass. Public vessels of the United States and vessels in distress shall be passed at any time.

(e) The draw of the Route 52 (Ninth Street) bridge, mile 80.4 at Ocean City, shall open on signal except that from Memorial Day through Labor Day from 11 a.m. to 5 p.m. on Saturdays, Sundays, and Federal holidays, the draw need open only on the hour and half hour if any vessels are waiting to pass. Public vessels of the United States, vessels with another vessel in tow, and vessels in distress shall be passed at any time.

(f) The draw of the Stone Harbor Boulevard bridge across Great Channel, mile 102.0 at Stone Harbor, shall open on signal except that on Saturdays, Sundays, and holidays from Memorial Day through Labor Day from 8 a.m. to 6 p.m. The draw need open only on the hour, 20 minutes after the hour, and 40 minutes after the hour. Public vessels of the United States and vessels with another vessel in tow shall be passed at any time.

(g) All bridges need not stay open for more than 10 minutes for the passage of vessels nor need they stay closed for more than 10 minutes for the passage of land traffic.

§ 117.733 Oceanport Creek.

The draw of the Conrail railroad bridge, mile 8.4 near Oceanport, shall open on signal if at least four hours notice is given.

§ 117.735 Oldmans Creek.

The draws of the US 30 bridge, mile 3.1 at Nortonville, the Conrail railroad bridge, mile 4.0 at Jumbo, and the Salem County bridge, mile 5.1 at Pedricktown, need not open for the passage of vessels.

§ 117.737 Passaic River.

The draws of each bridge shall open on signal except that:

(a) The following bridges need not open during the hours specified, Monday through Friday, except Federal holidays:

(1) Amtrak's Dock bridge, mile 5.0, from 7:20 a.m. to 9:20 a.m. and 4:30 p.m. to 6:50 p.m. Outside of these closed periods, an opening of the Dock bridge may be delayed no more than 10 minutes unless the drawtender and the vessel, communicating by radiotelephone, agree to a longer delay.

(2) Conrail's Morristown Line bridge, mile 5.8, from 7:23 a.m. to 9 a.m. and 4:30 p.m. to 6:50 p.m.

(b) The opening of the draw of the following bridges may be delayed as specified:

(1) Route 280 (Stickel Memorial) bridge, mile 5.8. The draw shall open on signal if at least eight hours notice is given. In an emergency the draw shall open as soon as possible but not more than two hours after the opening request.

(2) CONRAIL bridge (West Arlington), mile 8.0, from 7 a.m. to 11 p.m., the draw shall open on signal if at least eight hours notice is given. From 11 p.m. to 7 a.m., the draw need not open.

(3) CONRAIL bridge (Lyndhurst), mile 11.7, from 8 a.m. to midnight, the draw shall open on signal. From midnight to 8 a.m., the draw shall open on signal if at least six hours notice is given.

(4) Route 3 bridge, mile 11.8 at Rutherford, shall open on signal if at least six hours notice is given.

(5) Union Avenue bridge, mile 13.2, shall open on signal except that from midnight to 8 a.m. the draw shall open on signal if at least eight hours notice is given.

(c) Public vessels of the United States, state or local vessels used for public service, and vessels in distress shall be passed through the draw of each bridge as soon as possible.

(d) The draws of the following bridges need not open for the passage of vessels:

(1) Gregory Avenue bridge, mile 14.0.

(2) Second Street bridge, mile 14.7.

(3) West Eighth Street bridge, mile 15.3.

§ 117.739 Raccoon Creek.

The draw of the CONRAIL railroad bridge, mile 2.0 at Bridgeport, shall open on signal except that from 10 p.m. to 6 a.m., Monday through Friday, and on Saturdays, Sundays and holidays, from December 1 through the last day of February at least four hours notice is required.

§ 117.741 Rahway River.

The draw of the railroad bridge, mile 2.0 at Linden, shall open on signal from April 1 through November 30 from 6 a.m. to 10 p.m. At all other times the draw shall open on signal if at least four hours notice is given.

§ 117.743 Rancocas River (Creek).

The draws of the S543 bridge, mile 1.3 at Riverside, the CONRAIL bridge, mile 1.6 at Delanco, the US130 bridge, mile 3.3 at Bridgeboro and the S38 bridge, mile 7.8 at Centerton, shall open on signal from April 1 through November 30 from 7 a.m. to 11 p.m. From December 1 through March 31 from 7 a.m. to 11 p.m. the draws shall open on signal if at least 24 hours notice is given. From 11 p.m. to 7 a.m. the draws need not open for the passage of vessels.

§ 117.745 Raritan River and Arthur Kill and their tributaries.

The draws of all bridges shall open on signal except that from 7:30 a.m. to 10 a.m. and 5 p.m. to 7:30 p.m. the draws may open for the passage of vessels for periods no longer than 10 minutes. Public vessels of the United States and state or local vessels used for public safety, shall be passed at any time.

§ 117.747 Salem River.

The draw of the S49 bridge, mile 3.5 at Salem, shall open on signal if at least 24 hours notice is given.

§ 117.749 Shark River (South Channel).

(a) the draws of S71 bridge, mile 0.8 at Avon, the railroad bridge, mile 0.9 at Avon and the S35 bridge, mile 0.9 at Avon, are considered and operate as one unit. The owners shall provide signal systems so connected that the operator of any of the bridges may simultaneously notify the operators of the other two. The operator of the first bridge to be passed shall be responsible for observing the approach of vessels for receiving and acknowledging signals, and for communicating to the operators of the other bridges, the intention of such vessels.

(b) The draws shall open on signal from October 1 through May 14 and from May 15 through September 30, Monday through Friday, except Federal holidays, from 7 p.m. to 4 p.m., and Saturdays, Sundays and holidays, from 9 p.m. to 9 a.m.

(c) From May 15 through September 30 from 4 p.m. to 7 p.m., Monday through Friday, except Federal holidays and from 9 a.m. to 9 p.m. Saturdays, Sundays, and holidays the draw need open only on the hour and half hour if a vessel is waiting to pass.

§ 117.751 Ship Channel, Great Egg Harbor Bay.

The draw of the S52 bridge, mile 0.5 at Ocean City, shall open on signal except that and from 11 p.m. to 7 a.m. the draw shall open on signal if at least 24 hours notice is given.

§ 117.753 Shrewsbury River (South Branch).

(a) The draw of the S36 bridge, mile 1.8 at Highlands, shall open on signal, except that from Memorial Day through Labor Day on Saturdays, Sundays, and Federal holidays from 10 a.m. to 7 p.m. The draw need open only on the hour and half hour to pass any accumulated vessels.

(b) The draw of the Monmouth County highway bridge, mile 4.0 at Sea Bright, shall open on signal except that from May 15 through September 30 on Saturdays, Sundays, Memorial Day, Independence Day, and Labor Day, from 11 a.m. to 7 a.m. the draw need open only on the hour and half hour. The draw need not open at any time for a sailboat unless it is under auxiliary power or is towed by a powered vessel.

§ 117.755 Tuckahoe River.

The draw of the State highway bridge, mile 8.0 at Tuckahoe, shall open on signal if at least 24 hours notice is given.

§ 117.757 Wading River.

The draw of the Burlington County highway bridge, mile 5.0 at Wading River, shall open on signal if at least 24 hours notice is given.

§ 117.759 Woodbridge Creek.

The draws of the Middlesex County highway bridge, mile 0.5 at Sewaren, and the railroad bridge, mile 0.6 at Sewaren, shall open on signal if at least four hours notice is given.

New York

§ 117.771 Bronx River.

(a) The draws of the Bruckner Boulevard highway bridge,mile 1.1 at New York City, shall open on signal except that from 7 a.m. to 9 a.m. and 4 p.m. to 6 p.m., Monday through Friday, the draws need not open for the passage of vessels. Public vessels of the United States, state or local vessels used for public safety and vessels in distress, shall be passed without delay.

(b) The draws of the Westchester Avenue highway bridge, mile 1.5, and the CONRAIL bridge, mile 1.6, both at New York City, need not open for the passage of vessels.

§ 117.773 Buffalo River.

(a) The draws of the Michigan Avenue bridge, mile 1.3, and the Ohio Street bridge,mile 2.1, both at Buffalo, shall open on signal, except that from 7:30 a.m. to 9 p.m. and from 4 p.m. to 5:45 p.m., Monday through Saturday, except New Year's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving and Christmas, or other days observed in lieu of any of these under state law, the draws need not open for the passage of vessels.

(b) The draws of the South Park Avenue bridge, mile 5.3 at Buffalo, shall open on signal, except that from 7 a.m., to 8:30 a.m., and from 4 p.m. to 5:45 p.m., Monday through Saturday, except New Year's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving and Christmas, or other days observed in lieu of any of these under state law, the draws need not open for the passage of vessels.

§ 117.775 Coney Island Creek.

The draws of the Cropsey Avenue bridge, mile 0.4, the Stillwell bridge, mile 0.6, and the New York City Transit Authority bridges near Stillwell Avenue, mile 0.7, all at New York City, need not open for the passage of vessels.

§ 117.777 Dutch Kills.

(a) The draws of the Hunters Point Avenue, mile 1.4, and the Borden Avenue bridge, mile 1.2, both at New York City, shall open on signal if at least six hours notice is given to the New York City Highway Department's Radio (Hotline) Room.

(b) The draws of the Long Island Railroad bridge, mile 1.1 at New York City, shall open on signal if at least six hours notice is given to the Long Island Railroad Movement Bureau.

(c) Public vessels or vessels employed by the United States, and state or local vessels used for public safety, shall be passed as soon as possible.

§ 117.779 Eastchester Bay (Arm of).

The draw of the highway bridge, mile 2.2 between Rodman Neck and City Island, need not open for the passage of vessels.

§ 117.781 East River.

The draw of the Roosevelt (Welfare) Island bridge, mile 6.4 at New York City, shall open on signal if at least six hours notice is given to the New York City Highway Department's Radio (Hotline) Room.

§ 117.783 Flushing Creek.

The draws of the Whitestone Parkway bridge, mile 0.2, the Roosevelt Avenue bridge, mile 0.8, and the Long Island Railroad bridge, mile 1.0, all at New York City, need not open for the passage of vessels.

§ 117.785 Genessee River.

(a) The draw of the CONRAIL bridge, mile 0.9 at Rochester, shall open on signal except that from December 15 through March 31, the draw shall open on signal if at least 12 hours notice is given.

(b) The draw of the Stutson Street bridge, mile 1.2, at Rochester shall open on signal from April 1 through December 15, from 7 a.m. to 9 a.m. and from 4 p.m. to 6 p.m., Monday through Friday, except Federal holidays, the draw need not open for the passage of vessels. From 9 a.m. to 4 p.m. and 6 p.m. to 11 p.m., Monday through Friday, except Federal holidays, and from 7 a.m. to 11 p.m. on Saturdays, Sundays, and Federal holidays, the draw need open only on the hour and half hour. From December 16 through March 31 the draw shall open on signal if at least 12 hours notice is given.

(c) Public vessels of the United States, vessels in distress, and vessels seeking shelter from rough weather shall be passed through either bridge as soon as possible.

§ 117.787 Gowanus Canal.

The draws of the Third Street bridge, mile 1.8, the Carroll Street bridge, mile 2.0., and the Union Street bridge, mile 2.1, all at New York City, shall open on signal except that from May 1 through September 30, the draws shall open on signal if at least six hours notice is given to the New York City Highway Department's Radio (Hotline) Room.

§ 117.789 Harlem River.

(a) The draws of all the bridges across the Harlem River, except the Spuyten Duyvil railroad bridge need not open from 5 p.m. to 10 a.m.

(b) The draw of the Spuyten Duyvil railroad bridge, mile 7.9, shall open on signal at any time.

(c) The draws of the 125th Street bridge, mile 1.3, the Willis Avenue bridge, mile 1.5, the 3rd Avenue bridge, mile 1.9, the CONRAIL (Park Avenue) bridge, mile 2.1, the Madison Avenue bridge, mile 2.3, the 145th Street bridge, mile 2.8, and the two Broadway bridges, mile 6.8, shall open on signal from 10 a.m. to 5 p.m. A delay of up to five minutes may be experienced at the railroad bridges.

(d) The draws of the 103rd Street bridge, mile 0.0, the Macombs Dam bridge, mile 3.2, and the 207th Street bridge, mile 6.0, shall open on signal from 10 a.m. to 5 p.m. if at least six hours notice is given to the New York City Highway Department's Radio (Hotline) Room.

(e) Public vessels of the United States, and New York City vessels used for public safety shall be passed through the draw of each bridge as soon as possible.

§ 117.791 Hudson River.

(a) The draws of the CONRAIL bridge, mile 148.2 between Albany and Rensselaer, shall open on signal except that from December 16 through March 31, the draw shall open on signal if at least 24 hours notice is given.

(b) The draws of the state highway bridge, mile 150.2 between Troy and Menands, need not open for the passage of vessels.

(c) The draws of the highway bridge, mile 152.7, between Troy and Green Island:

(1) Need not open from December 16 through March 31.

(2)(A) From April 1 through December 15 shall open on signal from 9 a.m. to 4 p.m.

(B) Need not open from 6 p.m. to 7 a.m., unless notice is given, before 4:30 p.m., of the time the vessel is expected to pass.

(C) Need not open from 7 a.m. to 9 a.m. and 4 p.m. to 6 p.m.

(d) The draws of the 112th Street bridge, mile 155.4 between Troy and Cohoes:

(1) Shall open on signal from 9 a.m. to 4 p.m.

(2) Shall open on signal from 6 p.m. to 7 a.m., if notice is given, before 4:30 p.m., of the time the vessel is expected to pass.

(3) Need not open from 7 a.m. to 9 a.m. and 4 p.m. to 6 p.m.

(4) During the period that the Federal Lock at Troy is inoperative, the draw need not open for the passage of vessels.

(e) The draws of any of these bridges shall open as soon as possible for the passage of:

(1) Public vessels of the United States.

(2) State or local vessels used for public safety.

(3) Vessels of 500 tons or more.

(4) Any tug with a tow on a hawser.

(5) Downbound vessels during a freshet whose height exceeds an elevation determined by the District Commander.

(f) The draws of any of these bridges shall not remain open for more than 15 minutes (except as provided for in paragraphs (e)(5) above) and can remain closed for up to 10 minutes to allow accumulated land traffic to be reduced.

§ 117.793 Hutchinson River.

The draws of the Hutchinson River Parkway bridge, mile 0.9, and the New England Thruway (I-95) bridge, mile 2.2, both at New York City, shall open on signal if at least six hours notice is given.

§ 117.795 Jamaica Bay and Connecting Waterways.

(a) The draws of the New York City Transit Authority bridge, mile 10.6 across the North Channel, at Hamilton Beach, and the New York City highway bridge, mile 10.0 at Jamaica Bay Boulevard, need not open for the passage of vessels.

(b) The draws of the New York City highway bridge, mile 0.8 across Mill Basin, on Belt Parkway need not open for the passage of vessels from noon to 9 p.m. on the following days: Sundays, from May 15 to September 30, Memorial Day, Independence Day, and Labor Day. However, on these days, during the period from two hours before to one hour after the time of predicted high tide for the locality the bridge shall open on signal. Public vessels of the United States and state or local vessels used for public safety shall be passed as soon as possible.

(c) The draw of the Marine Parkway bridge, mile 3.0, at Rockaway Inlet shall open on signal except that from 4 p.m. to 8 p.m. the draw shall open on signal if at least eight hours notice is given; however, the draw shall open, if at least a one hour notice is given for the passage of U.S. Navy or National Oceanic and Atmospheric Administration vessels.

Note.—For the purpose of the regulations in this part, high tide at the bridge shall be deemed to occur 15 minutes later than the time of high tide for Sandy Hook as given in the tide tables for the United States, published by the National Oceanic and Atmospheric Administration. The time stated in the tables is eastern standard time and one hour should be added thereto to convert to eastern daylight saving time.

§ 117.797 Lake Champlain.

(a) The draw of the Vermont highway bridge, mile 105.9, across the entrance to Missisquoi Bay, between Alburg Tongue and Hog Island, at East Alburg, shall open on signal if at least 24 hours notice is given.

(b) The draw of the Central Vermont railroad bridge, mile 105.6 across the Missisquoi Bay of Lake Champlain, shall open on signal from June 15 through September 15 from 7 a.m. to 11 p.m. The draw shall open on signal at all other times if at least 24 hours notice is given.

(c) The draws of the Vermont highway bridge, mile 91.8 between Sandy Island and North Hero Island:

(1) Shall open on signal from May 15 through October 15 from 7 a.m. to 9 p.m.

(2) Shall open on signal from May 15 through October 15 from 9 p.m. to 7 a.m. if at least four hours notice is given.

(3) Shall open on signal from October 16 through May 14 if at least 24 hours notice is given.

(d) The draws of each of these bridges shall open as soon as possible for public vessels of the United States and Vermont Fish and Game Department vessels.

§ 117.799 Long Island, New York Inland Waterway from East Rockaway Inlet to Shinnecock Canal.

(a) The draw of the Atlantic Beach Bridge across Reynolds Channel, mile 0.4, shall open on signal:

(1) From October 1 through May 14.

(2) From May 15 through September 30 the draw shall open on signal except that it need open only on the hour and half-hour:

(i) From 4 p.m. to 7 p.m. on weekdays; and

(ii) From 11 a.m. to 9 p.m. on Saturdays, Sundays, Memorial Day, Independence Day and Labor Day.

(3) From May 15 through September 30 the draw shall open on signal from two hours before to one hour after predicted high tide (predicted high tide for this bridge shall be 10 minutes earlier than that predicted for Sandy Hook as given in the tide tables for the United States published by the National Oceanic and Atmospheric Administration).

(b) The draw of the Long Beach Bridge across Reynolds Channel, mile 4.7, shall open on signal:

(1) From October 1 through May 14.

(2) From May 15 through September 30 the draw shall open on signal except that from 3 p.m. to 8 p.m. on Saturdays, Sundays, Memorial Day, Independence Day and Labor Day the draw need open only on the hour and half hour.

(3) From midnight to 7 a.m. the draw shall open on signal if at least four hours notice is given.

(c) The draw of the Loop Parkway Bridge across Long Creek, mile 0.7, shall open on signal:

(1) Every other hour on the even hour except that from April 1 through October 31 on Saturdays, Sundays, and Federal holidays, the draw shall open on signal every three hours beginning at 3 a.m.

(2) If an opening is desired at other than a scheduled time, notice may be given from the telephone located on either side of the bridge or via marine radiotelephone.

(d) The draws of the Meadowbrook State Parkway across Sloop Channel, mile 12.8, Wantagh State Parkway across Goose Creek, mile 16.1, and Captree State Parkway across State Boat Channel at Captree Island, mile 30.7, shall open on signal if at least one

hour notice is given to the New York State Department of Transportation, as follows:

(1) Every other hour on the even hour.

(2) From April 1 through October 31 on Saturdays, Sundays, and Federal holidays the draw of the Meadowbrook State Parkway Bridge across Sloop Channel, mile 12.8, shall open on signal every three hours beginning at 1:30 a.m.

(3) From April 1 through October 31 on Saturdays, Sundays, and Federal holidays the draws of the Wantagh State Parkway Bridge across Goose Creek, mile 16.1, and Captree State Parkway Bridge across State Boat Channel at Captree Island, mile 30.7, every three hours beginning at 3 a.m.

(4) Notice may be given from the telephone located at the moorings on each side of each bridge or by marine radiotelephone.

(e) The draws of the Smith Point bridge, mile 6.1, across Narrow Bay, West Bay bridge, mile 0.1, across Quantuck Canal, Beach Lane bridge, mile 1.1, across Quantuck Canal, Quoque bridge, mile 1.1, across Quoque Canal, and Ponquoque Point bridge, mile 78.0, across Shinnecock Bay:

(1) Shall open an signal from October 1 through April 30 from 8 a.m. to 4 p.m. and from May 1 through September 30 from 6 a.m. to 10 p.m.

(2) At all other times during these periods the draws shall open as soon as possible but no more than one hour after a request to open is received.

(f) Public vessles of the United States, state or local vessels used for public safety and vessels in distress shall be passed through the draws of each bridge as soon as possible.

(g) The draw of each of these bridges need not open for sailing vessels unless the vessel is under machinery power or under tow, if such an opening would unduly delay other vessel or vehicular traffic.

§ 117.801 Newtown Creek (East Branch).

The draw of the Grand Street bridge, mile 3.1 at New York City, shall open on signal except that Monday through Saturday, except holidays, the draw need not open from 6:45 a.m. to 7 a.m., 7:15 a.m. to 7:30 a.m., 4:30 p.m. to 4:45 p.m., and 5 p.m. to 5:15 p.m.

§ 117.803 Niagara River.

The draw of the Canadian National Railway bridge, mile 3.8, need not open for the passage of vessels.

§ 117.805 Peekskill (Annsvile) Creek.

The draw of the CONRAIL bridge, mile 0.0 at Peekskill, need not open for the passage of vessels.

§ 117.807 Richmond Creek.

The draw of the Richmond Avenue bridge, mile 2.0 at New York City, need not open for the passage of vessels.

§ 117.809 Tonawanda Creek.

(a) The draw of the Penn Central Corporation railroad bridge, mile 0.1 at Tonawanda, is permanently maintained in the open to navigation position.

§ 117.811 Tonawanda Harbor.

The draw of the CONRAIL bridge, mile 0.2 at Tonawanda, shall open on signal if at least 24 hours notice is given.

§ 117.813 Wappinger Creek.

The draw of the CONRAIL bridge, mile 0.0 at New Hamburg, shall open on signal from May 15 through October 15 if at least eight hours notice is given and from October 16 through May 14 if at least 24 hours notice is given.

§ 117.815 Westchester Creek.

The draw of the Bruckner Boulevard bridge, mile 1.3, shall open on signal, except that from 7 a.m. to 9 a.m. and 4 p.m. to 6 p.m., Monday through Friday, the draw need not open for the passage of vessels. Public vessels of the United States, state or local vessels used for public safety, or vessels in distress, shall be passed without delay.

North Carolina

§ 117.821 Atlantic Intracoastal Waterway, Bogue Sound to Wrightsville Beach.

(a) The draw of the S58 bridge, mile 206.7, Atlantic Beach, Bogue Sound, shall open on signal except that from March 15 through October 15 the draw need open only on the hour from 8 a.m. to 8 p.m. for the passage of pleasure craft. If a pleasure craft is approaching the draw and cannot reach the draw exactly on the hour, the drawtender may delay the opening up to 10 minutes past the hour for the passage of the approaching vessel and any other vessels that are waiting. Public vessels of the United States, tugs with tows, commercial vessels, and any vessel in an emergency involving danger to life or property, shall be passed at any time.

(b) The draw of the highway bridge, mile 283.1 at Wrightsville Beach, shall open on signal from November 1 through April 30, and from 7 p.m. to 7 a.m. from May 1 through October 31. From May 1 through October 31 from 7 a.m. to 7 p.m. the draw need not open only on the hour.

(1) If a pleasure boat is approaching the drawbridge and cannot reach the draw exactly on the hour, the drawtender may delay the hourly opening up to 10 minutes past the hour for the passage of the approaching pleasure boat and any other pleasure boats that are waiting to pass.

(2) Public vessels of the United States, commercial vessels and any vessel in an emergency involving danger to life or property, shall be passed at any time.

§ 117.823 Neuse River.

(a) The draw of the US17 bridge, mile 33.7 at New Bern, shall open on signal except that the draw need not open from 6:30 a.m. to 7:30 a.m. and from 4:30 p.m. to 5:30 p.m., Monday through Friday. From May 24 through September 8, on Sundays and Federal holidays, the draw need not open from 2 p.m. to 7 p.m., however, the draw shall open at 4 p.m. and 6 p.m. if any vessels are waiting to pass. Public vessels of the United States, state or local vessels used for public safety, tugs with tows, and vessels in distress, shall be passed at any time.

(b) The draws of the Atlantic and East Carolina Railway bridge, mile 80.0 at Kinston, shall open on signal if at least 24 hours notice is given.

§ 117.825 Newport River.

The draw of the Atlantic and East Carolina Railway bridge, mile 13.0 at Newport, need not open for the passage of vessels.

§ 117.827 New River.

The draw of the Seaboard System Railroad bridge, mile 21.1 at Jacksonville, shall open on signal if at least 24 hours notice is given.

§ 117.829 Northeast River.

The draw of the Seaboard System Railroad bridge, mile 27.0 at Castle Hayne, shall open on signal only from 7:30 a.m. to 4:30 p.m., Monday through Friday. The draw shall open on signal from 4:30 p.m. to 7:30 a.m. for tugs with tows if at least 24 hours notice is given.

§ 117.831 Pamlico and Tar Rivers.

The draws of the US17–264 bridge, mile 37.2 at Washington, and the Boyds Ferry bridge, mile 44.8 at Grimesland, shall open on signal if at least 24 hours notice is given. The bridge owners shall restore constant attendance when so directed by the District Commander.

§ 117.833 Pasquotank River.

The draw of the Southern railroad bridge, mile 47.7 at Elizabeth City, will be maintained in the open position from 3:30 p.m. to 11:30 p.m. At all other times the draw shall open on signal.

§ 117.835 Perquimans River.

The draw of the US17 bridge, mile 12.0 at Herford, shall open on signal from 8 a.m. to midnight from April 1 through September 30 and from 10 a.m. to 10 p.m.

from October 1 through March 31. The draw need not open at all other times.

§ 117.837 Roanoke River.

(a) The draw of the US17 bridge, mile 37.5 at Williamson, shall open on signal if at least 24 hours notice is given.

(b) The draw of the Seaboard System Railroad bridge, mile 94.0 at Palmyra, need not open for the passage of vessels.

§ 117.839 Scuppernong River.

The draw of the US64 bridge, mile 4.5 at Columbia, shall open on signal if at least 24 hours notice is given. Public vessels of the United States, commercial fishing vessels unable to pass the closed draw, or vessels in an emergency involving danger to life or property, shall be passed as soon as possible.

§ 117.841 Smiths Creek.

The draw of the S133 bridge, mile 1.5 at Wilmington, shall open on signal if at least 24 hours notice is given.

§ 117.843 Trent River.

(a) The draws of the US70 bridge, mile 0.0, at New Bern, shall open on signal except that the draw need not open from 6:30 a.m. to 7:30 a.m. and 4:30 p.m. to 5:30 p.m., Monday through Friday. From May 24 through September 8 , on Sundays and Federal holidays, the draw need not open from 2 p.m. to 7 p.m., however, the draw shall open at 4 p.m. and 6 p.m., if any vessels are waiting to pass. Public vessels of the United States, state or local vessels used for public safety, tugs with tows, and vessels in distress shall be passed at any time.

(b) The draws of the Seaboard System Railroad bridge, mile 18.0 near Pollocksville, need not open for the passage of vessels.

§ 117.845 Wrightsville Beach (AIWW).

(a) The draw of the highway bridge, mile 283.1, Atlantic Intracoastal Waterway, at Wrightsville Beach shall open on signal from November 1 through April 30, and from 7 p.m. to 7 a.m. from May 1 through October 31. From May 1 through October 31 from 7 a.m. to 7 p.m. the draw need not open only on the hour.

(b) If a pleasure boat is approaching the drawbridge and cannot reach the draw exactly on the hour, the drawtender may delay the hourly opening up to 10 minutes past the hour for the passage of the approaching pleasure boat and any other pleasure boats that are waiting to pass.

(c) Public vessels of the United States, commercial vessels and any vessel in an emergency involving danger to life or property, shall be passed at any time.

Ohio

§ 117.847 Ashtabula River.

(a) The draw of the Fifth Street Bridge, mile 1.4 at Ashtabula, shall open on signal on the hour and half hour.

(b) The draw of the CONRAIL bridge, mile 2.2 at Ashtabula, shall open on signal from April 1 through November 30 from 7 a.m. to 11 p.m. At all other times the draw shall open on signal if at least 24 hours notice is given.

§ 117.849 Muskingham River (Zanesville Canal).

The draw of the CONRAIL bridge, miles 27.1 at Zanesville, shall open on signal Tuesday through Friday if the CONRAIL office is notified by 12:01 p.m. on day preceding the day and time the opening is required. For openings Saturday through Monday, the CONRAIL office shall be notified by 12:01 p.m. on day preceding the day and time the opening is required. For openings Saturday through Monday, the CONRAIL office shall be notified by 12:01 on Friday specifying which day and time the opening is required. In case of emergency, the draw shall be opened as soon as possible.

§ 117.851 Portage River

(a) The draws of the Monroe Street bridge, mile 1.1 at Port Clinton, shall open on signal:

(1) From May 1 through May 14 and from November 1 through December 1.

(2) From May 15 through October 31 and from 12 midnight to 6 a.m. From 6 a.m. to 12 midnight the draw shall open on signal from three minutes before to three minutes after the hour and half hour.

(3) From December 2 through April 30 the draw shall open on signal if at least 24 hours notice is given.

(b) The draws of the CONRAIL bridge, mile 1.5 at Port Clinton, shall open on signal except that from December 2 through April 30 the draw shall open on signal if at least 24 hours notice is given.

(c) Public vessels of the United States, state or local vessels used for public safety, commercial vessels, and vessels in distress or seeking shelter from rough weather, shall be passed as soon as possible.

§ 117.853 Sandusky Bay.

(a) The draw of the CONRAIL bridge, mile 3.5 at Sandusky, shall open on signal from April 1 through October 31 and from November 1 through November 30 from 8 a.m. to 4 p.m. At all other times the draw shall open on signal if at least 24 hours notice is given to the Chief Dispatcher, Central Union Terminal, Toledo.

(b) The draw of the Ohio Highway 269 bridge, mile 8.2 at Sandusky, shall open on signal except that from 11 p.m. to 7 a.m. the draw shall open on signal if at least 24 hours notice is given to the Sandusky Post, State Highway Patrol.

Oregon

§ 117.861 Blind Slough.

The draws of the Burlington Northern railroad bridge, mile 1.1 at Knappa, shall open on signal if at least one hour notice is given. However, the draw shall open promptly on signal from four hours before to four hours after each day's authorized commercial fishing period in the Columbia River Fishery below Bonneville Dam to the jetties at the mouth of the Columbia River as established by the Columbia River Compact (Washington State Department of Fisheries and the Fish Commission of Oregon).

§ 117.863 Catching Slough.

The draw of the secondary highway bridge, mile 1.0 near Eastside, shall open on signal if at least 48 hours notice is given.

§ 117.865 Clatskanie River.

The draw of the Burlington Northern railroad bridge, mile 0.7 at Clatskanie, shall open on signal if at least one hour notice is given. However, the draw shall open promptly on signal from four hours before to four hours after each day's authorized commercial fishing period in the Columbia River Fishery below Bonneville Dam to the jetties at the mouth of the Columbia River as established by the Columbia River Compact (Washington State Department of Fisheries and the Fish Commission of Oregon).

§ 117.867 Coalbank Slough.

The draws of the Southern Pacific railroad bridge, mile 0.1, and the Port of Hood River highway bridge, mile 0.2, both at Coos Bay, need not open for the passage of vessels.

§ 117.869 Columbia River.

(a) The draw of the Interstate 5 bridge, mile 106.5 at Vancouver, shall open on signal, except that from 6:30 a.m. to 8 a.m., and 3:30 p.m. to 6 p.m., Monday through Friday, except Federal holidays, the draws need not open for the passage of vessels.

(b) The draw of the Port of Hood River bridge, mile 169.8 at Hood River, shall open on signal if at least 12 hours notice is given.

§ 117.871 Coos Bay.

The draw of the Southern Pacific railroad bridge, mile 9.0 at North Bend, shall be kept open at all times except while actually required for the necessary passage of trains over the drawspan. During foggy weather a fog bell installed in the center of the drawspan shall be rung continuously, striking every 10 seconds. Any time during foggy weather, when the draw is closed and the passage is not clear for vessels, there shall be sounded continuously a siren which may be heard at a distance of one mile from the drawspan. When the bridge is again opened the siren shall be stopped, indicating that the way is clear for the passage of vessels.

§ 117.873 Coos River.

The draw of the Oregon State secondary highway bridge, mile 2.2 near Eastside, shall open on signal if at least 12 hours notice is given.

§ 117.875 Coquille River.

(a) The draws of the US101 highway bridge, mile 3.5 at Bandon, shall open on signal if at least two hours notice is given to the Coos Bay South Slough bridge attendant.

(b) The draws of the Oregon Secondary highway bridge, mile 24.0 at Coquille, shall open on signal if at least 48 hours notice is given.

§ 117.877 Dean Creek.

The draw of the highway bridge, mile 0.0 at Reedsport, need not open for the passage of vessels.

§ 117.879 Isthmus Slough.

The draw of the Oregon Stat e secondary highway bridge, mile 1.0 at Coos Bay, shall open on signal if at least four hours notice is given.

§ 117.881 John Day River.

(a) The draw of the Burlington Northern railroad bridge, mile 0.0 near Astoria, shall open on signal if at least one hours notice is given. However, the draws shall open promptly on signal from four hours before to four hours after each day's authorized commercial fishing period in the Columbia River Fishery below Bonneville Dam to the jetties at the mouth of the Columbia River as established by the Columbia River Compact (Washington State department of Fisheries and the Fish Commission of Oregon).

(b) The draw of the US30 highway bridge, mile 1.0 near Astoria, shall open on signal if at least 48 hours notice is given.

§ 117.883 Little Nestucca River.

The draw of the highway bridge, mile 2.0 at Oretown, need not open for the passage of vessels.

§ 117.885 Nehalem River.

The draw of the US101 highway bridge, mile 6.5 at Nehalem, need not open for the passage of vessels.

§ 117.887 Oregon Slough.

The draw of the Burlington Northern railroad bridge, mile 3.2 at Portland, shall open on signal if at least a one-half hour notice is given.

§ 117.889 Siuslaw River.

(a) The draw of the US101 bridge, mile 5.0 at Florance, shall open on signal if at least two hours notice is given.

(b) The draw of the Southern Pacific railroad bridge, mile 8.0 near cushman, shall open on signal if at least 24 hours notice is given.

§ 117.891 Umpqua River.

(a) The draw of the US101 bridge, mile 11.1 at Reedsport, shall open on signal from 8 a.m. to 4 p.m., Monday through Friday, from May 1 through October. At all other times the draw shall open on signal if at least four hours notice is given.

(b) The draw of the Southern Pacific railroad bridge, mile 11.5 at Reedsport, shall be kept fully open at all times except when actually required for the passage of trains or other railroad equipment or when maintenance to the drawspan is being performed. During foggy weather, when the draw is closed and the channel is not clear for the passage of vessels, there shall be sounded a fog horn with an audible range of one-half mile from the drawspan. The fog horn shall emit two clear signals of approximately six seconds duration each, repeated at intervals of sixty seconds from completion of the second signal to commencement of the next signal. The fog horn shall be sounded repeatedly from commencement of closure to full opening of the drawspan. When the drawspan is again in the open position, the fog horn shall be stopped, indicating that the channel is clear for the passage of vessels.

(c) Umpqua River (side channel). The draw of the US101 bridge, mile 11.1 near Reedsport, need not open for the passage of vessels.

§ 117.893 Walluski River.

The draw of the Oregon State secondary highway bridge, mile 1.0 near Astoria, shall open on signal if at least 48 hours notice is given.

§ 117.895 Willamette River.

(a) The draws of the following bridges shall open on the designated signal listed below except that from 7 a.m. to 8:30 a.m., and 4 p.m. to 5:30 p.m., except Saturdays, Sundays, and New Year's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving, and Christmas or days observed in lieu of these under state law, the draws need not open for the passage of vessels:

Bridge	Mile	Opening and acknowledging signals
(1) Broadway Bridge, Portland.	11.7	Two prolonged followed by one short blast.
(2) Steel Bridge, Portland	12.1	One prolonged followed by one short blast.
(3) Burnside Bridge, Portland.	12.4	One prolonged followed by two short blasts.
(4) Morrison Bridge, Portland.	12.8	One prolonged followed by three short blasts.
(5) Hawthorne Bridge, Portland.	13.1	One prolonged followed by four short blasts.

The acknowledging signals from the drawtender shall be those set forth in § 117.9.

Note.—The closed periods do not apply to harbor patrol or fire boats answering calls and for the Broadway Bridge only, oceangoing vessels of 750 gross tons or over.

(b) Signals to open shall be given by vessels at a distance of at least 1,000 feet from the bridge, except in case of a vessel leaving a wharf or anchorage or when waiting less than 1,000 feet from the bridge. In such cases the signal shall be given early enough to allow the operator of the bridge sufficient time in which to clear and open the draw before arrival of the vessel.

(c) In case two vessels approaching from opposite directions would meet at or near the bridge, the vessel bound downstream shall be considered as having the right of way.

(d) The draw of the Southern Pacific railroad bridge, mile 84.3 at Salem, need not open for the passage of vessels.

(e) The draw of the Southern Pacific railroad bridge, mile 119.6 at Albany, shall open on signal if at least six hours notice is given.

(f) The draw of the Oregon highway bridge, mile 132.1 at Corvallis, shall open on signal if at least seven days notice is given, however, the draw need not open on Saturdays, Sundays, and Federal holidays.

(g) The draw of the Southern Pacific railroad bridge, mile 164.3 near Harrisburg, need not open for the passage of vessels.

§ 117.897 Youngs Bay, Lewis and Clark River and Skippanon River.

(a) The draw of the US101 highway bridge, mile 0.7 across Youngs Bay at Smith Point, Astoria (New Youngs Bay

bridge), shall open on signal for the passage of vessels. The opening signal is two prolonged blasts followed by two short blasts.

(b) The draws of the Burlington Northern railroad bridges, mile 0.8 across Youngs Bay, at Smith Point, Astoria, and mile 1.9 across the Skianon River at Warrenton, shall be kept fully open at all times except when actually required for the passage of trains or other railroad equipment or when maintenance to the drawspan is being performed. When the draw is closed and visibility at the drawtender's station is less than one mile up or down the channel, the drawtender shall sound two prolonged blasts every minute. When the draw is reopened, the drawtender shall sound one prolonged blast followed by one short blast.

(c) The draw of the Oregon State highway bridge, mile 2.4 across Youngs Bay, at the foot of Fifth Street, Astoria (Old Youngs Bay bridge), and the draw of the Oregon State highway bridge, mile 1.0 across the Lewis and Clark River, shall open on signal from 5 a.m. to 9 p.m. At all other times, the draw shall open on signal if at least one-half hour notice is given to the drawtender at the New Youngs Bay bridge by marine radio, telephone or other suitable means.

(1) The opening signal for the Oregon State highway bridge across Youngs Bay is two prolonged blasts followed by one short blast.

(2) The opening signal for the Oregon State highway bridge across the Lewis and Clark River is one prolonged blast followed by four short blasts.

(d) All other signals shall be those set forth in § 117.9.

Pennsylvania

§ 117.901 Chester Creek.

The draw of the Front Street bridge, mile 0.1 at Chester, shall open on signal if at least 24 hours notice is given.

§ 117.903 Darby Creek.

(a) The draws of the CONRAIL railroad bridge, mile 0.3 at Essington, and the Reading railroad bridge, mile 0.3 at Essington, shall open on signal from May 15 through October 15 at 7:15 a.m., 10:30 a.m., 1 p.m., 3 p.m., 7:30 p.m., and 10:30 p.m., and at other times from 7 a.m. to 11 p.m. from May 15 through October 15 if an opening will not unduly delay railroad operations. Any vessel which has passed through one of these bridges shall be passed through the draw of the other bridge without delay. When once open for the passage of any vessel these bridges shall remain open sufficiently long to permit the passage through both bridges of all vessels waiting to pass.

(b) From 11 p.m. to 7 a.m. from May 15 through October 15 the draws need not open for the passage of vessels.

(c) From October 16 through May 14 the draws shall open on signal if at least 24 hours notice is given.

(d) The draws shall open as soon as possible for an emergency or vessel in distress.

§ 117.905 Schuylkill River.

(a) The draw of the University Avenue bridge, mile 6.2 at Philadelphia, shall open on signal from 8 a.m. to 4 p.m., and 8 p.m. to 4 a.m., Monday through Friday. At all other times the draw shall open on signal if at least two hours notice is given.

(b) The draws of the CONRAIL bridge, mile 6.4 near Christian Street, at Philadelphia shall open on signal if at least two hours notice is given.

Rhode Island

§ 117.907 Providence River.

The draw of the US1 (Point Street) bridge, mile 7.5 at Providence, need not open for the passage of vessels from 7 a.m. to 9 a.m. and 4 p.m. to 6 p.m. At all other times, the draw shall open on signal if at least 24 hours notice is given to the Director of Public Works, City Hall, Providence. However, loaded, self-propelled cargo vessels and any assisting tugs shall be passed as soon as possible.

South Carolina

§ 117.911 Atlantic Intracoastal Waterway, Little River to Savannah River.

(a) *Sullivans Island Narrows.* The draw of the Ben Sawyer, S703 bridge, mile 462.2 (AIWW), between Sullivan's Island and Mount Pleasant, shall open on signal, except that the draw need not open from 7 a.m. to 9 a.m. and from 4 p.m. to 6 p.m., Monday through Friday; and on Saturdays, Sundays, and Federal holidays from 2 p.m. to 6 p.m., the draw need open only on the hour and one-half hour. However, public vessels of the United States, tugboats, freight boats, commercial fishing boats, and vessels in distress, shall be passed at any time.

(b) *Wappoo Creek.* The draw of the S171/700 bridge across Wappoo Creek, mile 470.8, at Charleston, shall open on signal, except that the draw need not open from 6:30 a.m. to 9 a.m. and from 4 p.m. to 6 p.m., Monday through Friday; and on Saturdays, Sundays, and Federal holidays from 2 p.m. to 6 p.m., the draw need open only on the hour and one-half hour. However, public vessels of the United States, tugboats, freight boats, commercial fishing boats, and vessels in distress shall be passed at any time.

(c) *Beaufort River.* The draw of the Ladies Island bridge across the Beaufort River, mile 536.0 at Beaufort, shall open on signal, except that from 7 a.m. to 9 a.m. and 4 p.m. to 6 p.m., Monday through Saturday, except legal holidays, the draw need open only at 8 a.m. and 5 p.m. if any vessels are waiting to pass. However, public vessels of the United States, commercial tows, and vessels in distress shall be passed at any time.

§ 117.913 Ashepoo River.

The draw of the Seaboard System Railroad bridge, mile 32.0 at Ashepoo, need not open for the passage of vessels.

§ 117.915 Ashley River.

(a) The draws of the US17 highway bridges, miles 2.4 and 2.5 at Charleston, shall open on signal except that from 7 a.m. to 9 a.m., Monday through Friday, and 4 p.m. to 7 a.m. daily the draws need open only if at least 12 hours notice is given. The draws of either bridge shall open as soon as possible for the passage of vessels in an emergency involving damage to life or property.

(b) The draw of the Seaboard System Railroad bridge, mile 12.0 near Drayton Hall, shall open on signal from 7 a.m. to 11 p.m. From 11 p.m. to 7 a.m. the draw shall open on signal if at least three hours notice is given.

§ 117.917 Battery River.

The draw of the state highway bridge, mile 2.1 between Beaufort and Parris Island, shall open on signal if at least 24 hours notice is given.

§ 117.919 Black River.

The draw of the US17 highway bridge, mile 8.0 near Georgetown, shall open on signal if at least 12 hours notice is given.

§ 117.921 Broad River.

(a) The draw of the S170 bridge, mile 14.0 near Beaufort, shall open on signal if at least 24 hours notice is given.

(b) The draw of the Seaboard System Railroad bridge, mile 17.0, near Whale Branch shall open on signal if at least 24 hours notice is given.

§ 117.923 Congaree River.

The draw of the Southern Railway bridge, mile 4.3 at Moye's Station, shall open on signal if at least 24 hours notice is given.

§ 117.925 Cooper River.

The draw of the Seaboard System Railroad bridge, mile 42.8 near Cordesville, shall open on signal from 7 a.m. to 12 noon, and 1 p.m. to 4 p.m. At all other times the draw shall open on signal if at least 24 hours notice is given.

§ 117.927 Coosaw River (Whale Branch).

The draw of the Seaboard System Railroad bridge, mile 5.3 at Seabrook, and the draw of the US21 bridge, mile 7.0 at Beaufort, shall open on signal from 6 a.m. to 8 a.m., Monday through Friday, if at least 24 hours notice is given. At all other times the draw need not open for the passage of vessels.

§ 117.929 Durham Creek.

The removable span of the South Carolina Electric & Gas Co., railroad bridge, mile 1.7 at Bushy Park, shall be removed to allow the passage of dredges and construction equipment if at least 20 days notice is given. When notified by the City of Charleston of an emergency in the Bushy Park Reservoir the span shall be removed as soon as possible to permit the passage of dredges and construction equipment.

§ 117.931 Harbor River (a tidal estuary in St. Helena Sound).

The draw of the S285 bridge, mile 0.5 at Hunting Island, shall open on signal if at least 24 hours notice is given.

§ 117.933 Pee Dee River.

The draws of the Seaboard System Railroad bridges, miles 72.6 and 107.2 near Poston, need not open for the passage of vessels.

§ 117.935 Rantowles Creek.

The draw of the Seaboard System Railroad bridge, mile 1.1 near Rantowles, need not open for the passage of vessels.

§ 117.937 Savannah River.

(a) The draw of the Seaboard System Railroad bridge, mile 60.9 at Clyo, shall open on signal from 6 a.m. to 11 a.m. and from 12 noon to 3 p.m. At all other times the draw shall open on signal if at least three hours notice is given. VHF radiotelephone communications will be maintained at the bridge tender's house and the dispatcher's office in Savannah, Georgia.

§ 117.939 Wando River.

The draw of the state highway bridge, mile 10.0 near Cainhoy, shall open on signal if at least 12 hours notice is given.

Tennessee

§ 117.943 Cumberland River.

The draw of the Seaboard System Railroad bridge, mile 126.5 at Clarksville, shall open on signal when the vertical clearance under the navigational span is 47 feet or less. The draw shall open on signal if at least two hours advance notice has been given when the vertical clearance is greater than 47 feet. The draw need not open for a vessel that arrives at the bridge more than 30 minutes after the time specified in the advance notice, unless a second two hours notice have been given. A resumé of these regulations shall also be conspicuously posted at the Kentucky and Pickwick Locks on the Tenessee River and at the Barkley and Cheatham Locks on the Cumberland River.

§ 117.945 Hatchie River.

The draws of the Illinois Central Gulf railroad bridge, mile 35.0 at Covington, and the Seaboard System Railroad bridge, mile 71.0, at Brownsville need not open for the passage of vessels.

§ 117.947 Obion River.

The draws of all bridges need not open for the passage of vessels.

§117.949 Tennessee River.

The draws of the Southern Railway (Chief John Ross) bridge, mile 464.1 at Chattanooga, and the Southern Railway bridge, mile 470.7 at Hixon, shall open on signal when the vertical clearance beneath the draw span is 50 feet or less. When the vertical clearance beneath the draw is more than 50 feet at least eight hours advance notice is required. Whenever any vessel that required the opening of the draw will return through the draw within four hours and informs the drawtender of the probable time of its return, the drawtender shall return one-half hour before the time specified and the draw shall be promptly opened on signal for the passage of the vessel on the return trip without further advance notice. When a vessel has given advance notice and fails to arrive within one hour after the arrival time specified, whether upbound or downbound, a second eight hours notice shall be required. Notices of these regulations shall be posted at the Nickajack and Watts Bar Locks on the Tennessee River.

Texas

§ 117.951 Arroyo-Colorado River.

The draw of the S106 highway bridge, mile 22.5 at Rio Hondo, shall open on signal if at least 12 hours notice is given.

§ 117.953 Brazos River (Diversion Channel).

(a) The draw of the S36 highway bridge, mile 4.4 at Freeport, shall open on signal if at least 12 hours notice is given.

(b) The draw of the Missouri Pacific railroad bridge, mile 22.6 at Brazoria, need not open for the passage of vessels.

§ 117.955 Buffalo Bayou.

(a) The draw of the Southern Pacific railroad bridge and all drawbridges upstream, except the Houston Belt and Terminal railroad bridge, mile 4.3, shall open on signal if at least 24 hours notice is given.

(b) The draw of the Houston Belt and Terminal railroad bridge, mile 4.3, need not open for the passage of vessels.

§ 117.957 Cedar Bayou.

(a) The lift span of the Missouri Pacific automated bridge, mile 7.0 at Baytown, shall be maintained at a vertical clearance of 81.4 feet above mean high water. Fixed green navigation lights shall be displayed in the center of the lift span.

(b) When a train appoaches the bridge, the navigation lights shall be changed from green to red, alternating flashing red lights shall be turned on, a horn shall be sounded for six minutes, and at the end of six minutes the horn shall be stopped and the draw may be lowered and locked if the scanning equipment does not detect any object under the span. If the scanning equipment detects an obstruction, the draw shall be raised until the obstruction is cleared.

(c) After a train has cleared the bridge, the draw shall be raised to 81.4 feet above mean high water, the flashing red lights shall be stopped, and the navigation lights shall be changed from red to green.

§ 117.959 Chocolate Bayou.

The draw of the Missouri Pacific railroad bridge, mile 11.4 at Liverpool, need not open for the passage of vessels.

§ 117.961 Clear Creek.

(a) The draw of S146 bridge, mile 1.0 between Kemah and Seabrook, shall open on signal except that on Saturdays, Sundays and Federal holidays, from 8 a.m. to 8 p.m., the draw need open only every other 10 minutes if any vessels are waiting to pass.

(b) The draw of the Southern Pacific railroad bridge, mile 1.0 at Seabrook, will be maintained in the open position for the passage of vessels except when it is necessary to close the draw for the passage of trains or for maintenance.

§ 117.963 Colorado River.

The draw of the highway bridge, mile 10.7 at Wadsworth, shall open on signal if at least 24 hours notice is given.

§ 117.965 Cow Bayou.

The draws of the Orange County highway bridge, mile 2.9 at West Orange, and the S87 bridge, mile 4.5, at Bay City shall open on signal if at least six hours notice is given.

§ 117.967 Greens Bayou.

The draw of the Port Terminal Railroad Association railroad bridge, mile 2.8 at Houston, shall open on signal if at lest four hours notice is given. The draw shall open on signal for three hours thereafter if the opening is for returning downbound vessels.

§ 117.969 Lavaca River.

The draws of the Missouri Pacific railroad bridge, mile 11.2, and the highway bridge, mile 11.2, both at Vanderbilt, shall open on signal if at least 48 hours notice is given. In emergencies the draws shall open as soon as possible.

§ 117.971 Neches River.

The draw of the Atchison, Topeka and Santa Fe railroad bridge, mile 53.9 at Evadale, need not open for the passage of vessels.

§ 117.973 Nueces Bay.

The draw of the US181 bridge, mile 0.5 Corpus Christi, need not open for the passage of vessels.

§ 117.975 Old Brazos River.

The draw of the Missouri Pacific railroad bridge, mile 4.4 at Freeport, shall be maintained in the fully open to navigation position except for the crossing of trains or for maintenance.

§ 117.977 Pelican Island Causeway.

The draw of the Pelican Island causeway bridge, mile 356.1 across Galveston Channel at Galveston, shall open on signal except that from 7 a.m. to 8:30 a.m., 12 noon to 1 p.m. and 4:15 p.m., to 5:15 p.m., Monday through Saturday, except Federal holidays, the draw need not open for the passage of vessels. Public vessels of the United States and vessels in distress shall be passed at any time.

§ 117.979 Sabine Lake.

The draw of the S82 bridge, mile 10.0 at Port Arthur, shall open on signal except that from 9 p.m. to 5 a.m., the draw shall open on signal if at least six hours notice is given to the Maintenance Construction Supervisor or the Maintenance Foreman at Port Arthur.

§ 117.981 Sabine River.

The draws of the Southern Pacific railroad bridge, mile 19.3 at Echo, the Kansas City Southern railroad bridge, mile 36.2, at Ruliff, and the Texas and Louisiana railroad bridge and the Louisiana S7 bridge, mile 40.8, both at Deweyville, shall open on signal if at least 24 hours notice is given.

§ 117.983 Sabine River (Old Channel) behind Orange Harbor Island.

The draw of the highway bridge, mile 9.5 at Orange, shall open on signal from 7 a.m. to 12 midnight, Monday through Friday, except Federal holidays. The draw shall open on signal at all other times if at least eight hours notice is given.

§ 117.985 Taylor's Bayou.

The draws of the Southern Pacific railroad bridge, mile 2.0, and the S73 bridge, mile 10.2, both at West Port Arthur, need not open for the passage of vessels.

§ 117.987 Trinity River.

The draws of the Southern Pacific railroad bridge, mile 41.4 at Liberty, the Missouri Pacific railroad bridges, mile 54.8 at Kenefick, and mile 181.8 at Riverside, and the Atchison, Topeka and Santa Fe railroad bridge, mile 96.2 at Romayor need not open for the passage of vessels.

§ 117.989 Victoria Channel.

(a) The draw of the Missouri Pacific railroad automated bridge, mile 29.4 near Bloomington, need not be manned by a regular attendant.

(b) The lift span is normally in the down position, providing a vertical clearance of 22 feet above mean high water.

(c) Three prolonged blasts of a horn or whistle from an approaching vessel activates navigational approach detectors, located one-half mile upstream and downstream from the bridge. If the span is inoperable, these sound signals will activate an alarm to alert bridge maintenance crews.

(d) Interruption of the approach detector beams by a vessel will cause (1) the draw to open to the fully raised position of 50 feet above mean high water for 10 minutes, (2) a navigation warning siren to sound, (3) the navigation light in the center of the lift span to change from red to green, (4) the indicator lights, located one-quarter mile of each side of the bridge, to change from red to yellow. However, if a train is approaching the bridge so closely that the train may not be safely stopped, the light will remain red and the bridge will not open until the train has passed.

(e) Interuption of the detector beam, located at the end of the bridge fender system, will cancel the existing time intervals and start a new 10-minute interval during which the bridge will remain open. The span will not close until the vessel clears the detector located at the opposite end of the fender system, or the 10-minutes interval elapses, which ever occurs earlier.

(f) If a vessel is unable to reach the detectors located on the outer ends of the fender system before the span closes, an additional signal of three prolonged blasts of a horn or whistle will cause the span to reopen and initiate a new 10-minute interval.

(g) If the draw is in the open position for the passage of a vessel, and a train enters an approach circuit to the bridge, the bridge will remain open for five minutes if the detector beam has been interrupted. If the detector beam has not been interrupted the span will close at the end of the original 10-minute opening period and will not reopen in response to the additional signal described in paragraph (f) of this section. After the train passes, the span will open on signal for any waiting vessles.

Vermont

§ 117.993 Lake Champlain.

(a) The draw of the Vermont highway bridge, mile 105.9 between Alburg Tongue and East Alburg, shall open on signal if at least 24 hours notice is given.

(b) The draw of the Central Vermont railroad bridge, mile 105.6 between South Hero Island and North Hero Island, shall open on signal from 7 am. to 11 p.m. from June 15 through September 15. At all other times the draw shall open on signal if at least 24 hours notice is given.

(c) The draw of the Vermont highway bridge, mile 91.8 between South Hero Island and North Hero Island, shall open on signal:

(1) From May 15 through October 15 from 7 a.m. to 9 p.m.

(2) From May 15 through October 15 from 9 p.m. to 7 a.m. if at least four hours notice is given.

(3) From October 16 through May 14 if at least 24 hours notice is given.

(d) The draw of each of these bridges shall open as soon as possible for the passage of public vessels of the United States and Vermont Fish and Game Department vessles.

Virginia

§ 117.995 Appomattox River.

The draw of the Seaboard System Railroad bridge, mile 2.5 at Hopewell, shall open on signal if at least 24 hours notice is given to the Seaboard System Agent at Hopewell. A drawtender shall be placed in constant attendance and the draw shall open on signal upon 30 days notice, in writing, to take such action from the District Commander.

§ 117.997 Atlantic Intracoastal Waterway, South Branch of the Elizabeth River to the Albemarle and Chesapeake Canal.

(a) Elizabeth River, South Branch.

(1) The draw of the Jordan (S337) bridge, mile 2.8 at Portsmouth-Chesapeake, shall open on signal except that from 6:30 a.m. to 7:30 a.m. from 3:30 p.m. to 4:30 p.m., Monday through Friday, except Federal holidays, the draw need not open for the passage of pleasure craft.

(2) The draw of the Norfolk and Western railroad bridge, mile 3.6 at Portsmouth-Chesapeake, shall be maintained in the open to navigation position except the draw may close for the crossing of trains and the maintenance of the bridge. When the draw is closed, there shall be a drawtender present and the draw shall open on signal.

(3) The draw of the I-64 bridge, mile 7.1 at Chesapeake, shall open on signal if at least 24 hours notice is given.

(b) *Albemarle and Chesapeake Canal.* The draw of the S169 bridge, mile 12 at Chesapeake (Great Bridge), shall open on signal except that from 6 a.m. to 7 p.m., the draw need open only on the hour. If any vessel is approaching the drawbridge and cannot reach the draw exactly on the hour, the drawtender may delay the hourly opening up to 10 minutes past the hour for the passage of the approaching vessel and any other vessels that are waiting to pass. Vessels in an emergency condition which presents danger to life or property, shall be passed at any time.

§ 117.999 Blackwater River.

The draw of the S189 bridge, mile 9.2 at South Quay, shall open on signal if at least 24 hours notice is given.

§ 117.1001 Cat Point Creek.

The draw of the S634 bridge, mile 0.3 at Naylors, need not open for the passage of vessels.

§ 117.1003 Chickahominy River.

The draw of the highway bridge, mile 1.5 at Barrets Ferry, shall open on signal except that from 11 p.m. to 7 a.m., the draw shall open on signal if at least 12 hours notice is given.

§ 117.1005 Chuckatuck Creek.

The draw of the US17 bridge, mile 1.0 at Crittenden, shall open on signal if at least two hours notice is given. If an emergency exists, the draw shall open as soon as possible.

§ 117.1007 Elizabeth River—Eastern Branch.

The draw of the Campostella bridge, mile 1.8 at Norfolk, shall open on signal except that from 7:35 a.m. to 7:50 a.m., Monday through Friday, the draw need not open except for the passage of tugs with tows.

§ 117.1009 Elizabeth River—Western Branch.

(a) The draw of the Seaboard System Railroad bridge, mile 3.8 at Portsmouth, shall open on signal except that from 1 a.m. to 6 a.m. from April 1 through October 31 the draw shall open on signal if at least eight hours notice is given. (Any vessel operator intending to return through the draw during this period shall notify the drawtender prior to 6 a.m. of the time of return passage and the draw shall open on signal at the specified time.) From November 1 through March 31 the draw shall open on signal if at least four hours notice is given.

(b) The draw of the S337 bridge, mile 4.7 Hodges Ferry, shall open on signal if at least eight hours notice is given.

§ 117.1011 Great Wicomico River.

The draw of the S200 bridge, mile 8.0 at Tipers, shall open on signal except that if an opening is desired from 6 p.m. to 6 a.m., the drawtender on duty must be notified before 6 p.m.

§ 117.1013 Kinsale Creek.

The draw of the state highway bridge, mile 4.0, at Kinsale need not open for the passage of vessels.

§ 117.1015 Mattaponi River.

The draws of the Lord Delaware (S33) bridge, mile 0.8 at West Point, and the S629 bridge, mile 28.5 at Walkerton, shall open on signal if at least 24 hours notice is given. The drawtender service for either bridge shall be increased to the degree determined to be adequate within 20 days after written notice is received from the District Commander to take such action.

§ 117.1017 Nansemond River.

The draw of the US 460 bridge, mile 18.2 at Suffolk, shall open on signal if at least 12 hours notice is given.

§ 117.1019 Nansemond River—Western Branch

The draw of the S10 bridge, mile 2.0 at Reids Ferry, need not open for the passage of vessels.

§ 117.1021 North Landing River.

The draw of the S165 bridge, mile 20.2 at Chesapeake, shall open on signal except that from 6 a.m. to 7 p.m. the draw need open only on the hour and half hour for the passage of pleasure craft. Public vessels of the United States, commercial vessels, and vessels in an emergency endangering life or property, shall be passed at any time.

Washington

§ 117.1031 Chehalis River.

(a) The draw of the US101 highway bridge, mile 0.1 at Aberdeen, shall open on signal except that from 7:15 a.m. to 8:15 a.m. and 4:15 p.m. to 5:15 p.m., Monday through Friday, except Federal holidays, the draw need not open for the passage of vessels of less than 5,000 gross tons.

(b) The draw of the Union Pacific railroad bridge, mile 13.1 at South Montesano, shall be maintained in the open to navigation position except the draw may close for the crossing of trains and the maintenance of the bridge. When the draw is closed, there shall be a drawtender present and the draw shall open on signal.

§ 117.1033 Columbia River.

(a) The draw of the Interstate 5 bridge, mile 106.5 at Vancouver, shall open on signal, except that from 6:30 a.m. to 8 a.m., and 3:30 p.m. to 6 p.m., Monday through Friday, except Federal holidays, the draws need not open for the passage of vessels. The opening signal is two prolonged blasts followed by one short blast.

(b) The draw of the Port of Hood River bridge, mile 169.8 at Hood River, shall open on signal if at least 12 hours notice is given.

§ 117.1035 Columbia and Snake Rivers in the vicinity of Pasco.

(a) The draw of the Burlington Northern railroad bridge across the Columbia River, mile 328.0 between Pasco and Kennewick, shall open on signal from 8 a.m. to 4 p.m. At all other times, the draw shall open on signal if at least two hours notice is given through the General Yardmaster, Pasco, Washington.

(b) When two vessels approaching from opposite directions meet near the Union Pacific railroad bridge across the Columbia River, mile 323.5, the Burlington Northern railroad bridge across the Columbia River, mile 328.0, and the Burlington Northern railroad bridge across the Snake River, mile 1.5, the downbound vessel shall have the right-of-way. When one vessel waits for passage of another, the waiting vessel shall repeat the call signal for the bridge and receive an acknowledging signal from the drawtender before proceeding.

(c) Signals.

(1) Opening sound signal—to be repeated until acknowledged by the drawtender.

(i) Burlington Northern railroad bridge—two prolonged blasts and one short blast.

(ii) Burlington Northern railroad bridges—one prolonged blast and two short blasts.

(2) Opening visual signals may be used in conjunction with sound signals for all bridges listed in this section. These visual signals are a white flag by day and a white light at night swung in a full circle at arm's length infull sight of the bridge facing the draw.

(3) The acknowledging sound signal shall be the same as the opening sound signal when the draw will open. When the draw cannot open, the signal shall be four short blasts, given in rapid succession, repeated until acknowledged by the same signal from the vessel.

(4) Sound and visual signals may be omitted when radiotelephone communcations have been satisfactorily established and maintained between the drawtender and the approaching vessel, until the vessel has passed through the bridge.

§ 117.1037 Cowlitz and Lewis Rivers.

(a) The draw of the Burlington Northern railroad bridge, mile 2.0 across the Lewis River at Woodland, need not open for the passage of vessels.

(b) The draw of the Allen Street bridge, mile 5.5 across the Cowlitz River at Kelso, shall open on signal if at least two hours notice is given. In the event a vessel is delayed, the operator will remain a reasonable time, not to exceed two hours, and open the bridge on signal for the passage of the vessel. If a vessel is expected to be delayed more than two hours the operater will be so advised, and notified of the later time the opening will be required. If a vessel passing through the bridge intends to return through within two hours the vessel shall notify the bridge tender who shall remain at and open the draw upon signal for the vessel's return passage.

(c) When fog prevails by day or by night, the drawtender, after giving the opening signal, shall toll a bell continuously during the approach and passage of the vessel.

§ 117.1039 Deep River.

The draw of the Washington State highway bridge, mile 3.5 near Deep River, shall open on signal if at least four hours notice is given.

§ 117.1041 Duwamish Waterway at Seattle.

(a) The draws of each bridge across the Duwamish Waterway shall open on signal except that the draws of the Southwest Spokane Street bridge and the First Avenue South bridge need not open for the passage of vessels from 6:30 a.m. to 8:30 a.m. and 3:45 p.m. to 5:45 p.m., Monday through Friday, except Federal holidays. However, the draws of these bridges shall open at any time for a vessel of 5,000 tons or more.

(b) The following bridges shall open on the following signals:

(1) Burlington Northern railroad bridge, mile 0.4, and Southwest Spokane Street bridge, mile 0.3. One prolonged blast followed quickly by three short blasts.

(2) Burlington Northern railroad bridge, mile 0.4. One prolonged blast followed quickly by one short blast.

(3) First Avenue South bridge, mile 2.5. Three prolonged blasts.

(4) Fourteenth Avenue South bridge, mile 3.8. One prolonged blast followed quickly by one short blast and one prolonged blast.

(c) When fog prevails by day or by night, the drawtender, after giving the opening signal, shall toll a bell continuously during the approach and the passage of the vessel.

§ 117.1043 Grays Harbor.

When fog prevails by day or by night, the drawtender, after giving the opening signal, shall toll a bell continuously during the approach and passage of the vessel.

§ 117.1045 Hood Canal.

(a) The draw of the Washington State pontoon highway bridge near Port Gamble shall open on signal if at least one hour's notice is given.

(1) Telephone requests for bridge opening may be directed as collect calls to the Toll Office at the bridge site. The call may also be made by direct telephone communication, through the Seattle Marine Operator, Station KOH, or through other marine wire or radio telephone service.

(2) The sound signal is one prolonged blast of a horn or whistle followed quickly by two short blasts. The bridge attendant will acknowledge when the draw shall open by repeating the signal.

(3) If the drawspan cannot open immediately, or if open and must close immediately, the drawtender will sound five or more short blasts of a horn or whistle, to be repeated at regular intervals until acknowledged.

(4) During unusual or emergency periods, the authorized representative of the owner of or agency controlling the bridge will be required to operate the draw of the bridge on a demand basis for specified periods of time, which will normally not exceed 48 hours, when requested by the Department of the Navy. While on a demand basis the drawtender will be in attendance on the bridge with radio communications equipment in operation.

§ 117.1047 Hoquiam River (Grays Harbor Tributary).

The draw of the Simpson Avenue bridge, mile 0.5 at Hoquiam, shall open on signal if at least a one hour notice is given. The opening signal is two prolonged blasts followed by one short blast. The State Department of Transportation shall accept collect telephone calls from vessels via the local marine telephone operator, or long distance telephone, and shall provide a two-way radiotelephone on the Chehalis River bridge which will be attended at all times. Vessels may place one hour's notice calls for the Hoquiam River Simpson Avenue bridge through the Chehalis River bridge operator.

§ 117.1049 Lake Washington.

(a) The draw of the pontoon highway bridge between Foster Island and Evergreen Point shall open on signal if at least one hour's notice is given.

(1) Telephone requests for bridge opening may be directed as collect calls to the Highway Radio. The call may also be made by direct telephone communication, through the Seattle Marine Operator, Station KOH, or through other marine wire or radiotelephone service.

(2) Sound signals shall be one prolonged blast of a horn or whistle followed quickly by two short blasts in the immediate vicinity of the drawspan. The bridge attendant will acknowledge by repeating the signal.

(3) The draw need not open Monday through Friday from 7 a.m. to 9 a.m. and 4 p.m. to 6 p.m. for any vessel or other watercraft of less than 2,000 gross tons, unless such vessel has in tow a vessel of 2,000 gross tons or over, or a piledriver that is unable to pass under the fixed spans.

(b) The draw of the Pontoon highway bridge between Seattle and Mercer Point shall open on signal, except that fom 6:30 a.m. to 9:30 a.m. and 3 p.m. to 6:30 p.m., Monday through Friday, except Federal holidays, the draw need not open for any vessels of less than 2,000 gross tons, unless such vessels has in tow a vessle of at least 2,000 gross tons. The draw shall also open for the passage of a pile driver at any time.

(c) All non-self-propelled vessels, crafts, and rafts, navigating this waterway, for which the opening of any draw is necessary, shall be towed by a suitable self-propelled vessel(s) while passing the draw.

§ 117.1051 Lake Washington Ship Canal.

(a) The draw of the Burlington Northern railroad bridge, mile 0.1, shall open on signal.

(b) The draws of the Ballard (15th Avenue) bridge, mile 1.1, Fremont Avenue bridge, mile 2.6, University bridge, mile 4.3, and Montlake bridge, mile 5.2, all at Seattle, shall open on signal except that they:

(1) Need not open from 7 a.m. to 9 a.m., and from 4 p.m. to 6 p.m., Monday through Friday, except Federal holidays, for vessels of less than 1,000 tons unless the vessel has a vessel of over 1,000 tons in tow, except under emergency conditions when the Seattle City Engineer is notified.

(2) Shall open on signal from 12 midnight to 8 a.m., if at least one hour notice is given by telephone, radiotelephone, or otherwise to the drawtender at the Fremont Avenue drawbridge.

(c) The opening sound signal for each bridge is one prolonged blast followed by one short blast, except that the University bridge opens on one prolonged blast followed by three short blasts.

(d) When fog prevails by day or by night, the drawtender after giving the opening signal, shall toll a bell continously during the approach and passage of the vessel.

(e) All non-self-propelled vessels, craft, or rafts, navigating this waterway, for which the opening of any draw is necessary, shall be towed by a suitable self-propelled vessel(s) while passing the draw.

§ 117.1053 Skagit River.

The draws of all bridges across the Skagit River need not open for the passage of vessels.

§ 117.1055 Skamokawa Creek.

The draw of the Washington State highways bridge at Skamokawa need not be opened for the passage of vessels.

§ 117.1057 Snohomish River, Steamboat Slough, and Ebey Slough.

(a) The draws of the Twin bridges, mile 3.6 across the Snohomish River at Everett, shall open on signal if at least one hours notice is given. During freshets a drawtender shall be in constant attendance and the draws shall open on signal when so ordered by the District Commander. Notice shall be given by marine radio, telephone or other means; on weekends to the drawtender at these bridges; and on weekdays to the drawtender at the Ebey Slough bridge.

(b) The draw of the US2–SH15 bridge, mile 6.9 across the Snohomish River at Everett, shall open on signal if at least four hours notice is given. During freshets a drawtender shall be in constant attendance and the draw shall open on signal when so ordered by the District Commander.

(c) The draws of the state highway bridge, mile 15.0, and the Burlington Northern railroad bridge, mile 15.5, both across the Snohomish River at Snohomish, need not open for the passage of vessels.

(d) The draw of the Burlington Northern railroad bridge, mile 1.0, and the Twin Washington State highway bridges, miles 1.1 and 1.2, all across Steamboat Slough near Maryville, shall open on signal if at least four hours notice is given.

(e) Signals. (1) The opening signal for the Burlington Northern railroad bridge, mile 3.5, across the Snohomish River is one prolonged blast, one short blast and one prolonged blast.

(2) The opening signal for the US99 bridge, mile 3.6, across the Snohomish River is three prolonged blasts followed by one short blast (one signal opens both bridges).

(3) The opening signal for the US2–SH15 bridge, mile 6.9, across the Snohomish River is three prolonged blasts.

(4) The opening signal for the Burlington Northern railroad bridge, mile 1.0, is one short blast followed by one prolonged blast.

(5) The opening signal for the US99 bridges, mile 1.1, is two prolonged blasts followed by one short blast (one signal for both bridges).

(6) *Acknowledging Signals.* (A) When draw can be opened immediately. Two prolonged blasts followed by one short blast or three loud and distinct strokes of a bell.

(B) When draw cannot be opened immediately, or when it is open and must be closed immediately. Two prolonged blasts or two loud and distinct strokes of a bell. (This signal may also be used by a vessel to countermand its call signal.)

(f) *Fog Signal.* When fog prevails by day or by night, the drawtender, after giving the opening signal, shall toll a bell continuously during the approach and passage of the vessel.

Tacoma Harbor Waterway

§ 117.1059 City Waterway.

(a) The draw of the South 11th Street bridge, mile 0.6 at Tacoma, shall open on signal if at least two hours notice is given. However, the draw need not open from 6:30 a.m. to 8:30 a.m. and 3:30 p.m. to 5:30 p.m., Monday through Friday, except Federal holidays, for vessels of less than 1,000 gross tons, unless such vessel has in tow a vessel of 1,000 gross tons or over, or opening of the draw is required for the pickup for towing of a vessel of 1,000 gross tons or over. Under emergency conditions, openings will be made as soon as possible upon notification to the city of Tacoma, Department of Public Works.

(b) The draw of the Union Pacific railroad bridge, mile 0.9 at Tacoma, shall open on signal except that from 7:15 a.m. to 8 a.m. and 4:45 p.m. to 5 p.m., the draw need not open.

(1) The opening signal is one prolonged blast followed by one short blast followed by one prolonged blast.

§ 117.1061 Puyallup Waterway and River.

The draw of the Milwaukee Road railroad bridge, mile 0.9 at Tacoma, shall open on signal if at least 24 hours notice is given.

§ 117.1063 Blair Waterway.

The draw of the East 11th Street bridge at Tacoma shall open on signal except that the draw need not open from 6:30 a.m. to 8:30 a.m. and 3:30 p.m. to 5:30 p.m., Monday through Friday, except Federal holidays, for vessels of less than 1,000 gross tons, unless such vessel has in tow a vessel of 1,000 gross tons or over, or opening of the draw is required for the pickup for towing of a vessel of 1,000 gross tons or over. Under emergency conditions, openings will be made as soon as possible upon notification to the City of Tacoma, Department of Public Works.

§ 117.1065 Hylebos Waterway.

The draw of the East 11th Street bridge at Tacoma shall open on signal except that the draw need not open from 6:30 a.m. to 8:30 a.m., and 3:30 p.m. to 5:30 p.m., Monday through Friday, except Federal holidays, for vessels of less than 1,000 gross tons, unless such vessel has in tow a vessel of 1,000 gross tons or over, or opening of the draw is required for the pickup for towing of a vessel of 1,000 gross tons or over. Under emergency conditions, openings will be made as soon as possible upon notification to the City of Tacoma, Department of Public Works.

All Tacoma Harbor Bridges

Note.—Fog signals. When fog prevails by day or night, the drawtender, after giving the opening signal, shall toll a bell continuously during the approach and passage of a vessel.

§ 117.1067 Willapa Harbor.

(a) The draws of the Washington State highway bridge, mile 7.8 North Fork of the Willapa River at Raymond, and the Washington State highway bridge, mile 2.5 at Naselle, shall open on signal from 8 a.m. to 5 p.m., Monday through Friday, except Federal holidays,

if at least two hours notice is given, and at all other times if at least eight hours notice is given. The opening signals for the North Fork bridge at Raymond are one prolonged blast, one short blast and one prolonged blast and the bridge at Naselle, one long blast.

(b) The draw of the Burlington Northern railroad bridge across the South Fork of the Willapa River, mile 0.3 at Raymond, shall open on signal if at least 24 hours notice is given. The opening signal is two prolonged blasts followed by one short blast.

§ 117.1069 Wishkah River.

(a) The draws of the Heron Street bridge, mile 0.2, and the Wishkah Street bridge, mile 0.4, both at Aberdeen, shall open on the signal of one prolonged blast followed by two short blasts if at least a one-half hour notice is given. The Washington State Department of Transportation shall accept collect telephone calls from vessels via the local marine telephone operator or long distance telephone. The Washington State Department of Transportation shall provide a two-way radiotelephone on the Chehalis River bridge which will be attended at all times. Vessels may place calls for the Wishkah River bridges through the Chehalis River operator.

(b) When fog prevails by day or by night the drawtender on giving signal that draw will be opened, shall toll a bell continuously during the approach and passage of the vessel.

Wisconsin

§ 117.1081 Black River.

(a) The draw of the Milwaukee Road railroad bridge, mile 1.0 at La Crosse, shall open on signal if at least two hours notice is given.

(b) The draw of the Wisconsin highway bridge, mile 1.9 at North La Crosse, shall open on signal if at least 24 hours notice is given.

§ 117.1083 Duluth-Superior Harbor (St. Louis River).

(a) The draws of the Burlington Northern railroad bridge, mile 5.7, shall open on signal except that from January 1 through March 15 the draws shall open on signal if at least 24 hours notice is given. The following opening signals shall be used:

Minnesota Draw—One prolonged blast followed by two short blasts
Wisconsin Draw—Two prolonged blasts followed by two short blasts.

All other signals shall be those set forth in § 117.11.

(b) The draws of the Grassy Point bridge, mile 8.0, and the Arrow Head bridge, mile 8.7, shall open on signal except that from January 1 through March 15 the draw shall open on signal if at least 24 hours notice is given. The following opening signals shall be used:

Grassy Point bridge—Two prolonged blasts followed by one short blast.
Arrowhead bridge—Three prolonged blasts.

(c) The draw of the Duluth Missabe and Iron Range Railway bridge, mile 16.3, need not open for the passage of vessels.

§ 117.1085 East River.

The draw of the Monroe Street bridge, mile 0.3 at Green Bay, need not open for the passage of vessels.

§ 117.1087 Fox River.

(a) The draws of the Main Street bridge, mile 1.6, Walnut Street bridge, mile 1.8, and Mason Street bridge, mile 2.2, all at Green Bay, need not open for the passage of vessels, Monday through Saturday, except Federal holidays:

7 a.m. to 8 a.m.
12 noon to 1 p.m.
4 p.m. to 5 p.m.

However, public vessels of the United States, vessels of 300 short tons or over cargo capacity engaging in commercial transportation and their attendant towing tugs, and tugs and fireboats shall be passed at any time.

(1) The opening signals for each bridge are:

Main Street—Two short blasts followed by one prolonged blast
Walnut Street—One prolonged blast followed by two short blasts
Mason Street—One prolonged blast followed by one short blast

(b) The draw of the George Street bridge, mile 7.2 at DePere, shall open on signal during the navigation season except that from 6 p.m. to 8 a.m., during the navigation season, the draw shall open on signal if at least two hours notice is given.

§ 117.1089 Manitowoc River.

(a) The draws of the Eighth Street bridge, mile 0.3, and the Tenth Street bridge, mile 0.5, both at manitowoc, shall open on signal, Monday through Friday, except Saturdays, Sundays, and New Year's Day, Independence Day, Labor Day, Thanksgiving, and Christmas or on the Monday following such holidays when they occur on a Sunday. However, the draws need not open from:

6:50 a.m. to 7 a.m.
7:50 a.m. to 8 a.m.
11:55 a.m. to 12:10 p.m.
12:45 p.m. to 1 p.m.

(1) The opening signals for each bridge are:

Eighth Street—One prolonged blast followed by one short blast
Tenth Street—Two short blasts followed by one prolonged blast

(b) The draw of the Soo Line railroad bridge, mile 0.9, shall open on the signal of two short blasts followed by one prolonged blast.

Note.—When signal is given by a car ferry or other large vessel to pass either of the two bridges, the remaining bridge shall also open promptly so that such vessel shall not be held between the two bridges.

§ 117.1091 Menomonee River.

The draw of the Ogden-First Street bridge, mile 0.4 at Marinette, shall open on signal except that from November 1 through April 30 the draw shall open on signal if at least 12 hours notice is given.

§ 117.1093 Milwaukee, Menomonee, and Kinnickinnic Rivers, and South Menomonee Canal, Milwaukee.

(A) The draws of the North Broadway Street bridge, mile 0.5, North Water, Street bridge, mile 0.6, and Michigan Street bridge, mile 1.1, across the Milwaukee River; the North Plankinton Avenue bridge, mile 0.1, across the Menomonee River, and the Kinnickinnic Avenue bridge, mile 1.5, across the Kinnickinnic River, shall open on signal, except that from 7:30 a.m. to 8:30 a.m. and 4:30 p.m. to 5:30 p.m., Monday through Saturday, except Federal holidays, the draws need not open.

(b) The draws of the Milwaukee Road railroad bridge and the Chicago and Northwestern Railway bridges across the Kinnickinnic River, mile 1.5 and mile 1.52, respectively; and the draw of the Milwaukee Road railroad bridge across the Burnham Canal, mile 0.8, shall open on signal if at least two hours notice is given.

(c) The draws of all bridges across the Milwaukee River need not open 7:30 a.m. to 8:30 a.m. and 4:30 p.m. to 5:30 p.m. At all other times the draws shall open on signal if at least two hours notice is given.

(d) All other drawbridges across the Kinnickinnic, and Menomonee Rivers, and the Menomonee and Burham Canals shall open on signal. However, from 7:30 a.m. to 8:30 a.m., and 4:30 p.m. to 5:30 p.m., Monday through Saturday, except Federal holidays, the draws need not open, and from 11 p.m. to 7 a.m., the draws shall open on signal if at least two hours notice is given.

(e) Signals.

(1) The opening signals for all drawbridges except those listed below is one prolonged blast followed by one short blast.

(i) The opening signal for the Chicago and Northwestern drawbridges across the Kinnickinnic River, mile 1.0, and the Milwaukee River, mile 0.3, is two prolonged blasts.

The opening signal for the Broadway Street drawbridge, mile 0.5, is three prolonged blasts followed by one short blast.

(iii) The opening signal for the Water Street drawbridge, mile 0.6, is three prolonged blasts followed by two short blasts.

(iv) The opening signal for the Milwaukee road railroad drawbridge across the Menomonee River, mile 0.1, is two prolonged blasts followed by two short blasts.

(2) The acknowledging signal when the draw will open is the same as the opening signal.

(3) The acknowledging signal when the draw will not open or is open and must be closed is four short blasts.

(f) The draws of each bridge listed in this section shall open as soon as possible for the passage of public vessels of the United States, vessels carry United States mail, vessels licensed to carry 50 or more passengers when on their regular routes and fireboats of the City of Wilwaukee.

§ 117.1095 Root River.

(a) The draw of the Main Street bridge, mile 0.3, shall open on signal, except that:

(1) From April 1 through December 1, from 6 a.m. to 6 p.m. the draw need open only on the hour, 20 minutes after the hour and 40 minutes after the hour. During the period the draw shall remain open long enough to pass all accumulated vessels.

(2) From December 2 through March 31 the draw shall open on signal if at least two hours notice is given.

(b) The draw of the State Street bridge, mile 0.5, shall open on signal, except that from October 16 through April 30 the draw shall open on signal if at least two hours notice is given.

(c) The draws of each bridge shall open as soon as possible for passage of public vessels of the United States, state or local vessels used for public safety, commercial vessels and vessels in distress.

§ 117.1097 Sheboygan River.

(a) The draw of the Eighth Street bridge, mile 0.7 at Sheboygan, shall open on signal from May 1 thorugh October 31 from 6 a.m. to 10 a.m. as follows:

(1) From 6 a.m. to 8 a.m., 9 a.m. to 12 noon, 1 p.m. to 4 p.m., and 6 p.m. to 7 p.m., the draw need open only on the hour, quarter hour, half hour, and three-quarter hour.

(2) From 8 a.m. to 9 a.m., 12 noon to 1 p.m., and 4 p.m. to 6 p.m. the draw need open only on the hour and half hour.

(3) At all other times the draw shall open on signal if at least two hours notice is given.

(4) Public vessels of the United States, state or local vessels used for public service, and vessels in distress shall be passed as soon as possible at any time.

§ 117.1099 St. Croix River.

(a) The draws of all bridges from the mouth through Hudson shall open on signal except that from December 15 to March 1, the draws shall open on signal if at least 24 hours notice is given.

(b) The draw of the S36 (Stillwater) bridge, mile 23.4, shall open on signal:

(1) From May 15 through October 15 from Monday through Friday, except Federal holidays, as follows:

8 a.m. to 11 a.m. every hour on the hour
11 a.m. to 3 p.m. every hour and half hour
3 p.m. to 6 p.m. every hour on the hour
6 p.m. to 10 p.m. every hour and half hour
10 p.m. to 8 a.m. if at least two hours notice is given.

(2) On Saturdays, Sundays, and Federal holidays, as follows:

8 a.m. to 11 a.m. every hour and half hour
11 a.m. to 8 p.m. every hour on the hour
8 p.m. to midnight every hour and half hour
Midnight to 8 a.m. if at least two hours notice is given.

(3) From October 16 through May 14 if at least 24 hours notice is given.

(c) The draw of the Soo Line railroad bridge, mile 40.7 at Otisville, need not open for the passage of vessels.

§117.1101 Sturgeon Bay.

(a) The draws of the highway bridge, mile 4.3 at Sturgeon Bay, shall open on signal:

(1) From March 15 through May 14 and from September 15 through December 31.

(2) From May 15 through September 15, the draw shall open on signal from 6 p.m. to 6:30 a.m.

(3) From May 15 through September 15, from 6:30 a.m. to 6 p.m. the draw shall open on the hour and half hour provided vessels are waiting to pass. However, public vessels of the United States and commercial vessels shall be passed through the draw without delay during this period.

(4) From January 1 through March 14 the draw shall open on signal if at least 12 hours notice is given.

§117.1103 Upper Mississippi River.

(a) The draws of all bridges between Lock and Dam No. 2, mile 815.2, and Lock and Dam No. 10, mile 615.1, shall open on signal except that from December 15 through March 1 the draws shall open if at least 24 hours notice is given.

(b) The draws of all bridges between Lock and Dam No. 2, mile 815.2, and Lock and Dam No. 1, mile 847.6, shall open on signal except that from December 15 through March 1 the draws shall open on signal if at least 12 hours notice is given.

§117.1105 Wisconsin River.

The draws of each drawbridge shall open on signal if at least 48 hours notice is given.

§117.1107 Wolf River.

The draw of the Winneconne highway bridge, mile 2.4 at Winneconne, shall open on signal, except that from 11 p.m. to 7 a.m., from May 1 through October 31 at least two hours notice is required and from November 1 through April 30 at least 12 hours notice is required. Public vessels of the United States, state and local vessels used for public safety and vessels in distress shall be passed as soon as possible.

Dated: May 23, 1983.

R. A. Bauman,

Rear Admiral, Coast Guard Chief, Office of Navigation.

[FR Doc. 83-14207 Filed 5-27-83; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AID-FRL 2280-6]

Approval and Promulgation of Implementation Plans; Rule Revisions in the State of Nevada

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: Revisions to Clark County Health District regulations were submitted to EPA by the State of Nevada for incorporation into their State Implementation Plan (SIP). The regulations address cutback asphalt and malfunction. EPA is proposing to approve the cutbacks asphalt regulations since it is consistent with the control requirements recommended in EPA's Control Techniques Guideline (CTG) document. However, the malfunction regulation is inconsistent with EPA policy since it allows a finding of no violation for certain periods of excess emissions. Therefore, this notice proposes to disapprove the malfunction regulation.

DATES: Comments may be submitted up to June 30, 1983.

ADDRESSES: Comments may be sent to: Regional Administrator, Attn: Air Management Division, Air Programs Branch, State Implementation Plan Section (A–2–3), Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105.

Copies of the proposed revisions and EPA's associated Evaluation Report are available for public inspection during normal business hours at the EPA Region 9 office at the above address and at the following location: Nevada Department of Conservation and Natural Resources, 201 S. Fall Stree, Carson City, NV 89710.

FOR FURTHER INFORMATION CONTACT: Douglas Grano, Chief, State Implementation Plan Section, Air Programs Branch, Air Management Division, Environmental Protection Agency, Region 9, (415) 974–7641.

SUPPLEMENTARY INFORMATION: The State of Nevada submitted the following Clark County Health District regulations on November 17, 1981:

Subsection 60.4.2 *Evaporation Leakage* (Cutback Asphalt).

Section 25 *Upset/Breakdown, Scheduled Maintenance, Malfunctions.*

EPA has evaluated these rules for conformance with EPA policy. the submitted revision to subsection 60.4.2 reduces the geographic area where the rule applies. All of Clark County formerly constituted this area. Now, however, it consists of only the portion of Las Vegas Valley which lies withing Clark County. The revision is approvable since it is consistent with the ozone nonattainment area designation and the Nevada SIP.

Section 25 is proposed to be dissapproved. The rule is deficient because it allows, if certain conditions are met, for a finding of no violations for excess emissions which result from the malfunction or scheduled maintenance or air pollution control and process equipment. EPA policy requires "malfunction" rules to consider any period of excess emissions a violation. Enforcement action on a violation is then taken unless the excess emissions are proven to be truly beyond the control of the source.

The Adminstrator has certified that SIP actions do not have a significant economic impact on a substantial number of small entities. (see 46 FR 8709.)

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 response are available for public inspection at the EPA Region IX office (see address above).

List of Subjects in 40 CFR Part 52

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

Authority: Sections 110, 129, 171, to 178 and 301(a) of the Clean Air Act as amended (42 U.S.C. 7410, 7429, 7501 to 7508, and 7601(a)).

Dated December 28, 1982.

Sonia F. Crow,

Regional Administrator.

[FR Doc. 83–14275 Filed 5–27–83; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Parts 414 and 416

[WH–FRL 2372–7]

Organic Chemicals and Plastics and Synthetic Fibers Point Source Category Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Extension of comment period; notice of public hearing.

SUMMARY: On March 21, 1983, EPA proposed a regulation under the Clean Water Act to limit effluent discharges to waters of the United States and the introduction of pollutants into publicly owned treatment works from facilities engaged in the production of organic chemicals, plastics, and synthetic fibers (48 FR 11828). The Agency has received numerous complaints from the organic chemicals and plastics and synthetic fibers industry that additional comment time is needed to allow them to comment fully and to supply data to support their comments. EPA is extending the period for comment on this proposed regulation from June 19, 1983 to August 3, 1983.

Additionally, notice is hereby given of a hearing open to the public to discuss and receive comments on the pretreatment standards proposed in the March 21, 1983, **Federal Register** notice.

DATE: Comments on the proposed regulation for the organic chemicals and plastics and synthetic fibers category (48 FR 11828) must be submitted to EPA by August 3, 1983.

ADDRESSES: Send comments on the proposed regulation to Mr. E. H. Forsht, Effluent Guidelines Division (WH–552), Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460. Attention: Docket Clerk, Organic Chemicals and Plastics and Synthetic Fibers Industry. The supporting information and all comments on this proposal are available for inspection and copying at the EPA Public Information Reference Unit, Room 2404 (Rear) PM–213. The comments will be added to the record as they are received. The EPA Information Regulation (40 CFR Part 2) provides that a reasonable fee may be charged for copying.

The public hearing has been scheduled for July 14, 1983 and will be held at the following address: Skyline Inn South Capitol and I Street, S.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: E. H. Forsht, (202) 382–7135 for information concerning extension of the comment period. For further information about the public hearing contact Marvin B. Rubin, Project Officer for Public Participation, Effluent Guidelines Division (WH–552), Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460 (202) 382–7113.

SUPPLEMENTARY INFORMATION: On March 21, 1983, EPA proposed a regulation to limit effluent discharges to waters of the United States and the introduction of pollutants into publicly owned treatment works from facilities engaged in the production of organic chemicals and plastics and synthetic fibers (48 FR 11828). The March 21, 1983 notice stated that comments on the proposal were to be submitted on or before June 19, 1983.

The Agency has received numerous complaints from the organic chemicals and plastics and synthetic fibers industry that additional comment time is needed to allow them to comment fully and to supply data to support their comments. Given the size and diversity of the industry, the complexity of issues raised by this rulemaking, and the fact that there were delays of several weeks in the printing of the technical development document and in making the complete rulemaking record available to the public, EPA has determined that it is necessary to extend the comment period 45 days to allow the public adequate time to review and comment on this proposed regulation. This extension will give all members of the public adequate time to comment fully on this regulation.

The public hearing on pretreatment standards is being held for the Organic Chemicals and Plastics and Synthetic Fibers point source category in

accordance with Section 307(b) of the Clean Water Act, 33 U.S.C. 1317(b). Registration for the hearing will be held from 8:30 to 9:00 a.m. The hearing will start at 9:00 a.m. Following the registration period there will be a brief presentation by an EPA official on the development of these pretreatment standards. Opportunity will also be given throughout each session for the audience to submit written questions to the Presiding Officer. These questions will be addressed during a question and answer session at the conclusion of the oral testimony presentations for each category. For those people making an oral presentation, it is requested that a written transcript of their presentation as well as correct spellings of names, affiliations and addresses, be submitted to the court recorder. Official transcripts of the public hearing will be available upon request.

Date May 20, 1983.

Frederic A. Eidsness, Jr.,

Assistant Administrator for Water.

[FR Doc. 83-14272 Filed 5-27-83; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA-6527]

National Flood Insurance Program; Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations and proposed modified base flood elevations listed below for selected locations in the nation. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: Dr. Brian Mrazik, Acting Chief, Engineering Branch, Natural Hazards Division, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287-0230.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the proposed determinations of base (100-year) flood elevations and modified base flood elevations for selected locations in the nation, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 44 CFR 67.4 (a).

These elevations, together with the flood plain management measures required by Section 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under Section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the floodplain area. The elevation determinations, however, impose no restriction unless and until the local community voluntarily adopts floodplain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the floodplain and do not proscribe development. Thus, this action only forms the basis for future local actions. It imposed no new requirement; of itself it has no economic impact.

List of Subjects in 44 CFR Part 67

Flood insurance, Floodplains.

The proposed base (100-year) flood elevations for selected locations are:

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Arizona	Clifton (town) Greenlee County	San Francisco River	At the intersection of Laine Boulevard and 6th Street	*3,448
		Ward Canyon Creek	At the intersection of Southern Pacific Railroad and Ward Canyon Road.	*3,450
		Chase Creek	At the intersection of U.S. Highway 666 and Chase Creek Street.	*3,475
Maps available for inspection at City Manager's Office, City Hall, Clifton, Arizona. Send comments to Honorable Thomas Aguilar, P.O. Box 1415, Clifton, Arizona 85533				
California	Monterey County (Unincorporated areas)	Arroyo Del Rey	60 feet upstream from center of Blue Lakespur Lane	*229
		Arroyo Seco	40 feet upstream from center of Miller's Ranch Road dip crossing.	*617
		Calera Creek	50 feet upstream from center of Robley Road	*402
		Carmel River	50 feet upstream from center of State Highway 1	*27
		xl	50 feet upstream from center of Boronda Road	*233
		Castroville Boulevard Wash	10 feet upstream from center of Ormart Road	*26
		Corncob Canyon Creek	25 feet upstream from center of Garin Road	*44
		El Toro Creek	50 feet upstream from center of State Highway 68	*225
		Elkhorn Slough	50 feet upstream from center of San Miguel Canyon Road.	*32
		Gabilan Creek	25 feet downstream from center of Natividad Road	*139
		Natividad Creek	50 feet upstream from center of Sherwood Lane	*58

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
		Pajaro River	50 feet upstream from center of State Highway 1	*27
		Pajaro River—Without Consideration of Levee.	At the intersection of Trafton Road and McGowan Road.	*14
		Pine Canyon Creek	50 feet upstream from center of Jolon road	*309
		Reclamation Ditch	50 feet upstream from center of Boronda Road	*38
		Salinas River	At the intersection of Nashua Road and Cooper Road	*25
		Salinas River (Near King City)	50 feet upstream from center of U.S. Highway 101 Southbound.	*291
		Salinas River (Near San Ardo)	250 feet downstream from center of Cattlemen Road	*415
		San Lorenzo Creek	50 feet upstream from center of 1st Street	*323
		San Miguel Canyon Creek	At the intersection of Reese Circle and Cross Road	*26
		Santa Rita Creek	At the intersection of Paul Avenue and Rogge Road	*123
		Terribladero Slough	At the intersection of Preston Road and Salinas Street	*12
		Thomasello Creek	At point 100 feet northwest of intersection of creek and road on Pajaro River levee.	*45
		Carr Lake	Confluence of Gabilan Creek, Natividad Creek, and Reclamation Ditch.	*44
		Pacific Ocean	At the intersection of Elkhorn Slough and center of State Highway 1.	*6
	Maps available for inspection at Monterey Flood Control and Water Conservation District, 855 E. Laurel Drive, Salinas, California.			
	Send comments to Honorable William G. Peters, P.O. Box 1819, Salinas, California. 93902.			
Colorado	Montrose (City) Montrose County	Uncompahgre River	500 feet downstream from center of West Main Street (State Highway 90).	*5,770
		Montrose Arroyo	At the intersection of South 9th Street and Park Avenue.	*5,833
	Maps available for inspection at the Planning Department, City Hall, Montrose, Colorado.			
	Send comments to Honorable Ted Hermanns, Box 790, Montrose, Colorado 81402			
Connecticut	Clinton, (Town) Middlesex County	Long Island Sound	Entire shoreline within community	*16
	Maps available for inspection at the Town Hall, Clinton, Connecticut.			
	Send comments to Honorable James Cave, First Selectman of the Town of Clinton, Town Hall, 52 East Main Street, Clinton, Connecticut 06413.			
Connecticut	Stamford, (City) Fairfield County	Long Island Sound	Shoreline at Shippan Point	*17
			Shoreline of Stamford Harbor at Dolphia Cove Way (extended).	*17
			Shoreline of Stamford Harbor at Cook Road (extended).	*15
			Shoreline of Holly Pond at Weed Circle (extended)	*13
			Shoreline of East Branch Rippowam River behind hurricane barrier.	*6
	Maps available for inspection at the Office of the Environmental Protection Board, City Hall, 429 Atlantic Street, Stamford, Connecticut.			
	Send comments to Honorable Louis Clapes, Mayor of the City of Stamford, 429 Atlantic Street, Stamford, Connecticut 06904.			
Illinois	(C) Mt. Vernon, Jefferson County	Bishop Creek	At mouth	*453
			Just upstream of Norfolk Southern Railway (at 5th Street).	*547
			At 11th Street	*464
		Brickyard Creek	At mouth	*453
			Just upstream of Norfolk Southern Railway (at 5th Street).	*456
			Just upstream of 11th Street	*470
		West Tributary	Just upstream of Shiloh Drive	*442
			About 2,300 feet upstream of Richview Road	*491
		Church Tributary	About 150 feet downstream of State Route 37	*467
			About 1,250 feet upstream of State Route 37	*471
		Botches Ditch	Just downstream of State Route 37	*435
			Just downstream of Missouri Pacific Railroad	*456
			Just upstream of State Route 148	*466
			About 250 feet upstream of South Fishers Lane	*486
		East Fork Botches Ditch	At mouth	*467
			About 70 feet upstream of South Fishers Lane	*477
		Bell Street Ditch	At mouth	*436
			Just downstream of 10th Street	*458
		Casey Fork	About 1,800 feet downstream of State Route 142	*435
			About 3,000 feet upstream of Tolle Road	*456
	Maps available for inspection at the City Engineer's Office, City Hall, 1100 Main Street, Mt. Vernon, Illinois.			
	Send comments to Honorable William Thackery, Mayor, City of Mt. Vernon, City Hall, 1100 Main Street, Mt. Vernon, Illinois 62864.			
Illinois	(V) Lyndon, Whiteside County	Rock River	About 0.55 mile downstream of 6th Avenue West	*606
			About 1.2 miles upstream of 6th Avenue West	*608
	Maps available for inspection at the Village Hall, Lyndon, Illinois.			
	Send comments to Honorable Lyle Gehlsen, Village President, Village of Lyndon, Village Hall, P.O. Box 205, Lyndon, Illinois 61261.			
Illinois	(V) Walnut, Bureau County	Walnut Creek	About 1,400 feet downstream of Main street	685*
			About 2,225 feet upstream of Main street	*698
	Maps available for inspection at the Village President's Office, Village Hall, Jackson Street, Walnut, Illinois.			
	Send comments to Honorable Keith York, Village President, Village of Walnut, Village Hall, Jackson Street, Walnut, Illinois 61376.			
Kentucky	Unincorporated Areas of carter County	Cory branch	Just upstrem of Chessie System	*695
		Damron Branch	Just upstream of Private Road (Approximately 2,560 feet upstream of month).	*603

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
		Dry Fork	Approximately 1,000 feet Upstream of confluence of Lost Creek.	*632
		Flat fork	Just upstream of Interstate Highway 64	*886
		Grahn Fork	Just upstream of Unnamed Bridge (Approximately 740 feet upstream of Mouth).	*699
			Approximately 100 feet upstream of Kiser Branch Road.	*734
		Hitchins Tributary	Just upstream of Private drive (approximately 2,030 feet upstream of confluence with Little Fork of Little Sandy River).	*608
		Little Sandy River	Approximately 3,700 feet upstream of Interstate Highway 64.	*583
		Little Sinking Creek	Approximately 210 feet downstream of Fultz Road	*607
			Just downstream of Secondary Road 181 Bridge	*688
		Little Fork of Little Sandy River	Just downstream of Secondary Road 1,496	*629
			Just upstream of Secondary Road 1122	*659
		Lower Stinson Creek	Just upstream of Old U.S. Highway 60 (downstream crossing).	*601
		Soldier Fork	Approximately 210 feet downstream of Secondary Road 174 (downstream crossing).	*780
			Just downstream of confluence with Bradley Branch	*862
		Star Creek	Just upstream of U.S. Highway 60	*693
			Just upstream of Star Creek Road	*723
		Tygarts Creek	Approximately 2,380 feet upstream of Interstate Highway 64.	*729
			Just upstream of Secondary Road 174	*766
		Upper Stinson Creek	Just downstream of U.S. Highway 60	*588
		Upper Tygart Branch	Just upstream of U.S. Highway 60	*852
		Williams Creek	Just upstream of Secondary Road 854	*632

Maps available for inspection at Carter County Courthouse, Grayson, Kentucky 41143.

Send comments to Judge Joe Kitchens, Carter County Courthouse or Mr. D.C. Baldwin, Director of Disaster and Emergency Services, 711 East Main Street, Grayson, Kentucky 41143.

Massachusetts	Sandisfield, Town, Berkshire County	West Branch of the Farmington River.	Downstream corporate limits	*725
			Upstream Old Route 8	*750
			Downstream Private Drive	*774
			Downstream Routes 57 & 8	*838
			Approximately 5,000' upstream Routes 57 & 8	*910
			Approximately 6,600' downstream of Alan Road	*980
			Approximately 2,460' downstream Allan Road	*1,045
			Upstream Alan Road	*1,095
			Upstream corporate limits	*1,110
		Clam River	Confluence with West Branch of the Farmington River	*986
			Downstream Route 57	*838
			Upstream Beech Plain Road	*884
			Approximately 1,740' upstream confluence of the Buck River.	*913
		Buck River	Confluence with Clam River	*891
			Approximately 1,350' downstream Route 57	*940
			Upstream Route 57	*976
			Second upstream footbridge	*1,034
			Approximately 1,220' downstream third upstream footbridge.	*1,090
			Upstream third upstream footbridge	*1,120
			Upstream Route 57	*1,178
			Approximately 960' upstream Route 57	*1,210
			Approximately 2,090' upstream of Route 57	*1,241

Maps available for inspection at the Town Office, Sandisfield, Massachusetts.

Send comments to Honorable David A. Kelley, Chairman of the Sandisfield Board of Selectmen, Town Hall, Sandisfield, Massachusetts 02155.

Michigan	(V) Bingham Farms, Oakland County	Main Branch—River Rouge	Downstream corporate limit	*661
			Upstream corporate limit	*665
		Franklin Branch—River Rouge	Downstream corporate limit	*674
			Just downstream of Telegraph road	*711

Maps available for inspection at the Village President's Office, Suite 448, 30400 Telegraph Road, Bingham Farms, Michigan.

Send comments to Honorable Richard Holloway, Village President, Village of Bingham Farms, Suite 448, 30400 Telegraph Road, Bingham Farms, Michigan 48010.

Michigan	(c) Bloomfield Hills, Oakland County	Quarton Branch—River Rouge	Just upstream of Quarton Road	*754
			Just downstream of Lone Pine Road	*778
			Just upstream of Lone Pine Road	*783
			Just downstream of Cranbrook Road	*791
			About 50 feet upstream of Cranbrook Road	*795
			At confluence of Amy Drain	*822
		Stonycroft Branch—River Rouge	At confluence of Amy Drain	*822
			About 50 feet upstream of East Long Lake Road	*826
			at confluence of Hamlin Drain	*849
		Murphy Drain	At confluence of Hamlin Drain	*848
			Just downstream of Woodward Avenue	*873
			Just upstream of Woodward Avenue	*879
			Just downstream of Hickory Grove Road	*885
		Amy Drain	At mouth	*822
			Just upstream of the Grand Trunk and Western Railroad.	*838
			Upstream corporate limit	*847

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
		Sodon Lake Branch—River Rough	At mouth	*817
			About 450 feet downstream of Vaughn Road	*821
			Just upstream of of Vaughn Road	*829
			Just downstream of Lahser Road	*829
		Hamlin Drain	At mouth	*848
			Just downstream of the Grand Trunk and Western Railroad.	*854
			Just upstream of Kensington Road	*861
			Just downstream of New Bridge	*861
			Just upstream of New Bridge	*867
			About 550 feet upstream of New Bridge	*867
			About 750 feet upstream of New Bridge	*871
		Long Lake-Forest Lake Branch—River Rouge.	At mouth	*807
			Just downstream of Lake Placid Dam	*838
			Just upstream of Lake Placid Dam	*844
			Just downstream of Lahser Road	*858
	Maps available for inspection at the City Manager's Office, City Hall, 45 East Long Lake Road, Bloomfield Hills, Michigan.			
	Send comments to Honorable John Noonan, Mayor, City of Bloomfield Hills, City Hall, P.O. Box 288, 45 East Long Lake Road, Bloomfield Hills, Michigan 48103.			
Michigan	(Twp) White Lake, Oakland County	Huron River	Just downstream of Cooley Lake Road	*931
			Just downstream of Oxbow Lake Dam	*938
			Just upstream of Oxbow Lake Dam	*944
			Just downstream of Pontiac Lake Dam	*952
			Just upstream of Pontiac Lake Dam	*965
		Sugden Creek	Mouth at Huron River	*932
			Just upstream of the Bogie Lake Weir	*936
		Bogie Lake	Shoreline	*938
		Lake Neva	Shoreline	*946
		Cedar Island Lake	Shoreline	*935
		Pontiac Lake	Shoreline	*965
		White Lake	Shoreline	*1,021
		Grass Lake	Shoreline	*1,018
		Mandon Lake	Shoreline	*937
		Round Lake	Shoreline	*936
		Tull Lake	Shoreline	*954
		Cooley Lake	Shoreline	*936
		Long Lake	Shoreline	*936
	Maps available for inspection at the Clerk's Office, Town Hall, 7525 Highland Road, White Lake, Michigan.			
	Send comments to Honorable James L. Reid, Township Supervisor, Township of White Lake, Town Hall, 7525 Highland Road, White Lake, Michigan 48042.			
Minnesota	(C) Brownsville, Houston County	Mississippi River	Within the corporate limit	*639
	Maps available for inspection at the Office of the City Clerk, City Hall, Brownsville, Minnesota.			
	Send comments to Honorable John Hickey, Mayor, City of Brownsville, City Hall, Brownsville, Minnesota 55919.			
Minnesota	(C) Palisade, Aitken County	Mississippi River	About 850 feet downstream of Soo Line Railroad	*1,214
			About 450 feet upstream Soo Line Railroad	*1,215
	Maps available for inspection at the Office of City Clerk, City Hall, Palisade, Minnesota 56469.			
	Send comments to Honorable Gene Howel, Mayor, City of Palisade, City Hall, Palisade, Minnesota 56469.			
Mississippi	Town of McLain, Greene County	Leaf River	Just upstream of U.S. Highway 98 Bridge	*76
	Maps available for inspection at Town Clerk's Office, Town Hall, McLain, Mississippi 39456.			
	Send comments to Mayor L. A. Cooley or Ms. Ruth Coleman, Town Clerk, Town Hall, McLain, Mississippi 29456.			
Mississippi	City of Ocean Springs, Jackson County	Gulf of Mexico Mississippi Sound	Intersection of Shearwater Drive and Waterside Drive	*14
			Approximately 300 feet north of the intersection of Martin Avenue and West Beach Drive.	*13
			Intersection of Cleveland Avenue and Ruskin Avenue	*11
	Maps available for inspection at City Engineer's Office, City Hall, 1018 Porter Avenue, Ocean Springs, Mississippi 39564.			
	Send comments to Mayor Chester McPherson or Mr. Mark Seymour, City Engineer, City Hall, P.O. Drawer A, Ocean Springs, Mississippi 39564			
New York	Clifton Park, Town Saratoga County	Mohawk River	Downstream corporate limits	*198
			Upstream Vischer Ferry Dam	*218
			At upstream corporate limits	*222
		Dwaas Kill	Downstream corporate limits at U.S. Route 9	*187
			Upstream Interstate Route 81	*204
			At confluence of Cooley Kill	*209
		Cooley Kill	At confluence with Dwaas Kill	*209
			Approximately 780 feet upstream of State Route 109	*240
		Alplaus Kill	Downstream corporate limits	*236
			Upstream corporate limits	*265
		Anthony Kill	Entire shoreline within community	*160
		Ballston Lake	Entire shoreline affecting community	*258
		Round Lake	Entire shoreline within community	*160
	Maps available for inspection at the Town Hall Building Department, Town Hall, Route 146A, Clifton Park, New York 12065.			
	Send comments to Honorable Kevin Daley, Supervisor of the Town of Clifton Park, Town Hall, Route 146A, Clifton Park, New York 12065.			
Ohio	(Uninc.) Monroe County	Ohio River	Downstream County Boundary	*632
			Upstream County Boundary	*646

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
		Sunfish Creek	Just upstream State Route 7	*642
			About 1.0 mile downstream State Route 78	*668
			Just upstream State Route 78	*680
			Just upstream Township Road 156	*722
			Just upstream State Route 27	*843

Maps available for inspection at the Monroe County Commissioner's Office, Monroe County Courthouse, Woodsfield, Ohio.

Send comments to Honorable Bernard Smith, President, Monroe County Board of Commissioner's, Monroe County Courthouse, Woodsfield, Ohio 43793

	(V) Swanton, Fulton County	Ai Creek	At County Boundary	*668
			About 1,750 feet upstream of Athletic Field Road	*680
		Tributary A	At County Boundary	*664
			About 4,600 feet upstream of County Boundary	*674

Maps available for inspection at the the Village Hall, 219 Chestnut Street, Swanton, Ohio.

Send comments to Honorable Louis Carson, Mayor, Village of Swanton, Village Hall, 219 Chestnut Street, Swanton, Ohio 43558.

Oklahoma	Unincorporated areas of Oklahoma County	North Canadian River	Approximately 270 feet upstream of U.S. Highway 62	*1,073
			Approximately 2400 feet upstream of Triple XXX Road	*1,099
			Just downstream of northeast 78th Street (Wilshire Boulevard).	*1,103
			Approximately 300 feet upstream of northeast 36th Street.	*1,154
		Deep Fork	Approximately 300 feet downstream of Hiwassee Road.	*945
		Cowbell Creek	Just upstream of the City of Edmond corporate limits	*1,052
		Peavine Creek	Just upstream of the City of Edmond corporate limits	*1,070
		Chisholm Creek	Approximately 400 feet upstream of Waterloo Road (248th Street).	*1,013
			Approximately 1200 feet upstream of Sorghum Mill Road.	*1,027
			Approximately 300 feet downstream of Coffee Creek Road.	*1,030
		Chisholm Creek Tributary 1	Approximately 1400 feet upstream of confluence with Chisholm Creek.	*1,029
		Bluff Creek	Just upstream of Northwest 192nd Street	*1,036
			Approximately 260 feet upstream of northwest 178th Street.	*1,044
			Approximately 400 feet downstream of northwest 164th Street.	*1,057
		Deer Creek	Approximately 680 feet upstream of Waterloo Road (Northwest 248th Street).	*1,007
			Approximately 300 feet upstream of Coffee Creek Road (Northwest 220th Street).	*1,019
			Approximately 670 feet upstream of MacArthur Boulevard.	*1,041
			Approximately 130 feet upstream of Rockwell Avenue	*1,051
			Approximately 370 feet upstream of Council Road	*1,061
		Deer Creek Tributary 1	Approximately 50 feet upstream of Covell Road	*1,031
		Deer Creek Tributary 2	Just downstream of Danforth Road (Northwest 192nd Street).	*1,050
		Walnut Creek	Approximately 150 feet downstream of Northwest 164th Street.	*1,067

Maps available for inspection at the County Engineer's Office, Room 119, Oklahoma County Courthouse, Oklahoma City, Oklahoma 73102.

Send comments to Mr. F. G. Buchanan, Chairman, Board of County Commissioners or Mr. Paul Clowers, County Engineer, Room 119, Oklahoma County Courthouse, Oklahoma City, Oklahoma 73102.

Oregon	Reedsport (City) Douglas County	Umpqua River	At the Southern Pacific Railroad bridge crossing	*11
		Schofield Creek	At the intersection of Winchester Avenue and Schofield Creek.	*11

Maps available for inspection at Planning Department and Engineering Department, 451 Winchester Avenue, Reedsport, Oregon 97467.

Send comments to the Honorable Ronald Hanson, 451 Winchester Avenue, Reedsport, Oregon 97467.

Texas	Unincorporated Areas of Bell County	Big Elm Creek	Approximately 530 feet upstream of Big Elm Creek Road.	*410
			Approximately 600 feet upstream of State Highway 53	*478
			Approximately 110 feet downstream of FM 2086	*496
			Approximately 550 feet upstream of Bottoms Road	*561
			Approximately 320 feet upstream of Shiloh Road	*603
		Camp Creek	Approximately 440 feet upstream of Big Elm Creek Road.	*415
			Approximately 140 feet downstream of State Highway 53.	*464
			Approximately 100 feet upstream of FM 2904	*495
		Cyclone Branch	Just upstream of FM 964	*455
		Possum Creek	Approximately 480 feet downstream of State Highway 53.	*463
			Approximately 100 feet downstream of Possum Creek Road.	*492
		Possum Creek Tributary No. 1	Approximately 380 feet upstream of Airville Road	*473
		Ratibor Branch	Just upstream of FM 2086 (downstream crossing)	*493
			Approximately 300 feet upstream of FM 2086 (upstream crossing).	*502
		Little Elm Creek	Approximately 400 feet upstream of Seaton South Road.	*459
			Approximately 80 feet upstream of FM 3117	*503

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
			Approximately 350 feet downstream of Little Flock East Road.	*542
			Approximately 270 feet upstream of Gun Club Road	*610
			Just upstream of Moore's Mill Road	*678
		Little Elm Creek Tributary No. 1	Approximately 100 feet downstream of FM 3117	*492
			Approximately 150 feet upstream of Quail Trail	*546
		Williamson Creek	Just upstream of Little Flock Road	*561
		Little Elm Creek Tributary No. 2	Approximately 170 feet upstream of Old U.S. Highway 81.	*667
		Cottonwood Creek	Approximately 440 feet upstream of Mockingbird Road	*481
			Approximately 300 feet upstream of FM 2096	*536
			Just upstream of Gun Club Road	*636
			Just upstream of Interstate Highway 35	*731
		Pecan Creek	Just upstream of Berger Road (downstream crossing)	*541
			Just downstream of Pecan Road	*613
			Approximately 150 feet upstream of Quail Run	*669
		Kings Branch	Approximately 1,000 feet upstream of confluence with Big Elm Creek.	*616
		Kings Branch Tributary No. 2	Approximately 300 feet upstream of the Western corporate limits of the City of Troy.	*717
		South Elm Creek	Approximately 100 feet downstream of FM 2184	*418
			Approximately 300 feet upstream of Hunt Hill Road	*476
			Approximately 230 feet downstream of Highland School Road.	*519
		South Elm Creek Tributary No. 1	Approximately 1,450 feet upstream of confluence with South Elm Creek.	*465
		Nolan Creek	Just upstream of Backstrum Crossing	*592
			Approximately 100 feet upstream of FM 93	*601
			Approximately 200 feet upstream of confluence of Nolanville Tributary.	*667
		Nolan Creek Tributary No. 1	Approximately 80 feet upstream of the City of Belton corporate limits.	*556
		Nolan Creek Tributary No. 2	Just downstream of Dog River Road	*601
		North Nolan Creek	Approximately 240 feet upstream of Atchison-Topeka-Santa Fe Railway.	*598
			Approximately 290 feet upstream of FM 439	*606
		Nolanville Tributary	Approximately 170 feet downstream of FM 439	*734
		Little Nolan Creek	Just upstream of East Trimmer Road	*831
			Approximately 140 feet downstream of West Trimmer Road.	*903
		Little Nolan Creek Tributary No. 2	Just upstream of Elms Road	*838
			Approximately 80 feet upstream of Onion Road	*847
			Approximately 130 feet downstream of West Trimmer Road.	*894
		Little River	Just upstream of Sunshine Road	*420
			Approximately 1,350 feet upstream of State Highway 95.	*445
		Sypert Branch Tributary No. 1	Just downstream of FM 2184	*487
		Runnells Creek	Just downstream of Volvo Road	*434
			Approximately 250 feet upstream of Missouri-Kansas-Texas Railroad.	*473
		Willow Creek	Just downstream of State Highway 95	*454
		Boggy Creek	Approximately 250 feet downstream of FM 436	*453
			Just downstream of FM 93	*563
		Boggy Creek Tributary No. 1	Approximately 150 feet upstream of Missouri-Kansas-Texas Railroad.	*469
		Leon River	Approximately 150 feet downstream of FM 93	*476
			Approximately 200 feet downstream of the back toe of Belton Dam.	*502
		Fryers Creek	Approximately 160 feet upstream of Forrester Road	*482
			Approximately 150 feet upstream of Hartrick Bluff Road.	*567
		Fryers Creek Tributary No. 1	Just upstream of Belton Railroad	*556
			Approximately 70 feet upstream of FM 1741	*565
		Bird Creek	Approximately 450 feet upstream of Shallow Ford Road (downstream crossing).	*479
			Just upstream of Nugent Avenue	*697
		Bird Creek Tributary No. 1	Approximately 800 feet upstream of confluence with Bird Creek.	*486
		Pepper Creek	Approximately 170 feet upstream of Go-Cart Road	*512
			Approximately 100 feet downstream of Mouser Road	*683
		Pepper Creek Tributary No. 1	Just upstream of Private Drive (approximately 1,970 feet upstream of confluence with Pepper Creek).	*552
		Cedar Creek	Approximately 100 feet upstream of Cedar Creek Road.	*636
			Just downstream of FM 1237	*657
			Just upstream of Southerland Road	*701
		Lampasas River	Approximately 270 feet downstream of FM 1123	*465
			Approximately 150 feet downstream of the Back Toe of Stillhouse Hollow Dam.	*524
			Just upstream of Stillhouse Hollow Dam (Stillhouse Hollow Lake).	*642
			Approximately 100 feet upstream of Stillman Valley Road.	*669
			Approximately 350 feet upstream of Maxdale Road	*732
		Mitchell Branch	Approximately 100 feet upstream of FM 1123	*496
			Just upstream of Elm Grove Road	*560

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
		Dams Creek	Approximately 150 feet upstream of confluence of Cathey Creek.	*455
			Just downstream of Missouri-Kansas-Texas Railroad	*505
			Just upstream of Missouri-Kansas-Texas Railroad	*511
		Cathey Creek	Approximately 150 feet upstream of Missouri-Kansas-Texas Railroad.	*502
			Approximately 150 feet upstream of FM 1123	*540
		Donahoe Creek	Just downstream Donahoe Road	*459
			Approximately 770 feet upstream of FM 487	*511
		Indian Creek	Approximately 450 feet upstraeam of Lutheran Church Road.	*505
			Just downstream of Missouri-Kansa-Texas Railrod	*541
		Town Branch	Approximately 140 feet upstream of Lutheran Church Road (downstream crossing).	*525
			Approximately 70 feet downstream of State Highway 95.	*571
		Salado Creek	Just upstream of FM 1123	*476
			Approximately 150 feet downstream of Armstrong Road.	*492
			Approximately 300 feet upstream of Amity East Road	*530
			Just upstream of South Ridge Road	*569
			Just upstream of FM 2843	*646
		Smith Branch	Just upstream of Royal Road	*588
			Approximately 180 feet upstream of FM 2268	*634
		Salado Creek Tributary No. 1	Approximately 360 feet upstream of Rose Lane	*584
			Just upstream of Dam (Approximately 670 feet upstream of Rose Lane).	*595
		Salado Creek Tributary No. 2	Approximately 150 feet upstream of confluence with Salado Creek Tributary No. 1.	*559
		Salado Creek Tributary No. 3	Approximately 120 feet downstream of Demgummond Way.	*569
			Just downstream of FM 2268 (Main Street)	*606
		Campbell Branch	Just downstream of West Village Road	*607
		Salado Creek Tributary No. 4	Approximately 150 feet downstream of Dam (approximately 2500 feet upstream of confluence with Salado Creek).	*603 *626 *656
			Approximately 1,000 feet upstream of Dam (approximately 2,500 feet upstream of confluence with Salado Creek).	
			Just upstream of FM 2843	
		Knob Creek	Approximately 630 feet upstream of Reed's Lake South Road.	*441
			Just downstream of Knob Creek Lane	*477
			Just upstream of FM 436	*485
			Just downstream of FM 93	*536
			Just upstream of U.S. Highway 190	*559
		Margie Lou Branch	Approximately 160 feet upstream of FM 436	*499
			Just upstream of Atchison-Topeka and Santa Fe Railway.	*512 *531
			Approximately 270 feet downstream of FM 3117	
		Site Tributary No. 7	Approximately 110 feet upstream of the City of Harker Heights Northern Corporate limits.	*736
		Belton Lake	Entire Shoreline	*625

Maps available for inspection at County Judge's Office, Bell County Courthouse or County Engineer's Office, Bell County Courthouse Annex, Belton, Texas 76513.

Send comments to Judge John Carth, Bell County Engineer, County Courthouse or Mr. Walter Neazes, Bell County Engineer, County Courthouse Annex, Belton, Texas 76513.

Texas	Unincorporated areas of Kleberg County	Tranquitas Creek	Just upstream of Sage Road	*70
		Escondido Creek	Just upstream of FM 1356	*48
		Santa Gertrudis Creek	Approximately 1,000 feet downstream of FM 1356	*35
		Gulf of Mexico/Laguna Madre/ Baffin Bay/Alazan Bay.	Loyola Beach, just downstream of intersection of FM 1,546 and Vattaman Creek.	*9
		Gulf of Mexico/Laguna Madre/ Baffin Bay.	Padre Island, just east of State Highway 22	*9
			Padre Island, just west of State Highway 22	*8

Maps available for inspection at County Judges Office, Kleberg County Courthouse, Kingsville, Texas, 78363.

Send comments to Judge W. C. McDaniels or Mr. Hector Lopez, Civil Defense Director, Kleberg County Courthouse, P.O. Box 752, Kingsville, Texas 78363.

Texas	Unincorporated areas of Willacy County	Gulf of Mexico/Laguna Madre	Third Street extended to Laguna Madre shoreline	*13
			Intersection of Canal Street and Fourth Street	*11
			Intersection of Legion Drive and Beach Drive	*10
			Intersection of Well Street and Navigation Drive	*9

Maps available for inspection at County Judge's Office, Willacy County Courthouse Annex, Raymondville, Texas 78580.

Send comments to Judge Bill Rapp, Willacy County Courthouse Annex, Raymondville, Texas 78580.

Wisconsin	(C) La Crosse, La Crosse County	Mississippi River	About 3.5 miles downstream of U.S. Highways 14, 16 and 61.	*641 *647
			About 2.6 miles upstream of Lock an Dmm No. 7	
		La Crosse River	At mouth	644*
			Just downstream of Chicago, Milwaukee, St. Paul and Pacific Railroad.	*651 *656
			About 100 feet upstream of U.S. Highway 16	
		La Crosse River Left Overbank	Just upstream of Chicago and North Western Railroad	*645
			Just downstream of State Highway 35	*646
		La Crosse River Right Overbank	About 1,300 feet downstream of County Highway B	*647
			About 200 feet downstream of State Highway 16	*655

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
		Pammel Creek	About 2,150 feet downstream of U.S. Highways 14 and 61.	*640
				*653
			Just downstream of Broadview Place	*660
			About 1,000 feet upstream of Drive-In Road	
		Pammel Creek West Bank	Just upstream of Burlington Northern Railroad	*646
			Just downstream of Broadview Place	*651
			Just downstream of Ward Avenue	*656
		Pammel Creek East Bank	At downstream corporate limits	*645
			Just downstream of Ward Avenue	*660
			Just upstream of Ward Avenue	*666
			Just downstream of Drive-In Road	*673
		Pammel Creek Northwest Bank	Just upstream of 30th Street	*657
			Just downstream of 32nd Street	*665
			Just downstream of Drive-In Road	*670
		Ebner Coulee	Just upstream of Farnam Street	*659
			About 1,400 feet upstream of Farnam Street	*660
			About 500 feet upstream of 29th Stret	*675
		Ebner Coulee West Bank	Just upstream of Farnam Street	*659
			Just downstream of 29th Street	*662
		Ebner Coulee Southeast Bank	Just upstream of Ward Avenue	*656
			Just downstream of Jordan Place	*661
			Just about 500 feet upstream of Jordan Place	*664

Maps available for inspection at the City Planner's Office, City Hall, 505 6th Street, N., La Crosse, Wisconsin.

Send comments to Honorable Patrick Zieke, Mayor, City of La Crosse, City Hall, 505 6th Street, N., La Crosse, Wisconsin 54641.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001–4128); Executive Order 12127, 44 FR 19367; and delegation of authority to the Associate Director)

Issued: May 17, 1983.

Dave McLoughlin,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 83-14282 Filed 5-27-83; 8:45 am]

BILLING CODE 6718-03-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 172 and 173

[Docket HM-187; Notice No. 83-2]

Requirement for Small Arms Ammunition

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

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to authorize certain types of small arms ammunition to be classed and offered for shipment as ORM-D under the Department's Hazardous Materials Regulations. This change, if adopted, will eliminate the requirements for shipping papers to accompany the shipment.

DATE: Comments must be received by August 1, 1983.

ADDRESS: Address comments to: Dockets Branch, Materials Transportation Bureau, U.S. Department of Transportation, Washington, D.C. 20590. Comments should identify the docket and be submitted in five copies. The Dockets Branch is located in room 8426 of the Nassif Building, 400 Seventh Street, S.W., Washington, D.C. Public dockets may be reviewed between the hours of 8:30 a.m. and 5:00 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Thomas J. Charlton, Chief, Standards Division, Office of Hazardous Materials Regulations, Materials Transportation Bureau, U. S. Department of Transportation, 400 Seventh Street, S.W., Washington, D.C. 20590, (202) 462–2075.

SUPPLEMENTARY INFORMATION: On June 30, 1982, the Sporting Arms and Ammunition Manufacturers Institute, Inc. (SAAMI) petitioned the Office of Hazardous Materials Regulation (OHMR) to authorize the transportation of small arms ammunition classed as ORM-D instead of Class C explosive. The Materials Transportation Bureau (MTB) considers the SAAMI request to have merit but to be too broad in scope because small arms ammunition includes such devices as tear gas cartridges, tracer cartridges for machine guns, and seat ejector cartridges for aircraft. However, MTB is proposing that limited types of small arms ammunition which are used in rifles, shotguns, and pistols be classed as ORM-D. The SAAMI proposal suggested an additional "Small arms ammunition" entry in 49 CFR 172.101. The entry "Small arms ammunition" with the hazard class ORM-D is proposed to be added to the hazardous materials table.

Years of experience in shipping small arms ammunition indicate that these devices present only a very small hazard in transportation and this has been confirmed by extensive tests conducted by SAAMI. The MTB has reviewed a documentary film of the SAAMI tests and arrangements can be made for this film to be viewed by any interested person. Most of the weight in a small arms shipment is in the projectiles and the shell or cartridge cases. There is only a relatively small amount of propellant explosive present. For example, in shot shells the weight of the propellant powder is only about 4% and in rifle cartridges only about 8% of the total weight. There is no significant hazard from the shot or bullets in a fire because they are not accelerated unless the ammunition is fired in a weapon.

Information furnished by SAAMI indicates that savings to their members on shipments by one motor carrier alone would be approximately $100,000 per year. Although MTB does not have

specific data on the numbers of shipments by other shipper (such as distributers) and by other carriers it is believed that the annual savings on these shipments would also be substantial. MTB solicits comments from interested parties on the cost savings and burden reduction associated with this proposal, including specific data to quantify these savings.

Under existing regulations, small arms ammunition is not required to be in specification packaging and is not required to be labeled. This proposal would permit a different marking on the packages and would eliminate the need for shipping papers for surface transportation.

List of Subjects

49 CFR Part 172

Hazardous materials transportation, Labeling, Packaging, Containers.

49 CFR Part 173

Hazardous materials transportation, Packaging, Containers.

In consideration of the foregoing, Parts 172 and 173 of Title 49 of the Code of Federal Regulations would be amended as follows:

PART 172—HAZARDOUS MATERIALS TABLES AND HAZARDOUS MATERIALS COMMUNICATIONS REGULATIONS

1. In § 172.101, the Hazardous Materials Table would be amended by adding the following entry:

§ 172.101 Hazardous Materials Table.

(1)	(2)	(3)	(3A)	(4)	(5)		(6)		(7)		
					Packaging		Maximum net quantity in one package		Water shipments		
+EAW	Hazardous materials descriptions and proper shipping names	Hazard class	Identification number	Label(s) required (if not excepted)	Exceptions	Specific requirements	Passenger carrying aircraft or railcar	Cargo only aircraft	Cargo vessel	Passenger vessel	Other requirements
					(a)	(b)	(a)	(b)	(a)	(b)	(c)
	*	*	*	*	*		*	*			
	Small arms ammunition	ORM-D		None	None	173.1201	65 pounds gross.	65 pounds gross.	1,3	1,3	
	*	*	*	*	*		*	*			

2. Section 173.101 would be amended by adding paragraph (g) to read as follows:

§ 173.101 Small-arms ammunition.

* * * * *

(g) Special exceptions for shipment of certain types of small arms ammunition in the ORM–D class are provided in Subpart N of this part.

3. Subpart N of Part 173 would be amended by adding a new § 173.1201 as follows:

§ 173.1201 Small arms ammunition.

Small arms ammunition offered for transportation under provision of this section may only be ammunition for rifle, pistol, or shotgun containing either inert projectiles or blank ammunition. Small arms ammunition offered for transportation under provision of this section may not have any tear gas, incendiary or detonating explosive components, and may not be larger than 10 gauge for shot shells and 45 caliber for rifle and pistol ammunition. It must be packed in pasteboard or other inside boxes, in partitions designed to fit snugly in the outside packaging, or in metal clips. Partitions and metal clips must be so designed as to protect the primers from accidental initiation. Inside boxes, partitions, and metal clips must be packed in securely closed strong outside wooden or fiberboard boxes.

(49 U.S.C. 1803, 1804, 1808; 49 CFR 1.53, App. A to Part 1 and paragraph (a)(3) of App. A. to Part 106)

Note.—The MTB has determined that this document will not result in a "major rule" under the terms of Executive Order 12291 or a significant regulation under DOT's regulatory policy and procedures (44 CFR 11034) and does not require an environmental impact statement under the National Environmental Policy Act (49 U.S.C. 4321 *et seq.*). I certify that this document will not have a significant economic impact on a substantial number of small entities because the overall economic impact of this document will be minimal. A regulatory evaluation and environmental assessment are available for review in the docket.

Issued in Washington, D.C., on May 23, 1983.

Alan I. Roberts,

Associate Director for Hazardous Materials Regulation, Materials Transportation Bureau.

[FR Doc. 83-14329 Filed 5-27-83; 8:45 am]

BILLING CODE 4910-60-M

Federal Highway Administration

49 CFR Part 387

[BMCS Docket No. MC-107;

Notice No. 82-14]

Minimum Levels of Financial Responsibility for Motor Carriers of Passengers

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend 49 CFR 387 by adding a new subpart B to establish minimum levels of financial responsibility for for-hire motor carriers of passengers involved in interstate and foreign transportation. This action is in accord with the provisions of Section 18 of the Bus Regulatory Reform Act of 1982. This document further provides for the implementation and enforcement of the proposed standards.

DATE: Comments must be received on or before August 1, 1983.

ADDRESS: All comments should refer to the docket and notice number that appears at the top of this document and should be submitted preferably in triplicate, to Room 3404, Bureau of Motor Carrier Safety (BMCS), 400 Seventh Street, SW., Washington, D.C. 20590. All comments received will be available for examination at the above address between 7:45 a.m. and 4:15 p.m. e.t., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Neill L. Thomas, Bureau of Motor Carrier Safety, (202) 426–9767; or Mrs. Kathleen S. Markman, Office of the Chief Counsel, (202) 426–0346; Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m. e.t., Monday through Friday.

SUPPLEMENTARY INFORMATION: The FHWA has determined that this document does not contain a major rule under Executive Order 12291. It has further been determined that it contains a significant regulation under the regulatory policies of the Department of Transportation.

A draft regulatory evaluation and a Regulatory Flexibility Analysis are available for review in the public docket. A copy may be obtained by contacting Mr. Neill L. Thomas at the address provided above under the heading **"FOR FURTHER INFORMATION CONTACT"** of this document. The FHWA specifically requests information upon which to determine whether implementation of Section 18 of the Act would have a significant economic impact on a substantial number of small entities.

Background

On September 20, 1982, the President signed the Bus Regulatory Reform Act of 1982, Pub. L. 97-261 (the Act). Section 18 of the Act establishes minimum levels of financial responsibility covering public liability and property damage for the transportation of passengers by for-hire motor vehicles in interstate or foreign commerce.

The Act establishes minimum levels of financial responsibility that must be met by affected persons as of November 19, 1983 unless the Secretary issues regulations that require higher or lower levels. The Secretary may promulgate those regulations to require higher levels and the Secretary's authority to reduce these levels is limited. The statute precludes the Secretary from reducing the minimum levels below specified levels and provides that the authority to impose reduced levels applies only to a period of up to 2 years beginning either on: (1) The effective date of the rule provided that the rule is made effective by November 19, 1983, or (2) the 366th day after the effective date of Section 18 of the Act provided a rule is made effective 1 year after enactment or later.

The purpose of the financial responsibility provision of the Bus Regulatory Reform Act of 1982 is to create additional incentives to motor carriers to operate their buses in a safe manner and to assure that they maintain adequate levels of financial responsibility sufficient to satisfy claims covering public liability and property damage. The legislative history of Section 18 indicates a Congressional belief that the establishment of minimum levels of financial responsibility to enhance safety will also ensure that adequate sources of compensation are available to compensate those who may be injured while traveling by bus. It is also believed, given the interstate nature of many motor carrier operations, a single Federal standard for financial responsibility coverage will be more efficient for carriers and more equitable and certain for consumers.

Also appearing in today's **Federal Register** are the delegations of authority necessary for the issuance of this notice of proposed rulemaking (NPRM). The Bus Regulatory Reform Act of 1982 vests the Secretary with the authority to prescribe minimum financial responsibility levels. This authority is delegated to the FHWA, and, in turn, the FHWA is delegating the authority to the Director, Bureau of Motor Carriers Safety (BMCS).

Minimum Levels of Financial Responsibility Required

The current limits of liability required of motor carriers of passengers subject to regulation by the Interstate Commerce Commission (ICC) are:

(1) $100,000/$500,000/$50,000 for vehicles having a seating capacity of more than 12 passengers; and

(2) $100,000/$300,000/$50,000 for vehicles having a seating capacity of 12 passengers or less. These levels will remain in effect until final rules are promulgated by the FHWA or changed by the ICC.

The minimum levels of financial responsibility set forth in the Act that will take effect 1 year after the effective date of the Act unless the Secretary exercises the statutory authority to establish different levels, are as follows:

(1) $5 million for vehicles having a seating capacity of 16 or more passengers; and

(2) $1.5 million for vehicles having a seating capacity of 15 passengers or less.

The Secretary's authority to change the requirements for the 2-year phase-in period allows reductions as follows:

(1) The $5 million statutory requirement to no less than $2.5 million for vehicles having a seating capacity of 16 or more passengers; and

(2) The $1.5 million statutory requirement to no less than $750,000 for vehicles having a seating capacity of 15 or less passengers.

Generally, the Secretary may make these reductions provided the Secretary finds that such reductions (1) will not adversely affect public safety and (2) will prevent a serious disruption in transportation service.

Financial responsibility may be established under Section 18 of the Act by any one or combination of the following methods acceptable to the Secretary:

(1) Evidence of insurance, including high self-retention;

(2) Guarantee; or

(3) Surety bond.

The Act requires that any bond filed shall be issued by a bonding company authorized to do business in the United States.

Discussion

The following is a discussion of the proposed rules developed by the FHWA.

For the sake of clarity the rules concerning the minimum levels of financial responsibility for motor carriers of passengers will be designated as Subpart B of 49 CFR 387. The FHWA intends to designate existing sections 387.1 thru 387.17 concerning financial responsibility for motor carriers of property, as Subpart A.

Purpose, Scope, and Applicability (§ 387.25—Subpart B)

The minimum levels of financial responsibility, covering public liability and property damage, as proposed in this document, would apply to for-hire motor carriers of passengers involved in interstate and foreign commerce.

Section 18 of the Act does not apply to: 1. A motor vehicle transporting only school children and teachers to or from school;

2. A motor vehicle providing taxicab service and having a seating capacity of less than 7 passengers and not operated on a regular route or between specified points; and

3. A motor vehicle carrying 15 or less individuals in a single, daily round trip to commute to and from work.

It should be noted that the language of the Act clearly indicates that motor vehicles for-hire, carrying 16 or more individuals, even in a single, daily round trip to commute to and from work are subject to the law.

As previously discussed, the purpose of requiring increased levels of financial responsibility is to enhance safety. It is believed that the public will be better served by the proposed limits, especially considering that motor carriers would have greater incentives to create and maintain more effective safety programs to help keep their premiums lower. This belief is based on the observation that carriers having good safety records are usually evaluated in a favorable light by insurance companies since generally the premiums that insurance companies charge are directly related to their insureds' loss experience.

Equally important to safety in considering minimum levels of financial

responsibility is the economic conditions under which the motor carrier industry operates. Such consideration is required not only by Section 18 which directs the Secretary of Transportation to focus on safety without creating undue economic burdens on the motor carrier and insurance industries, but also by Executive Order 12291, dated February 17, 1981. Further, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354, September 19, 1980; 5 U.S.C. 60; et seq.) requires more flexible regulatory approaches for small business entities. In accordance with these requirements, a draft regulatory evaluation/regulatory flexibility analysis has been prepared. Initial findings contained in this document will be discussed in the section of this preamble entitled "Financial Responsibility, Minimum Levels (§387.33)."

Definitions (§ 387.29)

The proposed definitions for this subpart, particularly those referencing terminology commonly used in the insurance industry, are based on definitions found in 49 CFR 387.5. These definitions were developed with the assistance of the insurance and motor carrier industries during an earlier rulemaking action concerning liability requirements for motor carriers of property and are discussed in detail in a notice of proposed rulemaking published January 26, 1981, 46 FR 8186. Other definitions, such as those specifically relating to motor carriers of property, have been adjusted to reflect the transportation of passengers.

One term introduced in Section 18 of the Act which has not previously been defined in the FMCSR is "seating capacity." It is believed that this term is generallly self-explanatory since manufacturers designate the seating capacity for most vehicles. However, in the case of a custom made vehicle, or any other vehicle not having a designated seating capacity, the seating capacity will be determined in accordance with the National Highway Traffic Safety Administration's (NHTSA) definition of "designated seating position" (49 CFR 571.3). The NHTSA defines, "designated seating position" as "any plan view location capable of accommodating a person at least as large as a 5th percentile adult female, if the overall seat configuration and design and vehicle design is such that the position is likely to be used as a seating position while the vehicle is in motion, except for auxillary seating accomodations such as temporary or folding jump seats. Any bench or split bench seat in a passenger car, truck or multi-purpose passenger vehicle with a GVWR less than 10,000 pounds, having greater than 50 inches of hip room (measured in accordance with SAE Standards J1100(a)) shall have not less than three designated seating positions, unless the seat design or vehicle design is such that the center position cannot be used for seating."

Financial Responsibility Required (§ 387.31)

This notice proposes that policies of insurance, surety bonds, and endorsements required under this section shall remain in effect continuously until terminated. Cancellation may be effected by the insurer or the insured motor carrier giving 35 days notice in writing to the other.

An analysis of comments received in reponse to BMCS Docket No. MC–94, concerning minimum levels of financial responsibility for motor carriers of property, indicated that: (1) 35 days constitutes a reasonable amount of time for cancellation of policies of insurance, surety bonds, and endorsements, (2) it is sufficient time for a motor carrier to obtain replacement coverage, unless the carrier's performance record is extremely poor, (3) it is also sufficient time for an insurance company to be relieved of further liability since normally there is enough premium deposit to cover that period, and (4) 35 days is ample time to prepare cancellation papers. It is also important to note that the 35 days notice of cancellation would commence on the day that such notice is mailed with proof or mailing sufficient proof of notice.

Further, the proposed rule allows the motor carrier the right to obtain adequate coverage for a finite period (e.g., coverage by binder) of time to cover any lapse in continuous compliance without triggering the 35-day cancellation requirement. This will afford assurance that the public will be protected.

The proposed regulations would require that an endorsement(s) be attached to insurance policies for the purpose of assuring the insured that all the criteria of Section 18 of the Act have been met in the policy. Further, surety bonds, on a prescribed form, using prescribed language, would be permitted in lieu of the policy of insurance and required endorsement.

The required endorsements (See Illustrations I and II) would alleviate the often times confusing translation and interpretation of an insurance policy or surety bond. It is believed that this requirement would not create an undue

paperwork burden on the insurance industry as it consists of a single page form using simple language. Further, the proposal reflects the Department's belief that the benefits of having endorsement attached to policy far outweigh any considerations against it, since it would provide confirmation of full coverage to the motor carrier and the public at a glance. This type of endorsement is already provided to motor carriers of property in accordance with 49 CFR 387.7 and to motor carriers of passengers presently regulated by the Interstate Commerce Commission.

The proof of financial responsibility, whether it be an endorsement attached to a policy of insurance or a surety bond, would be kept at a motor carrier's principal place of business. This proof would be available to the public upon reasonable request for review. Such availability is in keeping with the intent of Congress to provide protection to the public. It would also provide the assurance needed by a lessor of a motor vehicle that the minimum levels of financial responsibility have been met by a motor carrier.

Financial Responsibility, Minimum Levels (§ 387.33)

As previously discussed, a draft regulatory evaluation/regulatory flexibility analysis has been prepared. The preliminary findings of the evaluation, when considered in light of Executive Order 12291, indicate that the public safety will not be adversely affected by reducing the mandated levels of financial responsibility to the lowest levels permitted for the full two-year period provided for in the Act.

The draft regulatory evaluation indicates that the accident rate for the interstate bus industry is less than one half of that for the interstate trucking industry. A comparative analysis between trucks and buses shows societal costs, as measured by number of fatalities and injuries, and property damage, for buses are low. Passenger safety is superior in buses compared to truck driver/co-driver safety; from 1.4 to 2.4 times as safe fatality wise and, while the number of injuries in bus and truck accidents is considerably closer, this can be attributed to the passenger-density factor on buses. This information, coupled with accident cost data which shows that the lowest levels are adequate to cover liability claims in the majority of cases, indicates that the 2-year phase-in period may be advisable.

While the data used to prepare the draft regulatory evaluation has been limited to BMCS accident statistics, it is believed that this information is very reliable and accurate. It is understood however that more detailed information, which will hopefully be obtained from the regulated industry in response to this notice, may indicate that the lowest levels may not be adviseable.

The information which is solicited from the regulated industry is needed to assist the FHWA in its assessment of what limits will best protect the public's safety without seriously disrupting transportation service. The regulatory evaluation also indicates that the cost of the highest levels may not represent significantly higher costs for the insured when compared to the expense of current limits. If the comments reflect such marginal increases in premiums, the FHWA may permit limits higher than the absolute minimum to take effect for protection of the public without placing significant burdens on the bus industry.

Should the comments to this notice warrant it, consideration will also be given to the option of layering the required levels depending on such variables as fleet size or annual mileage. The option of permitting a graduated phase-in over the two-year period is also considered feasible. Such considerations would be in keeping with the intent of the Regulatory Flexibility Act of 1980, Pub. L. 96–354, which addresses regulatory burden on small businesses.

In order to assist the FHWA in its final evaluation, it is requested that small bus companies (Class II and III) and small commuter companies, including vanpool operations where vans carry 16 or more individuals, submit their financial statements for aggregation and use in the final evaluation. The financial data should cover the years 1977-1981 and provide particular attention to insurance premium information, number of vehicles operated in each year, as well as type of services offered. Interstate bus companies are also requested to submit their accounting of total costs (itemized if possible) of serious accidents involving fatalities, personal injuries, and property damage.

State Authority and Designation of Agent (§ 387.35)

Section 18 of the Act states that "financial reponsibility may be established under this section by any one or combination of the following methods acceptable to the Secretary: evidence of insurance, including high self-retention, guarantee, or surety bond. Any bond filed shall be issued by a bonding company authorized to do business in the United States."

Based on comments received in response to Docket MC–94 on this same matter, it is proposed that both policies of insurance and surety bonds will satisfy the financial responsibility requirements of this part if the insurer or surety furnishing the policy or bond is—

(a) Legally authorized to issue such policies or bonds in each State in which the motor carrier operates; or

(b) Legally authorized to issue such policies or bonds in the State in which the motor carrier has its principal place of business or domicile, and designates a person upon whom process, issued by or under the authority of any court having jurisdiction of the subject matter, may be served in any proceeding at law or equity brought in any State in which the motor carrier operates; or

(c) Legally authorized to issue such policies or bonds in any State of the United States and eligible as an excess or surplus lines insurer in any State in which business is written, and designates a person upon whom process, issued by or under the authority of any court having jurisdiction of the subject matter, may be served in any proceeding at law or equity brought in any State in which the motor carrier operates.

It should be noted that even though the Act provides for "guarantees" as an acceptable method of meeting the financial requirements, this method has not been provided for in this proposed rule. This is due to the fact that our research shows no evidence that motor carriers regulated by the ICC consider this method a viable tool for meeting financial responsibility requirements. Further, neither the ICC nor the respondents to Docket MC–94 were able to enlighten the Department as to how a guarantee can be practically applied to the financial responsibility requirements for motor carriers. Comments, data or detailed information concerning this matter are welcome.

Violation and Penalty (§ 387.41)

To additionally strengthen the incentives for motor carriers to concentrate more rigorously on safety, Congress included a civil penalty of up to $10,000 per violation to be assessed against any motor carrier proven to be in violation of the final regulations implementing Section 18.

List of Subjects in 49 CFR Part 387

Highways and roads, Motor carriers, Motor vehicles Financial responsibility, Insurance, Penalties.

(Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety)

Issued on: May 20, 1983.

Kenneth L. Pierson,

Director, Bureau of Motor Carrier Safety, Federal Highway Administration.

In consideration of the foregoing and under the authority of § 18 of the Bus Regulatory Reform Act of 1982, Pub. L. 97–261; 23 U.S.C. § 315; and 49 CFR 1.48 and 301.60, the Federal Highway Administration proposes to amend Title 49, Code of Federal Regulations, Subtitle B, Chapter III, by revising Part 387 as set forth below.

PART 387—MINIMUM LEVELS OF FINANCIAL RESPONSIBILITY FOR MOTOR CARRIERS

1. Sections 387.1 through 387.17 are designated as Subpart A with the title "Motor Carriers of Property."

2. Subpart B is added to Part 387 to read as follows:

Subpart B—Motor Carriers of Passengers

Sec.
387.25 Purpose and scope.
387.27 Applicability.
387.29 Definitions.
387.31 Financial responsibility required.
387.33 Financial responsibility, minimum levels.
387.35 State of Authority and designation of agents.
387.37 Fiduciaries.
387.39 Forms.
387.41 Violation and penalty.

Authority: Sec. 18, Pub. L. 97–261, 96 Stat. 1102 (23 U.S.C. 315); 49 CFR 1.48 and 301.60.

Subpart B—Motor Carriers of Passengers

§ 387.25 Purpose and scope.

This subpart prescribes the minimum levels of financial responsibility required to be maintained by for-hire motor carriers of passengers operating motor vehicles in interstate or foreign commerce. The purpose of these regulations is to create additional incentives to carriers to operate their buses in a safe manner and to assure that they maintain adequate levels of financial responsibility.

§ 387.27 Applicability.

(a) This subpart applies to for-hire motor carriers operating motor vehicles transporting passengers in interstate or foreign commerce.

(b) *Exception.* The rules in this subpart do not apply to—

(1) A motor vehicle transporting only school children and teachers to or from school;

(2) A motor vehicle providing taxicab service and having a seating capacity of less than 7 passengers and not operated

on a regular route or between specified points; and

(3) A motor vehicle carrying less than 16 individuals in a single, daily round trip to commute to and from work.

§ 387.29 Definitions.

As used in this subpart—

Accident—includes continuous or repeated exposure of the same conditions which results in public liability which the insured neither expected nor intended.

Bodily injury—means injury to the body, sickness, or disease to any person, including death resulting from any of these.

Endorsement—an amendment to an insurance policy.

Financial responsibility—the financial reserves (e.g., insurance policies or surety bonds) sufficient to satisfy liability amounts set forth in this subpart covering public liability.

For-hire carriage—transportation of passengers by motor vehicle except when—

(a) The passengers are transported by a person engaged in a business other than transportation; and

(b) The transportation is within the scope of, and furthers a primary business (other than transportation) of the person.

Insured and principal—the motor carrier named in the policy of insurance, surety bond, endorsement, or notice of cancellation, and also the fiduciary of such motor carrier.

Insurance premium—the monetary sum an insured pays an insurer for acceptance of liability for public liability claims made against the insured.

Motor Carrier—means a for-hire carrier of passengers by motor vehicle.

Property damage—means damage to or loss of use of tangible property.

Public Liability—means liability for bodily injury or property damage.

§ 387.31 Financial responsibility required.

(a) No motor carrier shall operate a motor vehicle transporting passengers until the motor carrier has obtained and has in effect the minimum levels of financial responsibility as set forth in § 387.33 of this subpart.

(b) Policies of insurance, surety bonds, and endorsements required under this section shall remain in effect continuously until terminated. (1) *Exception.* Policies of insurance and surety bonds may be obtained for a finite period of time to cover any lapse in continuous compliance. (2) Cancellation may be effected by the insurer or the insured motor carrier giving 35 days notice in writing to the other. The 35 days notice shall commence to run from the date the notice is mailed. Proof of mailing shall be sufficient proof of notice.

(c) Policies of insurance and surety bonds required under this section may be replaced by other policies of insurance or surety bonds. The liability of the retiring insurer or surety, as to events after the termination date, shall be considered as having terminated on the effective date of the replacement policy of insurance or surety bond or at the end of the 35 day cancellation period required in paragraph (b) of this section, whichever is sooner.

(d) Proof of the required financial responsibility shall be maintained at the motor carrier's principal place of business. The proof shall consist of—

(1) "Endorsement(s) for Motor Carriers of Passengers Policies of Insurance for Public Liability Under Section 18 of the Bus Regulatory Reform Act of 1982" (form MCS–90B) issued by an insurer(s); or

(2) A "Motor Carrier of Passengers Surety Bond for Public Liability Under Section 18 of the Bus Regulatory Reform Act of 1982" (form MCS–82B) issued by a surety.

(e) The proof of minimum levels of financial responsibility required by this section shall be considered public information and be produced for review upon reasonable request by a member of the public.

§ 387.33 Financial responsibility, minimum levels.

The minimum levels of financial responsibility referred to in § 387.31 of this subpart are hereby prescribed as follows:

SCHEDULE OF LIMITS, PUBLIC LIABILITY—FOR-HIRE MOTOR CARRIERS OF PASSENGERS OPERATING IN INTERSTATE OR FOREIGN COMMERCE

Vehicle seating capacity	Effective dates	
	[Nov. 19, 1983]	[Nov. 19, 1985]
(1) [Any vehicle] with a seating capacity of 16 passengers or more	[$2,500,000] to [$5,000,000]	$5,000,000
(2) [Any vehicle] with a seating capacity of 15 passengers or less	[$750,000] to [$1,500,000]	$1,500,000

§ 387.35 State authority and designation of agent.

A policy of insurance or surety bond does not satisfy the financial responsibility requirements of this subpart unless the insurer or surety furnishing the policy or bond is—

(a) legally authorized to issue such policies or bonds in each State in which the motor carrier operates; or

(b) legally authorized to issue such policies or bonds in the State in which the motor carrier has its principal place of business or domicile, and designates a person upon whom process, issued by or under the authority of any court having jurisdiction of the subject matter, may be served in any proceeding at law or equity brought in any State in which the motor carrier operates; or

(c) legally authorized to issue such policies or bonds in any State of the United States and eligible as an excess or surplus lines insurer in any State in which business is written, and designates a person upon whom process, issued by or under the authority of any court having jurisdicition of the subject matter, may be served in any proceeding at law or equity brought in any State in which the motor carrier operates.

§ 387.37 Fiduciaries.

The coverage of fiduciaries shall attach at the moment of succession of such fiduciaries.

§ 387.39 Forms.

Endorsements for policies of insurance (Illustration I) and surety bonds (Illustration II) must be in the form prescribed by the FHWA and approved by the OMB. Endorsements to policies of insurance and surety bonds shall specify that coverage thereunder will remain in effect continuously until terminated as required in § 387.31 of this subpart. The endorsement and surety bond shall be issued in the exact name of the motor carrier.

§ 387.41 Violation and penalty.

Any person (except an employee who acts without knowledge) who knowingly violates the rules of this subpart shall be liable to the United States for civil penalty of no more than $10,000 for each violation, and if any such violation is a continuing one, each day of violation will constitute a separate offense. The amount of any such penalty shall be assessed by the Director, Bureau of Motor Carrier Safety, by written notice. In determining the amount of such penalty, the Director shall take into account the nature, circumstances, extent, the gravity of the violation committed and, with respect to the person found to have committed such violation, the degree of culpability, any history of prior offenses, ability to pay, effect on ability to continue to do business, and such other matters as justice may require.

BILLING CODE 4910-22-M

ILLUSTRATION I

U.S. Department of Transportation
Federal Highway Administration

Expiration Date:
Form Approved
OMB No.

ENDORSEMENT FOR MOTOR CARRIER POLICIES OF INSURANCE FOR PUBLIC LIABILITY UNDER SECTION 18 OF THE BUS REGULATORY REFORM ACT OF 1982

Issued to _____ of _____

Dated at _____ this _____ day of _____, 19____

Amending Policy No. _____ Effective Date _____

Name of Insurance Company _____

Countersigned by _____
Authorized Company Representative

The policy to which this endorsement is attached provides primary or excess insurance, as indicated by "☒", for the limits shown:

☐ This insurance is primary and the company shall not be liable for amounts in excess of $ _____ for each accident.

☐ This insurance is excess and the company shall not be liable for amounts in excess of $ _____ for each accident in excess of the underlying limit of $ _____ for each accident.

Whenever required by the Bureau or the ICC, the company agrees to furnish the Bureau or the ICC a duplicate of said policy and all its endorsements. The company also agrees, upon telephone request by an authorized representative of the Bureau or the ICC, to verify that the policy is in force as of a particular date. The telephone number to call is: _____

Cancellation of this endorsement may be effected by the company or the insured by giving (1) thirty-five (35) days notice in writing to the other party (said 35 days notice to commence from the date the notice is mailed, proof of mailing shall be sufficient proof of notice), and (2) if the insured is subject to the ICC's jurisdiction, by providing thirty (30) days notice to the ICC (said 30 days notice to commence from the date the notice is received by the ICC at its office in Washington, D.C.).

DEFINITIONS AS USED IN THIS ENDORSEMENT

ACCIDENT includes continuous or repeated exposure to conditions which results in Public Liability which the insured neither expected not intended.

BODILY INJURY means injury to the body, sickness, or disease to any person, including death resulting from any of these.

MOTOR CARRIER means a for-hire carrier of passengers by motor vehicle.

PROPERTY DAMAGE means damage to or loss of use of tangible property.

PUBLIC LIABILITY means liability for bodily injury or property damage.

The insurance policy to which this endorsement is attached provides automobile liability insurance and is amended to assure compliance by the insured, within the limits stated herein, as a for-hire motor carrier of passengers with Section 18 of the Bus Regulatory Reform Act of 1982 and the rules and regulations of the Federal Highway Administration's Bureau of Motor Carrier Safety (Bureau) and the Interstate Commerce Commission (ICC).

In consideration of the premium stated in the policy to which this endorsement is attached, the insurer (the company) agrees to pay, within the limits of liability described herein, any final judgment recovered against the insured for public liability resulting from negligence in the operation, maintenance or use of motor vehicles subject to financial responsibility requirements of Section 18 of the Bus Regulatory Reform Act of 1982 regardless of whether or not each motor vehicle is specifically described in the policy, and whether or not such negligence occurs on any route or in any territory authorized to be served by the insured or elsewhere. Such insurance as is afforded, for public liability, does not apply to injury to or death of the insured's employees while engaged in the course of their employment, or property transported by the insured, designated as cargo. It is understood and agreed that no condition, provision, stipulation, or limitation contained in the policy, this endorsement, or any other endorsement thereon, or violation thereof, shall relieve the company from liability or from the payment of any final judgment, within the limits of liability herein described, irrespective of the financial condition, insolvency or bankruptcy of the insured. However, all terms, conditions, and limitations in the policy to which the endorsement is attached shall remain in full force and effect as binding between the insured and the company. The insured agrees to reimburse the company for any payment made by the company on account of any accident, claim, or suit involving a breach of the terms of the policy, and for any payment that the company would not have been obligated to make under the provisions of the policy except for the agreement contained in this endorsement.

It is further understood and agreed that, upon failure of the company to pay any final judgment recovered against the insured as provided herein, the judgment creditor may maintain an action in any court of competent jurisdiction against the company to compel such payment.

The limits of the company's liability for the amounts prescribed in this endorsement apply separately to each accident and any payment under the policy because of any one accident shall not operate to reduce the liability of the company for the payment of final judgments resulting from any other accident.

The Bus Regulatory Reform Act of 1982 requires limits of financial responsibility according to vehicle seating capacity. It is the MOTOR CARRIER'S obligation to obtain the required limits of financial responsibility.

Form MCS-90B
(11-83)

SCHEDULE OF LIMITS
Public Liability
For-hire motor carriers of passengers operating in interstate or foreign commerce

Vehicle Seating Capacity	Effective Dates	
	Nov. 19, 1983	Nov. 19, 1985
(1) Any vehicle with a seating capacity of 16 passengers or more.	$2,500,000	$5,000,000
(2) Any vehicle with a seating capacity of 15 passengers or less.	$ 750,000	$1,500,000

ILLUSTRATION II

Federal Highway Administration

Form Approved
OMB No.

MOTOR CARRIER PUBLIC LIABILITY SURETY BOND UNDER SECTION 18 OF THE BUS REGULATORY REFORM ACT OF 1982

PARTIES

Surety Company and Principal Place of Business Address	Motor Carrier Principal, I.C.C. Docket No., and Principal Place of Business Address

PURPOSE

This is an agreement between the Surety and the Principal under which the Surety, its successors and assignees, agree to be responsible for the payment of any final judgment or judgments against the Principal for public liability and property damage claims in the sums prescribed herein, subject to the governing provisions and following conditions.

GOVERNING PROVISIONS

(1) Section 18 of the Bus Regulatory Reform Act of 1982
(2) Rules and regulations of the Federal Highway Administration's Bureau of Motor Carrier Safety (Bureau)
(3) Rules and regulations of the Interstate Commerce Commission (ICC)

CONDITIONS

The Principal is or intends to become a motor carrier of passengers subject to the applicable governing provisions relating to financial responsibility for the protection of the public.

This bond assures compliance by the Principal with the applicable governing provisions, and shall inure to the benefit of any person or persons who shall recover a final judgment or judgments against the Principal for public liability or property damage claims (excluding injury to or death of the Principal's employees while engaged in the course of their employment, and loss of or damage to property of the Principal, and the cargo transported by the Principal). If every final judgment shall be paid for such claims resulting from the negligent operation, maintenance, or use of motor vehicles in transportation subject to the applicable governing provisions, then this obligation shall be void, otherwise it will remain in full effect.

Within the limits described herein, the Surety extends to such losses regardless of whether such motor vehicles are specifically described herein and whether occurring on the route or in the territory authorized to be served by the Principal or elsewhere.

The liability of the Surety for each motor vehicle subject to the applicable governing provisions for each accident shall not exceed $_____, and shall be a continuing one notwithstanding any recovery thereunder.

The surety agrees, upon telephone request by an authorized representative of the Bureau or ICC, to verify that the surety bond is in force as of a particular date. The telephone number to call is: _____.

This bond is effective from _____ (12:01 a.m., standard time, at the address of the Principal as stated herein) and shall continue in force until terminated as described herein. The Principal or the Surety may at any time terminate this bond by giving (1) thrity five (35) days notice in writing to the other party (said 35 days notice to commence from the date the notice is mailed, proof of mailing shall be sufficient proof of notice), and (2) if the Principal is subject to the ICC's jurisdiction, by providing thirty (30) days notice to the ICC (said 30 days notice to commence from the date notice is received by the ICC at its office in Washington, D.C.). The Surety shall not be liable for the payment of any judgment or judgments against the Principal for public liability or property damage claims resulting from accidents which occur after the termination of this bond as described herein, but such termination shall not affect the liability of the Surety from the payment of any such judgment or judgments resulting from accidents which occur during the time the bond is in effect.

_____
Date

(AFFIX CORPORATE SEAL)

_____
Surety

_____, _____
City *State*

By _____

ACKNOWLEDGMENT OF SURETY

STATE OF _____ COUNTY OF _____

On this _____ day of _____, 19____, before me personally came _____, who, being by me duly sworn, did depose and say that he resides in _____; that he is the _____ of the _____ the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of directors of said corporation; that he signed his name thereto by like order, and he duly acknowledged to me that he executed the same for an on behalf of said corporation.

_____

(OFFICIAL SEAL)

_____
Title of offical administering oath

Surety Company File No. _____

Form MCS-82B
(11-83)

[FR Doc. 83-14251 Filed 5-27-83; 8:45 am]
BILLING CODE 4910-22-C

Notices

Federal Register
Vol. 48, No. 105
Tuesday, May 31, 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

Food and Nutrition Service

Organization, Functions and Delegations of Authority

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice of agency organization.

SUMMARY: This notice sets forth the organization, functions, and delegations of authority for the Food and Nutrition Service (FNS).

SUPPLEMENTARY INFORMATION: FNS was established by the Secretary of Agriculture on August 8, 1969, pursuant to authority under Reorganization Plan No. 2 of 1953. Authority for Food and Consumer Services is delegated by the Secretary of Agriculture to the Assistant Secretary in 7 CFR Part 2.15. Authority for the administration of the Food and Nutrition Service is delegated to the Administrator in 7 CFR Part 2.93. Pursuant to these two regulatory provisions, FNS administers various food and nutrition programs, to include the Food Stamp Program, School Lunch Program, child nutrition programs and commodity distribution programs. This notice supersedes the notice of FNS Organization, Functions and Delegations of Authority published at 35 FR 8835 (1970).

Section 1. *General.* The principal office of FNS is located in Alexandria, Virginia. Program activity in the field is carried on through seven regional offices. In addition, there are a number of special purpose offices geographically located in the field, which perform food stamp compliance, appeals review and certain automated data processing services.

Section 2. *Organization and Functions:*

(a) *The Administrator.* The Administrator reports to the Assistant Secretary for Food and Consumer Services. He/she serves as the chief executive officer of FNS and is responsible for the overall planning, direction and control of FNS programs and activities. He/she must establish and maintain working relationships and lines of communication with the Secretary and Deputy Secretary of Agriculture, Assistant Secretary, Congress, heads of other operating adminstrations, other agencies and the general public.

(b) *Associate Administrator.* The Associate Administrator reports to the Administrator and shares with the Administrator responsibility for the overall development, administration and coordination of FNS activities, providing executive leadership in developing, administering, executing and coordinating operational programs of the Agency; reviewing proposed programs, policies, and procedures inherent in Agency operations to determine that they are coordinated internally with other agencies of the Department, Federal, State and local government, or cooperating agencies; and providing liaison with Government Accounting Office (GAO) and coordinating GAO activities within FNS.

(c) *Director, Office of Analysis and Evaluation.* The Director, Office of Analysis and Evaluation, provides to the Administrator valid and timely analysis and evaluation information to support decisions regarding the legislative, budgetary, regulatory and program management processes.

(d) *Director, Office of Governmental Affairs and Public Information.* The Director, Office of Governmental Affairs and Public Information, establishes clear and continuing lines of communication between Congress and FNs, prepares legislative reports, monitors and reports on legislation status and other congressional activity affecting FNS, and coordinates testimony and other appearances before legislators and their staffs. He/she is responsible for the planning, development, coordination and implementation of information programs in support of FNS' policies and programs.

(e) *Deputy Administrator for Family Nutrition Programs.* The Deputy Administrator for Family Nutrition Programs provides direction and leadership in the formulation of Food Stamp Program policies and requirements, and in the development of program regulations and directives, the oversight of food assistance program grants and the review and evaluation of Food and Nutrition Service Regional Offices' and States' efforts to implement Food Stamp Program regulations, policies and requirements.

(f) *Deputy Administrator for Special Nutrition Programs.* The Deputy Administrator for Special Nutrition Programs participates with the Administrator in the overall planning and formulation of all special nutrition policies, programs and activities of FNS and provides direction and leadership in the administration of Special Nutrition Programs.

(g) *Deputy Administrator for Regional Operations.* The Deputy Administrator for Regional Operations provides operational direction and leadership in implementing the policies of food and nutrition programs. Operational activities are divided into regions, each headed by a Regional Administrator. The Regional Administrators are responsible for the Food Stamp and Special Nutrition Programs including Child Nutrition, Special Supplemental Food and Food Distribution and for providing staff support for Regional activities. The United States and its territories are divided into the following seven regions:

(i) Mid-Atlantic Regional Office includes Pennsylvania, New Jersey, Delaware, Maryland, West Virginia, Virginia, Puerto Rico, and the Virgin Islands.

(ii) Midwest Regional Office includes Minnesota, Wisconsin, Michigan, Illinois, Indiana, and Ohio.

(iii) Mountain Plains Regional Office includes Montana, Wyoming, North Dakota, South Dakota, Nebraska, Iowa, Utah, Colorado, Kansas, and Missouri.

(iv) Northeast Regional Office includes Maine, Vermont, New Hampshire, Massachusetts, Rhode Island, Connecticut, and New York.

(v) Southeast Regional Office includes Kentucky, Tennessee, Mississippi, Alabama, Georgia, North Carolina, South Carolina, and Florida.

(vi) Southwest Regional Office includes New Mexico, Texas, Oklahoma, Arkansas, and Louisiana.

(vii) Western Regional Office includes Washington, Oregon, Idaho, California, Nevada, Arizona, Alaska, Hawaii,

American Samoa, and Northern Marianas.

(h) *Deputy Administrator for Financial Management.* The Deputy Administrator for Financial Management participates with the Administrator in the overall planning and formulation of all financial policies, programs and activities of FNS and directs and administers the Agency's financial management program through the development, maintenance and operation of comprehensive systems that meet management needs.

(i) *Deputy Administrator for Management.* The Deputy Administrator for Management is responsible for participating with the Administrator in the overall planning, formulation, and direction of all administrative management policies, program activities of FNS, and providing executive direction to FNS administrative management activities and operation.

Section 3. *Delegations of Authority:*

(a) *Associate Administrator.* The Associate Administrator is hereby delegated the authority to perform all the duties and to exercise all the functions and power which are now, or which may hereafter be vested in the Administrator, except such authority as is, or may be, reserved to the Administrator.

(b) *Deputy Administrators.* The Deputy Administrators for Family Nutrition Programs, Special Nutrition Programs, Regional Operations, Financial Management, and Management are hereby delegated the authority to perform all the duties and to exercise all the functions and powers which are now, or which may hereafter be vested in the Administrator (including the power of redelegation except when prohibited) except such authority as is, or may be reserved to the Administrator. Each Deputy Administrator shall be primarily responsible for the program and activities of FNS hereafter assigned them.

(c) *Concurrent Authority and Responsibility.* No delegation or authorization prescribed herein shall preclude the Administrator, the Associate Administrator or each Deputy Administrator, from exercising any of the powers or functions or from performing any of the duties conferred herein, and any such delegation or authorization is subject at all times to withdrawal or amendment by the Administrator and, in their respective fields, each Deputy Administrator. The officers to whom authority is delegated herein shall maintain close working relationships with the officers to whom they report, keep them advised with respect to major problems and developments, and discuss with them proposed actions involving major policy questions or other important considerations or questions including matters involving relationships with other Federal agencies, other agencies of the Department, other divisions or offices of FNS or other governmental or private organizations or groups.

(d) *Authority to Act as Administrator.* In the Administrator's absence the person designated by the administrator or Acting Administrator as Acting Administrator is hereby delegated broad authority to perform all duties and to exercise all the functions and powers which are now or which hereafter may be vested in the Administrator, except such authority as is or may be reserved by the Administrator.

(e) *Prior Authorizations and Delegations.* All prior delegations and redelegations of authority relating to any functions, program or activity covered by this State of Organization, Functions and Delegations of Authority, shall remain in effect except as they are inconsistent herewith or a are hereafter amended or revoked. Nothing herein shall affect the validity of any action heretofore taken under prior delegations or redelegations of authority or assignments of functions.

Dated: May 19, 1983.

Robert E. Leard,

Administrator.

[FR Doc. 83-14351 Filed 5-27-83; 8:45 am]

BILLING CODE 3410-30-M

Forest Service

Recommended Renewable Resources Program (RPA) 1985 Update Progress Report; Availability

In response to the Forest and Rangeland Renewable Resources Planning Act (RPA) of 1974, as amended, the Department of Agriculture, Forest Service, has prepared a Progress Report on the 1985 Program for the nation's renewable resources. The Progress Report (Forest Service Publication No. 384) is available for inspection at any of the Forest Service Regional Offices and at the Washington Office.

During the past year a scoping process was conducted which resulted in the selection of initial goals and proposed alternatives. Those goals and alternatives are described in the Progress Report on the 1985 Program.

A notice of intent to prepare an environmental impact statement for the development of the 1985 Program Update was published in the **Federal Register** in August of 1981 (FR Vol. 46, No. 151, August 6, 1981, p. 40063). The initial goals and proposed alternatives will be addressed in detail in the environmental impact statement. As established in the August 6, 1981 notice of intent, the schedule to complete the 1985 Program and environmental impact statement is to file the draft statement with the Environmental Protection Agency and distribute it to the public in November 1983. Public review is expected to be completed by February 1984, and the final Program and environmental impact statement is expected to be filed with the Environmental Protection Agency and distributed to the public and the Congress in December 1984.

A limited number of single copies of the Progress Report may be obtained, free of charge, to the extent practicable, by contacting any Forest Service Regional Office or the Washington Office of RPA, USDA, Forest Service, P.O. Box 2417, Washington, D.C. 20013.

For questions or further information on any aspect of the Progress Report for the 1985 Program, or the environmental impact statement, please contact Thomas E. Hamilton, Director, RPA, USDA, Forest Service, P.O. Box 2417, Washington, D.C. 20013. Telephone: (202) 447-5440.

Dated: May 20, 1983.

F. Dale Robertson,

Associate Chief.

[FR Doc. 83-14494 Filed 5-27-83; 8:45 am]

BILLING CODE 3410-11-M

Soil Conservation Service

Cheshire Flood Prevention RC&D Measure, Connecticut; Environmental Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

FOR FURTHER INFORMATION CONTACT: Philip H. Christensen, State Conservationist Soil Conservation Service, Rt. 44 Mansfield Professional Park, Storrs, Connecticut 06268, telephone (203) 429-9361.

SUPPLEMENTARY INFORMATION: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Cheshire Sewage Treatment

Plant Flood Prevention RC&D Measure, New Haven County, Connecticut.

The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Philip H. Christensen, State Conservationist, has determined the preparation and review of an environmental impact statement are not needed for this project.

The measure concerns a flood prevention plan to protect the Cheshire Sewage Treatment Plant. The planned works of improvement include an earthen dike, 1,770 feet long with an average height of 8 feet, a 700 foot long vegetated diversion channel with an average depth of 3 feet, a one cfs pump for handling interior floodwaters, and a pumping station to pump treated effluent over the dike during flood periods. All disturbed areas will be seeded.

The Notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental assessment are on file and may be reviewed by contacting Philip H. Christensen. The Environmental Assessment has been sent to various Federal, State, and local agencies and interested parties. A limited number of copies of the Environmental Assessment are available to fill single copy requests at the above address.

Implementation of the proposal will not be initiated until 30 days after the date of this publication in the **Federal Register.**

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program. Office of Management and Budget Circular A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

Dated: May 23, 1983.

Philip H. Christensen,

State Conservationist.

[FR Doc. 83-14510 Filed 5-29-83; 8:45 am]

BILLING CODE 3410-16-M

CIVIL AERONAUTICS BOARD

[Docket 41499]

Buffalo Airways, Inc., Fitness Investigation; Notice of Prehearing Conference

Notice is hereby given that a prehearing conference in the above-entitled matter is assigned to be held on June 9, 1983, at 10:00 a.m. (local time), in Room 1012, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C., before the undersigned.

Dated at Washington, D.C., May 25, 1983.

John M. Vittone,

Administrative Law Judge.

[FR Doc. 83-14498 Filed 5-27-83; 8:45 am]

BILLING CODE 6320-01-M

[Docket 41044]

Frontier Flying Service Fitness Investigation; Notice of Hearing

Notice is hereby given that a hearing in the above-entitled matter is assigned to commence on June 7, 1983, at 10:00 a.m. (local time), in Court Room 1, Lower Level, 2120 L Street, N.W., Washington, D.C., before the undersigned administrative law judge.

Dated at Washington, D.C., May 25, 1983.

John M. Vittone,

Administrative Law Judge.

[FR Doc. 83-14497 Filed 5-27-83; 8:45 am]

BILLING CODE 6320-01-M

[Docket 41329]

Interamerica Airlines Fitness Investigation; Notice of Postponement of Hearing

At the request of the applicant, the hearing in the above-titled proceeding set for June 1, 1983, (48 FR 22767, May 20, 1983) is postponed. The hearing will be held on June 8, 1983, at 10:00 a.m. (local time), in Room 1012, Universal Building, 1825 Connecticut Avenue, N.W., Washington, D.C., before the undersigned.

Dated at Washington, D.C., May 25, 1983.

William A. Kane, Jr.

Administrative Law Judge.

[FR Doc. 83-14499 Filed 5-27-83; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

Petitions By Producing Firms for Determinations of Eligibility To Apply for Trade Adjustment Assistance

Petitions have been accepted for filing from the following firms: (1) Evantov Diamond Company, Inc., 125 West 45th Street, New York, New York 10036, producer of jewelry (accepted May 2, 1983); (2) G. V. Furniture & Decoration, Inc., P.O. Box GB, Caparra Heights, San Juan, Puerto Rico 00922, producer of household furniture (accepted May 2, 1983); (3) West Orange Manufacturing Company, Inc., 177 Main Street, West Orange, New Jersey 07052, producer of women's robes, sleepwear and blouses (accepted May 2, 1983); (4) Steve Ognibene & Sons, Inc., 5520 North Byron Road, Elba, New York 14058, producer of onions (accepted May 2, 1983); (5) Boston Cutting Die Company, 50 Freeport Street, Boston, Massachusetts 02122, producer of cutting dies (accepted May 2, 1983); (6) Oxford Royal Mushroom Products, Inc., Route 796, Kelton, Pennsylvania 193346, producer of mushrooms (accepted May 2, 1983); (7) Gould & Eberhardt Gear Machinery Corporation, Sutton Road, Webster, Massachusetts 01570, producer of machine tools (accepted May 3, 1983); (8) Hawaiian Reflection, 3210 Production Avenue, Oceanside, California 92054, producer of wallets, purses and travel bags (accepted May 3, 1983); (9) Arttrim, Inc., 212 West 35th Street, New York, New York 10001, producer of apparel trimmings (accepted May 4, 1983); (10) Armstrong Cement & Supply Corporation, Route 2, Cabot, Pennsylvania 16023, producer of cement and mortar (accepted May 5, 1983); (11. Wilbrecht Electronics, Inc., 240 East Plato Boulevard, St. Paul, Minnesota 55107, producer of resistors and other electronic components (accepted May 5, 1983); (12) Hayes-Albion Corporation, 1999 Wildwood Avenue, Jackson, Michigan 49202, producer of aluminum and iron castings (accepted May 6, 1983); (13) Richtone Knits, Ltd., 498 7th Avenue, New York, New York 10018 producer of women's suits and dresses (accepted May 6, 1983); (14) Mickey Madann Handbags, Inc., P.O. Box H-3067, New Bedford, Massachusetts 02741, producer of handbags (accepted May 6, 1983); (15) Claymore Sportswear, Inc., 304 Boerum Street, Brooklyn, New York 11206, producer of women's coats and jackets (accepted May 9, 1983); (16) Jenice Fabrics, Inc., 160 John Street, Brooklyn New York 11201, producer of knit fabric (accepted May 9, 1983); (17) Automatic Spring Coiling Company, 4045 W. Thorndale Avenue, Chicago, Illinois 60646, producer of automotive and other springs (accepted May 9, 1983); (18) Veva Art Products, Inc., 4726 Park Harbor Drive, Erie, Pennsylvania 16511, producer of wind chimes (accepted May 9, 1983); (19) Icon Corporation, 156 Sixth Street, Cambridge, Massachusetts 02142, producer of numerical control systems for machines (accepted May 9, 1983); (20) Viking Die Cast Corporation, 7700 West Michigan Avenue, Kalamazoo, Michigan 49009, producer of machined die castings (accepted May 9, 1983); (21) Northern Shoe Bindings Company, Inc., P.O. Box 503, Beverly Massachusetts 01915, producer of shoe components

(accepted May 10, 1983); (22) Chemetals, Inc., 7310 Ritchie Highway, Glen Burnie, Maryland 21061, producer of manganese metals and compounds (accepted May 10, 1983); (23) Jordan Chemical Company, 1830 Columbia Avenue, Folcroft, Pennsylvania 19032, producer of chemicals (accepted May 10, 1983); (24) California Amforge Corporation, 750 North Vernon Avenue, Azusa, California 91702, producer of steel forgings (accepted May 10, 1983); (25), (accepted May T. G. Industries, Inc., 7445 Greenbush Avenue, North Hollywood, California 91605, producer of automotive carburetors (accepted May 10, 1983); (26) R.M.C. Fabricating, Inc., Main Street Genesee, Pennsylvania 16923, producer of metal furniture parts (accepted May 10, 1983); (27) Walker Shoe Company, Drawer 1167, Asheboro, North Carolina 27203, producer of men's and boy's footwear (accepted May 11, 1983); (28) Dumore Corporation, 1300 17th Street, Racine, Wisconsin 53403, producer of drilling and grinding equipment and motors (accepted May 11, 1983); (29) Cea & Cea Marine Supply, Inc., 412 North Marine Avenue, Wilmington, California 90744, producer of marine hardware (accepted May 11, 1983); (30) Class–5, Inc., 1480 66th Street, Emeryville, California 94608, producer of men's and women's jackets, vests, shirts and shorts; sleeping bags, backpacks and comforters (accepted May 13, 1983); (31) Sillas Manufacturing Corporation, 5560 Brooks Street, Montclair, California 91763, producer of wood chairs (accepted May 13, 1983); (32) Datamarine International, Inc., 53 Portside Drive, Pocasset, Massachusetts 02559, producer of marine instruments (accepted May 13, 1983); (33) J. & H. Plastic Bag Corporation, 346 Grand Street, Brooklyn, New York 11211, producer of sports, shopping and travel bags (accepted May 16, 1983); (34) Vi-Mill, Inc., 167 Bridge Street, Cambridge, Massachusetts 02141, producer of men's and women's jackets and women's rainwear (accepted May 16, 1983); (35) Herman Schwabe, Inc., 147 Prince Street, Brooklyn, New York 11201, producer of die-cutting machinery and equipment (accepted May 16, 1983); (36) J. G. Tilp, Inc., 80 Milltown Road, Union, New Jersey 07087, producer of injection molds (accepted May 16, 1983); (37) All American Manufacturing Company, 2201 E. 51st Street, Los Angeles, California 90058, producer of wrenches and metal stampings (accepted May 18, 1983); (38) Harley-Davidson Motor Company, Inc., P.O. Box 653, Milwaukee, Wisconsin 53201, producer of motorcycles (accepted May 18, 1983); (39) Saw Mill River Industries, Inc., 937 Saw Mill River Road, Yonkers, New York 10710, producer of exercise equipment and closet accessories (accepted May 20, 1983); (40) Augello & Vigneri, Oak Orchard Road, Elba, New York 14058, producer of potatoes (accepted May 20, 1983).

The petitions were submitted pursuant to Section 251 of the Trade Act of 1974 (Pub. L. 93–618) and Section 315.23 of the Adjustment Assistance Regulations for Firms and Communities (13 CFR Part 315). Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by the Director, Certification Division, Office of Trade Adjustment Assistance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.309, Trade Adjustment Assistance. Inasfar as this notice involves petitions for the determination of eligibility under the Trade Act of 1974, the requirements of Office of Management and Budget Circular No. A–95 regarding review by clearinghouses do not apply.

Jack W. Osburn, Jr.,

Director, Certification Division, Office of Trade Adjustment Assistance

[FR Doc. 83-14495 Filed 5-27-83; 8:45 am]

BILLING CODE 3510-25-M

Final Negative Countervailing Duty Determinations; Certain Softwood Products From Canada

AGENCY: International Trade Administration, Commerce.

ACTION: Final negative countervailing duty determinations: Certain softwood products from Canada.

SUMMARY: We determine that no benefits which constitute subsidies within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in Canada of certain softwood products, as described in the "Scope of Investigations" section of this notice. The total estimated net subsidy for each product is *de minimis*, and therefore our final countervailing duty determinations are negative.

EFFECTIVE DATE: May 31, 1983.

FOR FURTHER INFORMATION CONTACT: Roland MacDonald or Mary S. Clapp, Office of Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenu, N.W., Washington, D.C. 20230, telephone: (202) 377–4087 or (202) 377–2438.

SUPPLEMENTARY INFORMATION:

Final Determinations

Based upon our investigations, we determine that the following programs confer subsidies on the products under investigation:

A. Federal Programs

1. Certain Aspects of the Investment Tax Credit.
2. Program for Export Market Development.
3. Forest Industry Renewable Energy Program.
4. Regional Development Incentives Program (RDIP)—Grants.
5. Federal Employment Program—CIAP.

B. Federal/Provincial Programs

1. Agricultural and Rural Development Agreements (ARDA).
2. General Development Agreements:
a. British Columbia—Assistance to Small Enterprise Program (ASEP).
b. New Brunswick—NED, KED and SIFAP.
c. Ontario—Eastern Ontario Subsidiary Agreement.

C. Provincial Programs

1. Alberta—Stumpage Payment Deferral.
2. British Columbia:
a. Low-Interest Loan Assistance (LILA).
b. Stumpage Payment Deferral.
3. Ontario:
a. Stumpage Pricing for Non-Integrated Licensees.
b. Stumpage Payment Deferral.
4. Québec:
a. Stumpage Pricing on Timber Limits.
b. Aide à la Promotion des Exportations.
c. Société de Récupération, d'Exploitation et de Développement Forestiers du Québec.
d. FRI Tax Abatement Program.
e. SDI Export Expansion Program.

The total estimated net subsidies are 0.349 percent *ad valorem* for softwood lumber, 0.260 percent *ad valorem* for softwood shakes and shingles, and 0.304 percent *ad valorem* for softwood fence. These *ad valorem* subsidies are *de minimis*. Therefore, we determine that no benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers, or exporters in Canada of certain softwood products, as described

in the "Scope of Investigations" section of this notice.

Case History

On October 7, 1982, we received a petition from counsel for the United States Coalition for Fair Canadian Lumber Imports on behalf of a number of producers in the United States of certain softwood products. The petitioner alleged that certain benefits which constitute subsidies within the meaning of section 701 of the Act are being provided, directly or indirectly, to manufacturers, producers, or exporters in Canada of certain softwood products. We found the petition to contain sufficient grounds upon which to initiate countervailing duty investigations, and on October 27, 1982, we initiated investigations (47 FR 49878). Since Canada is a "country under the Agreement" within the meaning of section 701(b) of the Act, injury determinations are required for these investigations. Therefore, we notified the U.S. International Trade Commission (ITC) of our initiations. On November 22, 1982, the ITC determined that there is a reasonable indication that these imports are materially injuring U.S. industries.

In our notice of initiations, we stated that we expected to issue preliminary determinations by December 31, 1982. We subsequently determined that the investigations are "extraordinarily complicated," as defined in section 703(c) of the Act, and postponed our preliminary determinations for 65 days until March 7, 1983 (47 FR 56688).

We presented questionnaires concerning the allegations to the Embassy of Canada in Washington, D.C. on December 6, 1982. On January 4, 1983, we received responses. Additional information was received on January 17, 1983.

A supplemental questionnaire was presented on February 9, 1983, and a response was received on February 23, 1983. Additional information was submitted on numerous dates.

Preliminary negative countervailing duty determinations were published on March 11, 1983 (48 FR 10395) and a correction was published on March 21, 1983 (48 FR 11731). Both petitioner and respondent filed briefs pertaining to these investigations prior to and after our preliminary determinations. We received a request to hold a public hearing in accordance with § 355.35 of the Commerce Department Regulations, but that request was subsequently withdrawn.

Scope of Investigations

The products covered by these investigations are:

- Softwood lumber.
- Softwood shakes and shingles.
- Softwood fence.

The products are fully described in Appendix A of this notice. There are a large number of producers and/or exporters of certain softwood products in Canada. The period for which we are measuring subsidization is the most recent year for which data are available, as stated in the appropriate program descriptions.

Analysis of Programs

In its responses, the government of Canada (GOC) provided data at the federal and provincial levels for the applicable periods. In addition, information was provided by counsel for the Canadian producers and counsel for the petitioner.

General principles applied by the Department of Commerce (the Department) to the immediate investigations concerning certain softwood products from Canada, many of which are repeated throughout this notice, are described in detail below. Other principles are discussed in the appropriate sections of this notice.

Petitioner alleged that respondent companies have received numerous grants for various purposes. Grants determined to be countervailable have been treated according to the Department's established methods. To calculate the benefit received from the countervailable grants being considered in these investigations, we allocate the present value of grants "tied" to the purchase of capital equipment over the relevant period. If the grant was "tied" to the purchase of capital assets, but not to specific capital assets, we use the number of years reflecting the average useful life of capital assets in the sector producing the products under investigation. A grant is considered tied where the intended use is known to the donor, and where such use is acknowledged prior to, or concurrently with, its bestowal. In these investigations no grants were tied to specific items of capital equipment. Based on evidence in the record, we determine that the average useful life of sawmill plants and equipment is 15 years.

"Present value" is a mechanism for allocating money received in one year to other years and is calculated using a discount rate. For this purpose, we determine that the most appropriate discount rate is the "risk-free" rate. For these investigations, we determine the risk-free rate is the secondary market rate for long-term (ten years and over) Canadian government debt. The source used to determine the Canadian "risk-free" rate was *Financial Statistics*, published by the Organization for Economic Cooperation and Development (OECD).

Certain small grants are expensed in the year received for reasons discussed in the appropriate program descriptions in the "Programs Determined to Confer Subsidies" section of this notice.

We normally use data from a uniform period in calculating subsidies. The responses contained data based on both fiscal years and calendar years. Where the grants were reported on a fiscal year basis, we used those amounts as the best information available and alloçated the calculated net benefit over annual sales values. Where information provided was based on fiscal year data and it was necessary to apply a discount rate, a fiscal year discount rate was calculated by averaging the appropriate monthly rates.

Unless otherwise stated in the "Programs Determined to Confer Subsidies" section of this notice, the denominator used to calculate an *ad valorem* subsidy depended on whether the response provided information on a product-by-product basis or on a combined basis. Where loans and grants were reported on a product-by-product basis, we allocated the benefits over the total sales, for the most recent year for which data are available, of the producers of that specific product. Where loans and grants were reported on a combined basis for some or all of the products under investigation, we allocated the benefits over the total sales, for the most recent year for which data are available, of the producers of those certain softwood products. To determine the total sales figures for the producers of the products under investigation, we used value of shipments statistics provided by the GOC, which are the most recent and best data available.

Based on our analysis of the petition, responses to our questionnaires, arguments made by interested parties, and our verification, we determine the following.

I. Programs Determined To Confer Subsidies

We determine that subsidies are being provided to manufacturers, producers, or exporters in Canada of certain softwood products included in these investigations under the programs described below. The total estimated net subsidy for each product under

investigation, however, is *de minimis*, and therefore our determinations are negative.

A. Federal Programs

1. *Certain Aspects of the Investment Tax Credit.* The investment tax credit incentive is available to all secondary industries which purchase new buildings, machinery and equipment for use in manufacturing and processing activities. Credits for the purchase price of eligible assets are subject to a yearly maximum of $15,000 [1] and 50 percent of the excess over $15,000 of federal taxes payable. Unused credits are carried forward for five years.

The program provides a credit of seven percent of the capital cost of qualified property acquired by companies located anywhere in Canada. A credit of 20 percent is given for qualified property acquired for use anywhere in the provinces of Newfoundland, Prince Edward Island, Nova Scotia, New Brunswick and the Gaspé Peninsula. Other areas, as designated by the Department of Regional Economic Expansion (DREE) under the Regional Development Incentives Act (RDIA), are eligible for a ten percent credit. A company can receive a credit of 50 percent when an asset is used in census divisions which record family unemployment rates over 30 percent greater than the national average, and per capita incomes less than 89 percent of the national average. This category is further limited to five percent of the Canadian population living in areas that meet the above tests. Companies in a province can only receive benefits in this category for areas including no more than 40 percent of that province's population.

Since investment tax credits up to seven percent are available to all companies on equal terms, the Department has determined that such credits do not confer a subsidy. However, credits over seven percent are limited to companies located within specific regions, and confer a subsidy.

In our preliminary determinations, we evenly allocated the investment tax credits taken to each of the four rate categories since we did not know more precisely the amount of investment tax credits claimed under each category. During verification, we obtained additional information on capital investment by Standard Industrial Code (SIC) 25 industries (sawmilling industries) and the shipments by SIC 251 (sawmills and planing mills) and 259 (miscellaneous wood products) industries. We determine that capital investment and shipments parallel each other, so we believe it is reasonable to assume that the distribution of investment tax credits granted corresponds to the volume of shipments. Therefore, we allocated investment tax credits claimed in 1980 (the most recent year for which data are available) as appropriate to the four rate categories based on shipment data.

The subsidy calculation for this program takes into account the fact that an investment tax credit immediately reduces the depreciable value of an asset and thus reduces the capital cost allowance benefits for purposes of both federal and provincial taxation. In the preliminary determinations, we assumed a 25 percent rate for capital cost allowance, since we did not realize that 50 percent was the rate applicable for property acquired prior to November 12, 1981. We are now using the 50 percent rate. The net benefit from the capital cost allowance is equal to the amount of the deduction multiplied by the taxpayer's combined federal and provincial tax rate. we used the 1979 combined federal and provincial tax rate of 41 percent, the most recent data available.

The subsidy to the producers of softwood lumber and softwood shakes and shingles, allocated over the value of total 1980 sales for sawmills and planing mills, amounts to 0.030 percent *ad valorem*. The subsidy to softwood fence producers, allocated over total 1980 sales of miscellaneous wood products, amounts to 0.018 percent *ad valorem*.

2. *Program for Export Market Development (PEMD).* PEMD is administered by the Department of External Affairs and is available to all businesses in the manufacturing or service sectors which export, including producers of the products under investigation. PEMD facilitates the development of export markets for Canadian products by sharing with the companies the costs of travel, per diem and some special expenses. PEMD assistance is in the form of interest-free loans with forgivable repayment terms. If sales result from the export market development activities, the funds must be repaid at a rate of two percent of sales generated for a period of three years up to the amount of assistance provided.

Between 1980 and 1982 two small projects were funded by PEMD to develop market opportunities in the United States for softwood fence and softwood lumber. The disbursements for both projects were made in 1982. The sole purpose of PEMD is to stimulate exports; therefore, we determine that assistance provided under the program confers benefits which constitute export subsidies. Because there is no absolute obligation to repay the loan and because PEMD assistance covered costs normally expensed in the year incurred, we treated the funds disbursed as grants expensed in the year of receipt. We allocated the 1982 benefit of each project over the total 1981 export sales to the United States of softwood fence and softwood lumber, respectively, and calculated a subsidy of 0.009 percent *ad valorem* for softwood fence and less than 0.001 percent *ad valorum* for softwood lumber.

3. *Forest Industry Renewable Energy Program.* The Forest Industry Renewable Energy (FIRE) program is administered by the federal Department of Energy, Mines and Resources. The purpose of the program, which began in 1979, is to encourage the substitution of biomass energy sources for fossil fuels by companies that would otherwise have no economic incentive to do so. FIRE assistance is given in the form of taxable grants that are tied to the purchase of capital equipment (facilities for burning biomass in place of fossil fuels).

We verified that prior to April 1, 1981, funds were made available under the FIRE program only to "forest industry firms," as defined by the GOC according to the Treasury Board submission of August 16, 1978. Thereafter, FIRE assistance became available to all industries throughout Canada according to the Treasury Board submission of January 8, 1981.

This program involves the provision of a monetary benefit which could be used by all industries if made available to them. Since the restrictions on the availability of FIRE grants from August 16, 1978 to January 8, 1981 were due entirely to governmental action, we determine that the grants received by the producers of the products under investigation during that period confer subsidies within the meaning of the Act. Grants awarded after that period do not confer subsidies because eligibility was not limited by governmental action.

The benefit is based on the amount of grants received by the producers of the products under investigation during the first two years of the program's existence. We calculated the benefit to these producers in accordance with our grant methods described in the "Analysis of Programs" section of this notice. We allocated the benefit received over the total sales value of the producers of the products under

[1] Throughout this notice, all amounts are expressed in Canadian dollars, unless otherwise specified.

investigation, and calculated a subsidy of 0.003 percent *ad valorem*.

4. *Regional Development Incentives Program (RDIP)—Grants*. The RDIP is administered by DREE for the purpose of creating stable employment opportunities in areas of Canada where employment and economic opportunity are chronically low. The program provides development incentives (grants) and loan guarantees to manufacturers whose capital investment projects for establishing new facilities or expanding or modernizing existing facilities will create jobs and economic opportunities in areas designated as economically disadvantaged. Loan guarantees are discussed in the "Programs Determined Not to Confer Subsidies" section of this notice. The Governor-in-Council may designate a region upon the report of the Minister of DREE, if satisfied that existing opportunities for productive employment in the region are exceptionally inadequate and the provision of development incentives will make a significant contribution to economic expansion and social adjustment within that region. Development incentives and loan guarantees are currently not available to manufacturing and processing industries located in southern Ontario, southern Alberta and southern British Columbia (BC).

The prime criterion for DREE approval of a proposed project is the likelihood that the project will provide needed economic opportunities and social adjustment. Projects which would proceed without RDIP assistance are ineligible.

RDIP grants were provided to producers of the products under investigation. We determine that grants provided through the RDIP program of DREE confer subsidies because the benefits are limited to companies located within specific regions.

The subsidy to producers of the products under investigation has been calculated according to the grant methods described in the "Analysis of Programs" section of this notice.

The grants received since fiscal 1970 (when the program started) were provided on a product-by-product basis. Therefore, we have calculated a separate subsidy for each product. The amount of subsidy provided by RDIP grants is 0.180 percent *ad valorem* for softwood lumber, 0.070 percent *ad valorem* for softwood shakes and shingles, and 0.151 percent *ad valorem* for softwood fence.

5. *Federal Employment Program—CIAP*. The Community-Based Industrial Adjustment Program (CIAP), which began early in 1981, is one of the two components of the Industry and Labour Adjustment Program, which is administered by the Department of Industry, Trade and Commerce. Its purpose is to alleviate the distress caused in "designated" Canadian communities by large-scale permanent industry dislocation in a given sector when such dislocation causes high unemployment in these communities. CIAP assistance comes in the form of grants for consulting costs of interest-free loans for the funding or capital costs.

At verification, we ascertained that communities in Canada are designated for CIAP assistance at the discretion of the federal Cabinet from a list of depressed communities. We also verified that one producer of softwood lumber received one small grant in 1982 under the CIAP program. Since the benefits under this program are limited to companies located in specific regions, we determine that CIAP assistance constitutes a subsidy within the meaning of the Act. Because the grant covered costs normally expensed in the year incurred, we allocate the grant exclusively to the year of receipt. Allocating this CIAP grant over the total sales value of the producers of softwood lumber, we calculated a subsidy of less than 0.001 percent *ad valorem*.

B. Federal/Provincial Programs

1. *Agricultural and Rural Development Agreements (ARDA)*. The ARDA's resulted from joint determinations by the federal and provincial governments that government action is required to promote economic development and to alleviate conditions of social and economic disadvantages in certain rural areas. These agreements are available to all provinces in Canada.

Of the six programs under the General ARDA, the Alternative Income and Employment Opportunities in the Rural Development Region (Alternative Income and Employment) is the only program that provided benefits to the producers of the products under investigation.

The Alternative Income and Employment program was available to all provinces, but was used only in Ontario and BC. The program was designed to provide grants to establish, expand or modernize production facilties in order to increase income and alternative employment opportunities for low income people in designated rural areas of a province. Both BC and Ontario received federal funds to finance 50 percent of the assistance given under this program for rural areas which are "economically depressed." Since the eligibility for General ARDA is limited to companies located within specific regions, we have determined that both federal and provincial benefits under this program confer a subsidy.

As a supplement to the General ARDA program, the Special ARDA program is aimed at improving employment and income opportunities for people of native ancestry in rural areas (defined by specific criteria). These agreements have been signed with Manitoba, the Northwest Territories, the Yukon, BC and Saskatchewan.

Since the benefits of the Special ARDA program are limited to companies located in rural areas, we determine that Special ARDA confers subsidies.

We used the grant methods described in the "Analysis of Programs" section of this notice to calculate the benefits under the ARDA programs. Allocating the benefits over the total sales value of producers of the products under investigation, we calculated a subsidy of 0.005 percent *ad valorem*.

2. *General Development Agreements*. As part of its activities to spur developent in Canada, DREE entered into ten-year General Development Agreements (GDA's) with all provinces except Prince Edward Island. A similar 15-year comprehensive development plan exists for Prince Edward Island.

GDA's have become the principal instruments of DREE's development policies, both in terms of expenditure and coordination of planning and programming. Within each GDA, specific subsidiary agreements have been negotiated with individual provinces. These mainly fund general planning, infrastructure and community development, although some assistance has been provided to individual companies.

Under the GDA's, subsidiary agreements with provisions for assistance to small enterprises are available to all provinces and have been negotiated with Manitoba, Ontario BC and New Brunswick. Funds were provided to producers of the products under investigation in the latter three provinces.

a. *British Columbia—Assistance to Small Enterprise Program (ASEP)*. This program is jointly funded by BC (Ministry of Industry and Small Business Development) and the federal government (DREE) under the authority of the Canada-British Columbia Industrial Development Subsidiary Agreement. ASEP offers interest-free loans to companies in the manufacturing and processing sector with annual revenues of less than $500,000. The

terms of the loans provide that the loans will be forgiven. These loans are available for the construction of new facilities (the lesser of 50 percent of the eligible capital costs or $30,000), and for modernization projects (the lesser of 30 percent of the eligible capital costs or $18,000).

The ASEP program began in 1977 and continued until March 31, 1983. During that period, only companies located outside the "Lower Mainland and Southern Vancouver Island" regions were eligible for funds. During June 1980-July 1981, the area excluded from ASEP was included in the Small Manufacturers Assistance Program (SMAP), a similar program established and funded by BC (Ministry of Industry and Small Business Development).

We determine that all federal assistance provided through ASEP is countervailable because it was limited to companies in specific regions. We determine that provincial assistance provided through ASEP is countervailable during the period in which SMAP was not in operation because provincial benefits were then likewise limited to companies within specific regions. Provincial assistance provided through ASEP is not countervailable during June 1980-July 1981, when it was generally available because the SMAP program was also in operation.

Because the loans by their terms are to be forgiven, we treated them as grants and used the grant methods described in the "Analysis of Programs" section of this notice to calculate the benefits. The total amount of ASEP loans to producers of the products under investigation was adjusted to account for loans made to operations that were destroyed, were in receivership, were permanently closed prior to 1981, or had the assets which were purchased with the proceeds of the loans repossessed.

The subsidy amounts to 0.002 percent *ad valorem* for softwood lumber, 0.044 percent *ad valorem* for softwood shakes and shingles, and 0.010 percent *ad valorem* for softwood fence.

b. *New Brunswick-NED, KED and SIFAP.* Three subsidiary agreements between New Brunswick and the federal government provide assistance to small enterprises in the province. These are the Northeast New Brunswick Development Subsidiary Agreement (NED), the Kent Region Pilot Project Subsidiary Agreement (KED), and the Industrial Development Subsidiary Agreement (SIFAP). No applications for funds under these programs were accepted after the 1980–81 fiscal year, and no funds have been disbursed since March 31, 1982.

The benefits under these programs were interest-free forgivable loans. The total amount of funding provided could not exceed 50 percent of the cost of new manufacturing or processing facilities or 30 percent for modernization or expansion of existing facilities. To be eligible, firms had to have average sales of less than $1,000,000 over the past two years and had to be located in specific regions, which varied for each of the three programs. Companies were required to contribute new equity of at least 20 percent of the cost of a project. Producers of the products under investigation received interest-free forgivable loans under this program between 1978 and 1981.

We determine that benefits under NED, KED, and SIFAP are countervailable because they are limited to companies located within specific regions. Because loans under the programs are forgivable and they have all been forgiven, we treated the benefits as grants.

In calculating the benefits, we used the grant methods described in the "Analysis of Programs" section of this notice. The subsidy under this program amounts to 0.008 percent *ad valorem* for softwood shakes and shingles, 0.007 percent *ad valorem* for softwood fence, and less than 0.001 percent *ad valorem* for softwood lumber.

c. Ontario—Eastern Ontario Subsidiary Agreement. Under the Eastern Ontario Subsidiary Agreement, interest-free forgivable loans are provided to industries located in the eastern region of Ontario. Producers of softwood lumber received such loans in fiscal year 1981. Benefits under this program are countervailable because they are limited to companies located within a specific region. Because loans under the program are, by their terms, to be forgiven, we treated them as grants.

In calculating the benefits, we used the grant methods described in the "Analysis of Programs" section of this notice. The subsidy under this program amounts to less than 0.001 percent *ad valorem* for softwood timber.

C. Provincial Programs

1. *Alberta.—Stumpage Payment Deferral.* The government of Alberta has deferred the payment of stumpage dues and holding and protection charges for one year from May 1, 1982 to May 1, 1983. This applies to holders of stumpage rights under Forest Management Agreements, Quota Certificates, and Commercial Timber Permits. Stumpage dues are paid on a monthly basis and holding and protection charges are paid on an annual basis. The terms of the deferral specify that the cumulated deferred dues must be repaid in 12 equal monthly installments beginning on May 1983. The deferred holding and protection charges were to be repaid in May 1983.

The deferral involves the provision of a benefit which could be used by all industries if made available to them. Since the restrictions on availability are due entirely to governmental action, we find that the program was limited to a specific industry or group of industries. Furthermore, because recipients paid no interest, the deferral is on terms inconsistent with commercial considerations. Therefore, the benefits under this program confer a subsidy on the products under investigation.

Because stumpage dues are paid on a monthly basis, we treated each month's deferred dues, through December 1982, as a separate loan at zero interest rate with deferment of principal. To calculate the benefit, we compared what the companies would pay a commercial lender in principal and interest with what was actually to be paid. For the commercial benchmark, we used the rate for prime corporate paper (90 days) in Canada, as reported in the OECD *Financial Statistics*. We then calulated the percent value of the monthly stream of benefits of these loans using as the discount rate the secondary market bond yield for Canadian government bonds (one to three years), as reported in the OECD *Financial Statistics*.

Because holding and protection charges are paid annually and were to be repaid in May 1983, we treated this deferral as a one-year loan. For the commercial benchmark we used the rate for prime corporate paper (90 days), as reported in the OECD *Financial Statistics*. Allocating the benefits of these loans over total sales of the producers of the products under investigation, we calculated a subsidy of 0.003 percent *ad valorem*.

2. *British Columbia.*—a. *Low-Interest Loan Assistance (LILA).* When the joint Canada-British Columbia Industrial Development Subsidiary Agreement (IDSA) was signed in 1977, a program was established to provide loans at low interest rates. Funding for LILA loans is provided by BC through the Ministry of Small Business Development and the Special Purpose Appropriation Act. The British Columbia Development Corporation (BCDC) acts as trustee for the province in administering the LILA program. During February 1978–April 1979 the program's eligibility criteria were determined by the IDSA, and participation was limited to areas outside the Lower Mainland and Southern Vancouver Island regions. In

April 1979, the province changed the program criteria and LILA became generally available throughout BC.

LILA loans are used for captial improvements for plant expansions or modernizations, or for the establishment of production facilities which will create new economic activity and benefits. The loan rate, established twice a year, is the BCDC's prime commercial rate divided by two, subject to a maximum of ten percent per year.

From April 1977, when the program began, to August 1982, 24 loans were received by producers of the products under investigation. Of those loans, four were given during February 1978–April 1979 when eligibility was limted to companies located outside the Lower Mainland and Southern Vancouver Island regions. LILA loans given during this period are countervailable because of their availability was limited to companies located in specific regions, and because they were provided on terms inconsistent with commercial considerations.

The terms for the four loans given during February 1978–April 1979 matched the economic life of the fixed assets purchased. After 1981, the loan term was the lesser of three years or the economic life of of the asset.

We compared what a company would pay a normal commercial lender in principal and interest in any given years with what was actually paid on the loan in that year to calculate the subsidy rate for the four LILA loans identified. We also accounted for a six-month interest payment deferral on LILA loans. The benchmark rate used was the chartered banks' prime rate in Canada, as reported in the OECD *Financial Statistics*.

After calculating the payment differential in each year of the loan, we then calculated the present value of this stream of benefits in the year the loan was made using as the discount rate the secondary market bond yield for Canadian government bonds (one to three years), as reported in the OECD *Financial Statistics*. The subsidy provided by LILA loans amounts to less than 0.001 percent *ad valorem* for the products under investigation.

b. *Stumpage Payment Deferral.* The Fort Nelson Selling Price Zone was created in northeastern BC in recognition of the problems of logging in spruce swamplands where logging is only possible after "freeze-up" (mid-November to March 1). However, the lumber mills operate over a 12-month period. The volumes logged during the period November through February are allocated during the period November through October and stumpage is billed accordingly, regardless of the month in which the lumber was actually cut. Only licensees within the Fort Nelson Selling Price Zone are eligible for this deferral.

We determine that this deferral of stumpage payments confers a subsidy since the deferral is limited to companies located within a specific region and is on terms inconsistent with commercial considerations. The subsidy was calculated by taking the difference between the monthly stumpage payments due based on when the timber was actually cut and the monthly stumpage payments due based on the 12-month distribution plan. We treated these monthly differences as one-month loans at a zero interest rate, and multiplied the amount of the difference by a benchmark short-term interest rate. For the benchmark rate we used the rate for prime corporate paper (90 days) in Canada, as reported in the OECD *Financial Statistics*. The best information available for calculating the benefit from the deferral of stumpage payments due was billing information for the period November 1981–October 1982. The subsidy on the products under investigation amounts to less than 0.001 percent *ad valorem*.

3. *Ontario.*—a. *Stumpage Pricing for Non-Integrated Licensees.* Stumpage prices in Ontario are based largely on Crown dues, which are derived by multiplying an administratively set base rate by an index tied to end prices for forest products. The base rate for "non-integrated" licensees is set at 90 percent of the base rate for "integrated" licensees; the province defines "integrated" as "a licensee who owns or operates any pulp mill in Manitoba, Ontario or Quebec or is related to any person who owns or operates any such pulp mill."

During the course of these investigations, we asked about the basis for the difference in the two rates. We were told that integrated mills are larger and more efficient, and thus can afford to pay more for stumpage.

The fact that base rates for non-integrated licensees are lower does not necessarily mean that they are preferential within the meaning of subsection 771(5)(B)(ii). We recognize that there may be valid bases for charging different stumpage prices to integrated and non-integrated licensees. However, we do not have sufficient evidence on the record to explain the rate differential.

Consequently, we determine that the price charged to non-integrated licensees is preferential and constitutes a subsidy within the meaning of subsection 771(5)(B)(ii). To calculate the subsidy, we took the difference between the base rate for integrated licensees and that charged to non-integrated licensees. We then multiplied this difference by the volume of softwood timber sold in fiscal 1981–82 to non-integrated licensees. Because stumpage dues are current obligations, we treated this amount as a grant expensed in the year received and calculated a subsidy of 0.015 percent *ad valorem*.

b. *Stumpage Payment Deferral.* In December 1981, the government of Ontario initiated a six-month program whereby billings for stumpage payments could be deferred for approved applicants. The program was extended for an additional six months in July 1982. We determine that the program conferred a subsidy on the products under investigation because the benefits were provided only to sawmills and on terms inconsistent with commercial considerations.

We treated the amount of stumpage payments deferred for each month during the period for which we are measuring subsidization as a short-term loan at a zero interest rate. We multiplied the amount of each loan by a benchmark short-term interest rate for the months in which billings were deferred. For the benchmark rate we used the rate for prime corporate paper (90 days) in Canada, as reported in the OECD *Financial Statistics*. The subsidy amounts to 0.005 percent *ad valorem* for softwood lumber.

4. *Québec.*—a. *Stumpage Pricing on Timber Limits.* The timber limit is one of two forms of stumpage tenure and allocation in Québec (see Appendix B, section on Québec). Stumpage dues charged by the province for sawlogs harvested on timber limits are lower than those charged by the province for pulpwood. In most instances, the cutting rights for sawlogs or the cut sawlogs themselves are sold by the timber limit holders to sawmills and other users. The timber limit holder pays only $0.77 per m^3 to the province for sawlogs harvested on the limit. However, the limit holder can in turn charge a higher price to the purchaser. In the 1981–82 fiscal year, there were five timber limit holders that produced softwood lumber from sawlogs harvested on their own limits, and they paid the $0.77 per m^3 charged by the province.

During the course of these investigations, we asked about the basis for the difference in the two prices. We were told that timber limits are primarily held by pulp and paper producers and that they were not harvesting sawmill quality timber on their limits. Since the province wanted that timber harvested, it set a price

which it considered would encourage the harvesting of sawlogs. In contrast, the stumpage price for pulpwood is based on a percentage of the price per ton of newsprint delivered in New York.

The fact that sawlog prices are lower does not necessarily mean that they are preferential within the meaning of subsection 771(5)(B)(ii). We recognize that there may be valid bases for charging different stumpage prices for pulpwood and sawlogs. However, we do not have sufficient evidence on the record to explain the lower price for sawlogs.

Consequently, we determine that the price charged for sawlogs is preferential and constitutes a subsidy within the meaning of subsection 771(5)(B)(ii). To calculate the subsidy, we took the difference between the price charged for pulpwood ($3.36 per m^3) and that charged for sawlogs ($0.77 per m^3). We then multiplied this difference by the volume of sawlogs harvested in fiscal 1981–82 by timber limit holders and processed in their own sawmills. Because stumpage dues are current obligations, we treated this amount as a grant expensed in the year received and calculated a subsidy of 0.061 percent *ad valorem*.

b. *Aide à la Promotion des Exportations.* The Aide à la Promotion des Exportations (APEX) program is administered by the recently created Ministère du Commerce Extérieur of Québec. Prior to a December 1982 reorganization in the provincial government, APEX was administered by the Ministère de l'Industrie, du Commerce et du Tourisme (Office Québécois du Commerce Extérieur). The program has been available since 1977 to manufacturing and service companies in Québec. Under APEX, grants are awarded to companies for market research and for trade expositions for the promotion of exports of Québec goods and services outside Canada.

In 1982, two small APEX grants were made to exporters of the products under investigation specifically to develop export markets in the United States. Because APEX is expressly designed to stimulate exports, we determine that the program confers benefits which constitute export subsidies. One of the 1982 grants went to a producer of softwood lumber and softwood shakes and shingles. We allocated it over the 1981 export sales to the United States of those products, and calculated a subsidy of less than 0.001 per cent *ad valorem*.

We allocated the other 1982 grant, which went to a producer of softwood fence, over the total 1981 export sales to the United States of softwood fence and calculated a subsidy of 0.002 percent *ad valorem*.

c. *Société de Récupération, d'Exploitation et de Développement Forestiers du Québec.* The Société de Récupération, d'Exploitation et de Développement Forestiers du Québec (REXFOR) was incorporated in 1973 under Québec's REXFOR Act as a provincial Crown corporation. Under the joint trusteeship of the Ministère des Finances and the Ministère de l'Energie et des Ressources of Québec, its entire stock is allotted to the former, which approves REXFOR's operating and investment budgets.

REXFOR was created to manage specific provincially owned forest lands, to preserve and protect provincial forest lands through silviculture, and to encourage the development of the "forest industry" in Québec. REXFOR owns sawmills and pulp and paper mills, and produces the softwood products under investigation as well as a wide variety of products not under investigation. In carrying out these activities, REXFOR receives funds from both the Canadian and Québec governments, and is also an active investor in and provider of funds to the "forest products industry" in Québec.

(1) *Assistance to REXFOR from the Government of Canada.* REXFOR and three of its subsidiaries producing softwood lumber received six RDIP grants from DREE. These grants, which we determine to confer subsidies, are included in the federal portion of the "Programs Determined to Confer Subsidies" section of this notice.

(2) *Assistance to REXFOR from the Government of Québec.*—(a) *Loans and Loan Guarantees.* Between 1973 and 1977, REXFOR and its subsidiaries received a number of loans and a loan guarantee from the government of Québec (GOQ) at interest rates inconsistent with commercial considerations. We consider these loans and loan guarantee to have been targeted to a specific company. Accordingly, we determine that these loans and loan guarantee confer a subsidy on REXFOR.

To calculate this subsidy, we compared the principal and interest a company would pay a normal commercial lender in any given year with amounts actually repaid in that year. For purposes of these determinations, we included deferral of principal and interest payments in our subsidy calculations.

The benchmark rate used was the chartered banks prime rate in Canada, as published in the OECD *Financial Statistics*. After calculating the payment differential in each year of the loan, we then calculated the present value of this stream of benefits in the year the loan was made, using the secondary market bond yield for Canadian government bonds, as published in the OECD *Financial Statistics*, as the discount rate.

We allocated the benefits from these loans and loan guarantee over the total sales of the producers of softwood lumber and softwood shakes and shingles and calculated a subsidy of less than 0.001 percent *ad valorem*.

(b) *Grants.* Between 1977 and 1981, REXFOR received a grant from the GOQ for the production of softwood lumber. We consider grants made to REXFOR by the GOQ to have been targeted to a specific company. Accordingly, we determine that this grant confers a subsidy on REXFOR.

We calculated the benefit to REXFOR in accordance with the grant methods described in the "Analysis of Programs" section of this notice. We allocated the benefit received over the total sales of the producers of softwood lumber, and calculated a subsidy of less than 0.001 percent *ad valorem*.

(c) *Loss Coverage.* In two instances, the GOQ covered operating losses sustained by REXFOR in connection with two of its subsidiaries which respectively produce softwood lumber (Scieries Chic-Chocs) and all the products under investigation (Samoco). In both instances, the amounts received exceeded the losses sustained by REXFOR. In the case of Scieries Chic-Chocs, the excess of the funds received over the loss incurred was used to purchase fixed assets; in the case of Samoco, the excess was transferred into REXFOR's retaining earnings.

We determine that loss coverage confers a subsidy. We expensed those portions of the grants used to cover actual operating losses in the year in which they were received. We treated the excess amounts as grants and allocated them over 15 years, the average useful life of capital assets of sawmill plants and equipment. We allocated the benefit received over the total sales of the prducers of softwood lumber (in the case of Scieries Chic-Chocs) and of the producers of the products under investigation (in the case of Samoco), and calculated a subsidy of 0.017 percent *ad valorem* for softwood lumber, and 0.014 percent *ad valorem* for softwood shakes and shingles and softwood fence.

(d) *Equity Purchases.* The GOQ has made equity purchases in REXFOR under two difference sections of the REXFOR Act. Under section 6 of the REXFOR Act, the proceeds from

Quebec's equity purchases are made available to REXFOR for "general intvestment" purposes to be used as the company sees fit. Under section 7, the proceeds from Quebec's purchases of REXFOR stock are specifically directed by the GOQ to be used for loans to or equity purchases in third companies which may or may not be subsidiaries or affiliates of REXFOR, some of which produce softwood lumber or shakes and shingles.

(i) After analyzing REXFOR's financial statements since 1973, especially the company's debt position and rate of return on equity, we conclude that the GOQ's section 6 equity infustions into REXFOR were not inconsistent with commercial considerations. Therefore, we determine that government equity purchases in REXFOR that were not specifically directed do not confer a subsidy.

(ii) With regard to government equity purchases made pursuant to section 7 that were specifically directed, but *not* to producers of the products under investigation, we determine that these purchases did not confer subsidies on the products under investigation.

(iii) With regard to equity purchases made by the GOQ pursuant to section 7 that were specifically directed to producers of the products under investigation:

• Where the proceeds were used by REXFOR to make equity infusions in subsidiaries, affiliates or unrelated companies, we must consider whether these infusions were made on terms inconsistent with commercial considerations.

Our analysis of these companies leads us to conclude, based on verified financial data contained in the responses and REXFOR's annual reports, that REXFOR's equity purchases in these companies were in fact not inconsistent with commercial considerations. Accordingly, we determine that these equity purchases do not confer subsidies within the meaning of the Act on producers of the products under investigation.

• There were no loans made by REXFOR pursuant to section 7 that were specifically directed to producers of the products under investigation, for which principal was still outstanding during the period for which we are measuring subsidization.

d. *FRI Tax Abatement Program.* The Tax Abatement Program (TAP) is one of two programs under the aegis of the Fonds de Relance Industrielle (FRI) of Québec, which provided assistance to producers of the products under investigation. The second FRI program, *i.e., the Industrial Incentives Fund, is discussed below in the section titled "Programs Determined Not To Confer Subsidies."*

The FRI is a fund, administered by the Ministère de l'Industrie, du Commerce et du Tourisme of Québec with the assistance of Revenu Québec, which provides financial aid in order to stimulate modernization and development of Québec-based manufacturing enterprises.

TAP applies to capital equipment investments of at least $50,000 and allows a company to retain the lesser of 50 percent of taxes payable to the province or 25 percent of the investment costs. The total abatement can be spread over a maximum of five years. The company chooses in which of those five tax years it will file for the abatement and may use the retained amount as it sees fit, but it may not claim more than $500,000 during the five-year period. The program was discontinued in 1981, and no applications filed after March 31, 1981 have been accepted. However, disbursements are still being made on previously approved applications.

Companies located in the metropolitan area of Montréal are excluded from this program. Since TAP is limited to companies located within specific regions, we conclude that it confers a subsidy within the meaning of the Act.

Producers of the products under investigation took advantage of tax savings under this program. Total tax abatements claimed by these producers for the 1981 tax year amounted to $284,481. We consider this benefit to be received in 1982 because the companies do not know their tax savings under TAP until the completion of the tax year. We allocated these savings over the total sales value of the products under investigation, and calculated a subsidy of 0.005 percent *ad valorem.*

e. *SDI Export Expansion Program.* The Société de Développement Industriel (SDI) was established in 1971 by the Assemblée Nationale (Legislature) of Québec as a Crown corporation. SDI is wholly owned by the province and administered by the Ministère de l'Industrie, du Commerce et du Tourisme, but has certain powers and authority of its own as spelled out in the SDI Act. SDI gives financial assistance to the private sector in order to promote new business investment, plant expansion or modernization, and the export of Québec goods and services. This assistance comes in several forms: Loans, loan guarantees, grants as cash reimbursements for interest costs on investments or partial forgiveness of loans, and acquisition of capital stock (the latter with the proviso that SDI not hold a majority of any given company's shares).

SDI receives annual budget appropriations voted by the Assemblée Nationale which are used to cover its administrative expenses and grants. In fiscal 1981–1982, SDI received $55.8 million from the Assemblée, of which $44.9 million was specifically earmarked for "subsidies" (grants). Another source of SDI funding is an endowment established by the GOQ at the time of SDI's formation in 1971 to provide liquidity against which SDI could guarantee its loans. This fund now totals $47.4 million, of which $32 million is the initial endowment and the balance is accumulated interest. Finally, SDI finances itself, in part, through borrowings on the capital markets, which amounted to $74 million as of July 15, 1982.

SDI assistance programs fall under three categories: the Export Expansion Program, which we determine to confer a subsidy for the reasons outlined below; development grant programs; and loans and loan guarantees to manufacturing firms. The latter two categories are described later in the "Programs Determined Not to Confer Subsidies" section of this notice.

Under the Export Expansion Program, SDI reimbursed interest costs to Québec firms whose direct exports increased by 25 percent over the previous year. The program has been discontinued; May 25, 1981 was the final date for receipt of new applications. Disbursements were made through May 1982.

The maximum grant awarded to a recipient company was the lesser of two percent of the company's export sales value or the amount of interest expense paid in a given year. Once the total grant was computed, SDI allocated the amount to the company for U.S. and overseas exports respectively, in direct proportion to the company's export sales to the United States and overseas.

Producers of softwood lumber received funds under this program. We determine the Export Expansion Program to confer an export subsidy. Because interest charges are normally expensed in the year paid, we calculated the benefit by allocating the amound provided by SDI in 1981 (the most recent year for which data are available) to softwood lumber producers for their exports to the United States over the total sales value of exports of softwood lumber to the United States, and calculated a subsidy of 0.019 percent *ad valorem.* Producers of softwood shakes and shingles and softwood fence did not receive funds

under this program during the period for which we are measuring subsidization.

II. Programs Determined Not To Confer Subsidies

We determine that the Canadian federal provincial governments are not providing subsidies to manufacturers, producers, or exporters of certain softwood products included in these investigations under the following programs:

A. Stumpage Programs of the Canadian Federal and Provincial Governments

Petitioner alleges that the stumpage programs [2] of the Canadian federal and provincial governments confer both a domestic and an export subsidy on the products under investigation.

Concerning the former allegation, petitioner alleges that stumpage programs are provided to a specific group of industries within the meaning of subsection 771(5)(B) of the Act. Also, rather than alleging that stumpage programs constitute the provision of a good at preferential rates under subsection 771(5)(B)(ii) of the Act, petitioner alleges that stumpage programs constitute the assumption of a cost of production within the meaning of subsection 771(5)(B)(iv) of the Act. Essentially, petitioner claims that "assumption," as used in subsection (iv), should have a broad, all-inclusive meaning, encompassing any governmental activity that reduces or absorbs production costs on terms inconsistent with commercial considerations.

First, stumpage programs do not confer an export subsidy, because they do not operate and are not intended to stimulate export rather than domestic sales, and because they are not offered contingent upon export performance. The mere fact that significant quantities of products made from stumpage are exported to the U.S. does not mean that stumpage programs confer an export subsidy.

Further, stumpage programs do not confer a countervailable domestic subsidy for the following reasons. First, we determine tht stumpage programs are not provided only to a "specific enterprise or industry, or group of enterprises or industries." Rather, they are available within Canada on similar terms regardless of the industry or enterprise of the recipient. The only limitations as to the types of industries that use stumpage reflect the inherent characteristics of this natural resource and the current level of technology. As technological advances have increased the potential users of standing timber, stumpage has been made available to the new users. Any current limitations on use are not due to activities of the Canadian governments.

Although nominal general availability of a program does not necessarily suffice to avoid its being considered a possible domestic subsidy, the Department further determines that stumpage is used within Canada by several groups of industries. Stumpage is cut by the lumber and wood products industries (which manufacture products ranging from simple "two-by-fours" to window frames), the veneer, plywood and building boards industries, the pulp and paper industries (which manufacture products ranging from cardboard boxes to newsprint), and the furniture manufacturing industries, each of which requires different types of processing equipment and uses different channels of trading. Stumpage permits are also held by individual consumers and by industries producing turpentine, charcoal, wood alcohol, and even food additives (*i.e.*, vanillin and lignin). In this regard, we note also that, under the classification systems of both Canada and the United States, the lumber and wood products industries, the pulp and paper industries, and the furniture manufacturing industries constitute at least three groups of industries. Therefore, in view of its general availability without governmental limitation and its use by wide-ranging and diverse industries, we determine that stumpage is not provided to a "specific group of * * * industries."

We note, however, the importance of stumpage's general availability without governmental limitation. Where, on the other hand, the governments expressly limit programs to the so-called "forest products industries," we have found some domestic subsidies. Unlike stumpage programs, these types of programs involve the provision of benefits, usually money, that can be used by all enterprises and all industries. In such cases, the restrictions on availability are due entirely to governmental action, and not to any specific characteristics of that which is provided. With respect to these types of programs, we believe that there is sufficient evidence of governmental action to support a determination that a benefit is conferred upon a "specific group of * * * industries."

Even if stumpage programs were being provided to a "specific group of * * * industries," we determine that they would not confer a domestic subsidy. In this regard, we determine that Canadian stumpage programs, except for certain aspects of those of Ontario and Québec, do not confer a domestic subsidy, because they do not provide goods at preferential rates to the producers of the products under investigation within the meaning of subsection 771(5)(B)(ii).

In our opinion, subsections 771(5)(B)(i)–(iv) are mutually exclusive. We recognize that subsections (i)–(iv) are not an all-inclusive list of domestic subsidies. However, we maintain that where a particular subsection clearly covers a given program, the determination whether that program is a subsidy must be based upon the standard provided in the relevant subsection. In addition, we recognize that in some situations it may be arguable as to which subsection most closely describes a particular program. However, this problem does not arise in the instant investigations, because stumpage programs clearly involve the prosision of a good (raw timber), and thus clearly fall within sucsection (ii). Therefore, we determine that subsection (ii) is the controlling provision insofat as these stumpage programs are concerned.

The standard contained in subsection (ii) is "preferential," which normally means only more favorable to some within the relevant jurisdiction than to others within that jurisdiction.[3] In this context, it does not mean "inconsistent with commercial considerations," a distinct term used in subsection 771(5)(B)(i) (which is not applicable with regard to stumpage programs in general, because they do not involve the provision of capital, loans, or loan guarantees).

Assuming *arguendo* that subsection (iv) also applies to stumpage programs, we determine that Canadian stumpage programs do not "assume" a cost of production. We believe that the most reasonable interpretation of "assumption" is that it refers only to government activity which relieves an enterprise or industry of a pre-existing statutory or contractual obligation. Otherwise, subsection (iv) would embrace all of the activities described in preceding subsection (i)–(iii), because

[2] In general, "stumpage" refers to standing timber and "stumpage programs" refer to the systems by which individuals and companies acquire rights to cut and remove standing timber from government forest lands. The stumpage programs of the various Canadian governments are described in further detail in Appendix B of this notice.

[3] There may be other cases in which the number of users of a good or service may be so limited that the preferentiality test may need to be examined further. In addition, as the Department and the Department of the Treasury have recognized in prior cases, "different" does not necessarily mean "preferential."

the activities described in those subsections could all be regarded as activities which reduce or absorb—and thereby arguably "assume"—costs of production. Such a broad construction of the term "assumption" would make subsection (iv) largely redundant of subsections (i)–(iii) and is, as a matter of law, not preferred. Accordingly, "assumption," as used in subsection (iv), means something other than the universe of governmental activities which could have the effect of reducing or absorbing a cost of production. Rather, it refers to a specific type of activity. In the financial and legal terms relevant to subsection 771(5)(B)'s list of domestic subsidies, an "assumption" is the relief from a pre-existing statutory or contractual obligation.

Under this interpretation, stumpage programs do not constitute the assumption of a cost of production, because the Canadian governments do not relieve the producers of any pre-existing statutory or contractual obligations. To the contrary, the governments impose a cost for the stumpage, which they have owned themselves for well over a century. These imposed costs include not only cash payments for stumpage, but also one or more other costs, such as ground rents, forest management plans, silviculture and road building, as detailed for each province in Appendix B.

Even if "assumption" were construed more broadly, we determine, based upon available information in the record of these investigations, that Canadian stumpage programs have not effectively reduced, and thereby "assumed," a cost of production. Petitioner claims that because there is an allegedly unified North American market for softwood lumber, shakes and shingles and fence, the Department should compare Canadian stumpage prices to prices for stumpage in the United States. We disagree. First, it has been the Department's policy not to use cross-border comparisons in establishing commercial benchmarks.

Second, while there may be a unified North American market for each of the products under investigation, there is not a unified market and a unified price for stumpage, because each individual stand of timber is unique due to a variety of factors, such as species combination, density, quality, size, age, accessibility, and terrain and climate. Stumpage prices vary substantially both regionally and locally within Canada and the United States, even within a mill's timber supply area. For example, a publication called *Timber-Mart South* publishes stumpage prices for the southeastern United States. This publication covers thirteen states, each divided into three regions, and lists separate prices for each species within each region of each state.

We believe that a comparison of Canadian stumpage prices with U.S. prices would be arbitrary and capricious in view of: (1) The wide differences between species composition; size, quality, and density ot timber; terrain and accessibility of the standing timber throughout the United States and Canada; (2) the additional payments which are required in many provinces in Canada, but not generally in the United States; (3) the fact that in recent years, prices in national forests in the United States have been bid anywhere between two to five years in advance of cut, without taking into account the fluctuations in demand for lumber; and (4) the fact that in recent years the U.S. Forest Service has restricted the supply of timber in certain national forests due to budgetary and environmental constraints.

Alternatively, even if one believes that there is a rational basis for comparing U.S. and Canadian stumpage prices, the record of these investigations includes studies showing that once appropriate adjustments are made to take into account the differences in quality, accessibility, as well as additional cash payments and in-kind services, Canadian prices for standing timber do not vary significantly from U.S. prices. Indeed, in some cases the Canadian price may be higher. Therefore, even if one were to use U.S. prices as a benchmark, there is evidence in the record which establishes that the Canadian governments do not assume costs of production through their stumpage programs.

In the absence of a market price for stumpage with which Canadian stumpage prices may reasonably be compared, we could, as petitioner suggests, alternatively determine whether Canadian stumpage prices reflect "true market value."

The value of stumpage derives from a number of factors, including the price of the end products made from it, and not from any intrinsic value of the standing timber. One method of establishing stumpage prices, which is used in BC and some parts of the United States, is to calculate its residual value based upon the end-product price. Under the residual value approach, the seller makes allowances for normal profit and risk factors and deducts manufacturing costs from the end-product price to determine the minimum price for stumpage below which it will not sell.

As noted above, residual valuation is used in BC, which between 1977 and 1981 produced 67 percent of the softwood lumber manufactured in Canada. We believe that it constitutes a reasonable method for establishing stumpage prices. Therefore, we determine that prices charged in BC for stumpage may not be said not to reflect "true market value," as alleged by petitioner. Accordingly, one cannot find that stumpage programs in BC assume a cost of production, even if that term is interpreted broadly. In addition, other provinces established stumpage prices (such as competitively bid prices) which cannot be said not to reflect "true market value."

For all the above reasons, we determine that Canadian stumpage programs do not assume a cost of producing the products under investigation.

In conclusion, based on information in the record, we determine that Canadian stumpage programs (with the exceptions noted above for Ontario and Québec) do not confer a subsidy within the meaning of the Act because they are not offered contingent upon export performance, because they are not provided to a "specific enterprise or industry, or group of enterprises or industries," and because they do not confer a domestic subsidy within the meaning of subsection 771(5)(B).

B. Federal Programs

1. *Deductible Inventory Allowance.* The federal Income Tax Act authorizes a deduction equal to three percent of the opening value of inventories held for sale or for the production of goods for sale. This deduction is available on equal terms to all businesses holding inventories for sale throughout Canada.

We determine that the deductible inventory allowance does not confer countervailable benefits because it is not limited to a specific industry, group of industries or to companies in specific regions.

2. *Capital Cost Allowances.* The federal Income Tax Regulations provide for a capital cost allowance for businesses throughout Canada that purchase qualifying assets used in abating water or air pollution, manufacturing or processing, or conserving energy. These companies receive a full write-off over three years with a cumulative maximum deduction of 25 percent in the first year, 75 percent in the second year and 100 percent in the third year. This is the only method of depreciation allowed for these

properties, and they are depreciated according to this schedule regardless of use by industrial sector.

We determine that these capital cost allowances do not confer countervailable benefits because they ae not limited to a specific industry, group of industries or to companies in specific regions.

3. *Export Credit Insurance.* Petitioner alleges that the GOC covered export credit insurance losses incurred by the Export Development Corporation (EDC). EDC is a Canadian Crown corporation providing financial services to Canadian exporters and foreign buyers to develop Canada's export trade. The GOC is the sole stockholder in EDC. One of EDC's financial services is export credit insurance. EDC maintains its own commercial insurance operation, as well as a separate operation on behalf of the government. We verified that exports to the United States of the products under investigation are not insured under the government account.

EDC has never incurred a fiscal year loss on its commercial operations, although there has been a downward trend in earnings. This downward trend in earnings prompted EDC to develop a cost allocation and accounting system in 1982. Although not fully implemented, the system is designed to assign costs and forecast revenue requirements more accurately for all of EDC's commercial operations, including the insurance operation. In this regard, EDC's Financial Planning Division also conducts an annual review of the past five year's claims experience, and then forecasts the percentage of every premium dollar that should be assigned to claims. In 1982, the percentage of every premium dollar allocated to cover future claims was increased from 38 percent to 50 percent. Because the claims provision was increased, EDC has raised its premium rates twice in the past two years. We verified that between 1982 and 1983, premiums on exports of lumber to the United States were raised 25 percent.

Based upon our review of information on the record, it appears that the petitioner's allegation pertains to export credit insurance losses sustained by EDC in its operation on behalf of the GOC and not in its commercial operation. Exports to the United States of the products under investigation are insured solely through EDC's commercial operation. Further, as noted above, EDC has raised premium rates when the claims provision was increased. Thus, it appears that EDC is charging premiums sufficient to cover long-term operating costs and losses. We determine that EDC's export credit insurance does not confer an export subsidy within the meaning of the Act.

4. *Federal Employment Programs.*—a. *Local Employment Assistance Program.* The Local Employment Assistance Program (LEAP), administered by the Canada Employment and Immigration Commission (CEIC), aims to increase the self-sufficiency of chronically un- or under-employed workers, such as handicapped persons, through grants for job creation and worker training. LEAP assistance is not limited to a specific industry, group of industries or to companies in specific regions. Moreover, "for-profit" organizations or entrprises are not eligible for LEAP funding. We determine that these grants did not confer any countervailable benefits upon the producers of the products under investigation.

b. *Work Sharing Program.* The purpose of the Work Sharing Program, which is also administered by the CEIC, is to avert temporary layoffs during short-term economic downturns by reducing workweeks, taking steps so that available work is shared, and providing unemployment benefits when no work is available. It does not relieve participating employers of any contractual oblibations. Employees of producers of the products under investigation received benefits under this program.

The Work Sharing Program is financed through the national Unemployment Insurance (UI) fund, to which employers contribute 47 percent; employees, 33 percent; and the federal government, 20 percent. Eligibility is not limited to a specific industry, group of industries or to companies in specific regions. Any company whose employers and employees pay regular UI premiums may receive Work Sharing assistance. Therefore, we determine that the Work Sharing Program did not confer any countervailable benefits to producers of the products under investigation.

5. *Regional Development Incentives Program (RDIP)—Loan Guarantees.* The RDIP, administered by DREE, as described in the "Programs Determined to Confer Subsidies" section of this notice, provides loan guarantees to manufacturers whose capital investment projects for establishing new facilities or expanding or modernizing existing facilities will create jobs and economic opportunities in areas designated as economicaly disadvantaged.

Under the loan guarantee program, DREE insures ultimate payment of losses related to approved loans at a cost of one percent of the balance of the guaranteed principal per annum. Some producers of the products under investigation have defaulted on these loans. However, the security or assets pledged by the companies enabled the private lender to recover the principal and thus avoid an insurance claim against DREE.

These loans are made on terms not inconsistent with commercial considerations. We determine that no benefit is being provided by RDIP loan guarantees, as all loans to producers of products under investigation were contracted at a rate of interest above the average Canadian commercial rate of interest based on the chartered banks' prime lending rate, as reported in the OECD *Financial Statistics.*

6. *Enterprise Development Program (EDP).* The Enterprise Development Program (EDP) was established in 1977 to provide loans, loan insurance and contributions to manufacturers (individuals, firms or corporations in Canada engaged in a manufacturing or processing activity) and, in the case of loan insurance, to private lenders to assist in projects of product development or enhancement, or for other types of productivity initiatives. The program is administered by one national and ten regional Enterprise Development Boards (one in each province), in conjunction with the federal Department of Industry, Trade and Commerce.

Enterprise Development Regulations provide a listing of the qualifying purposes for which any loan, loan insurance or contribution may be issued, and state that a regional board may exercise and perform the powers, duties and functions of the Board under the regulations with respect to:

- Any loan, insurance or contribution made where the total amount of any such loan, insurance or contribution does not exceed $200,000, the aggregate liability of the manufacturer does not exceed $200,000 and the dollar volume of sales of the manufacturer did not exceed $5,000,000 in its fiscal year immediately preceding the application for the loan, insurance or contribution.
- Any loan or insurance where the total amount of any such loan or insurance does not exceed $50,000 and the aggregate liability of the manufacturer does not exceed $200,000, except as a result of the making of such loan or the provision of such insurance.
- Any contribution where the total amount of the contribution does not exceed $20,000 and the aggregate liability of the manufacturer does not exceed $200,000, except as a result of the making of such contributions.

Loan insurance and contributions are determined not to confer subsidies and are discussed below, while loans

provided under EDP are discussed in the "Programs Determined Not to Be Used" section of this notice.

a. *EDP Loan Insurance.* The GOC provides loan insurance under the EDP to private lenders for loans to companies for approved productivity projects. The private lender pays a fee of one percent per annum, twice yearly, on the outstanding obligation for the insurance. The insurance allows the lender to recover up to 90 percent of the actual loss it experiences on defaulted loans after all security has been realized.

Companies participating in this program first negotiate a loan insurance agreement witht he Enterprise Development Board and then go to the private market to negotiate a loan. Loans vary in duration from three to ten years, with the repayment schedule being set by the lender.

Loan insurance may be provided under EDP on loans made by a private lender to a manufacturer, individual, firm or corporation in Canada if a loan is required to enable the manufacturer to meet changing competitive circumstances and if the provision of loan insurance is necessary to encourage private lending at normal commercial rates.

A few producers of the products under investigation received loan insurance under the EDP. We verified that EDP loan insurance was provided to a wide range of industries and was not limited to companies in specific regions. Therefore, we determine that the provision of the loan insurance does not confer a subsidy.

b. *DEP Contribution.* Under EDP the GOC shares the cost of approved projects with companies. Audits are conducted to verify that expenditures were made for the intended purpose. Contributions are administered in accordance with the terms and conditions approved by the Treasury Board. The funds are available to manfuacturers in any industry or region for a project which represents a significant departure from a company's traditional productivity improvement practices and has an existing potential for productivity gains but demonstrated uncertainty as to benefits. The cost of any feasibility study and implementation of the results thereof should represent a significant burden on the company's resources. In addition, the manufacturer must be capable of implementing the results of the study.

We found that small contributions were provided to producers of the products under investigation to assist in product development, proposal development, identification of new products and productivity enhancement. We verified that EDP grants were provided to a wide range of industries and were not limited to companies in specific regions. Therefore, we determine that they do not confer a subsidy on the products under investigation.

7. *Transportation Programs.* a. *Rail Freight Rates.* There are 33 common carrier companies providing rail transportation services in Canada, almost half of which are U.S. subsidiary lines. Of the Canadian lines, two companies—Canadian National (CN) and Canadian Pacific (CP)—are engaged in countrywide transport. Their combined trackage comprises 89 percent of the total railway trackage in Canada.

CP is a privately owned company, while CN is a Canadian Crown corporation. Laws and regulations governing railway operations and freight rates are promulgated by the federal government and administered by the Canadian Transport Commission.

Both Canadian and U.S. railroads offer several types of rates: class rates, competitive rates, commodity rates, and contract rates. In Canada, "agreed charges" is the term applied to contract rates for intra-Canada shipments. Rail shipments within Canada that do not fall under agreed charges generally move under competitive or commodity rates. At the present time, class rates apply to very little rail traffic. International rail shipments move under rates established jointly by the U.S. and Canadian rail companies involved.

The petitioner alleged that agreed charges are a domestic subsidy because they are below "tariff rates" and because they apply only to "forest (wood) products." In its response, the GOC provided copies of published agreed charges covering a large number of different commodities, such as foodstuffs, automobiles, appliances and petroleum products. Ten of these agreed charges cover shipments of lumber, shakes and shingles, and fence. Agreed charges are generally used when the companies are moving large volumes on a regular basis.

As require by section 32(2) of the Transport Act of 1938, the railroads that are competitive at the points of origin and/or destination must concur on the agreed charge rates to be charged the shippers. The railroads develop a joint position which is then presented to the shippers. We verified that agreed charges are rates agreed upon after arm's length negotiations between the Canadian railway(s) and the shippers. Agreed charges are renegotiated every year and reflect such variables as market and modal competition, value of the commodity, loadability, and equipment use.

In addition to the agreed upon rates, agreed charges stipulate that a certain percentage of volume must be shipped. For lumber this volume requirement is 80 percent. The lumber agreed charges also specify that the railcars must be completely off-loaded in Canada and that the agreed charge rates cannot be used in constructing combination rates to the United States. Under agreed charge regulations, any shipper who is moving the same goods under similar conditions between the same points can become a signatory to the agreed charge, and cannot be charged more than the agreed charge rate.

Agreed charges, like all rates charged by the railroads, must be compensatory; that is, the rate must cover the railroads' variable costs on each movement. However, the railroads charge what the market will bear. As such, their variable costs represent a floor below which a rate cannot go, but they do not represent a ceiling on rates.

During verification, we compared agreed charge rates for lumber with agreed charge rates for some other commodities and found that lumber agreed charge rates are higher both in cents per ton and cents per ton-mile. Moreover, although the rates charged by the railroads are not calculated on a per car-mile or per ton-mile basis, the Waybill Analysis from 1978–80 (the latests available published statistics) for all rate structures shows that "forest products" generated higher revenue for the railways than all other commodities both on a per car-mile and per ton-mile basis.

Because there are a number of agreed charges covering a wide range of commodities and because agreed charges are negotiated at arm's length, we determine that agreed charges do not confer benefits which constitute subsidies within the meaning of the Act.

b. *Currency Exchange Rate Tariff (No. 6016A).* The currency exchange rate tariff was implemented in 1921 on all rail shipments between the United States and Canada. Because of currency fluctuations, the railroads agreed that the value of that portion of the rail haul taking place in the United States should be reflected in U.S. currency and the value of that portion taking place in Canada should be reflected in Canadian currency. A study was conducted showing that of the total amount of freight charges collected on international shipments, 60 percent accrued to U.S. railways and 40 percent accrued to Canadian railways. Based on this study, Canadian railways were

authorized to collect a surcharge of 60 percent or to provide a discount of 40 percent on international shipments depending on prevailing exchange rates. These percentages were calculated to correspond to the average portion of a movement that took place in each country. Although the Canadian government has not legally mandated the exchange rate tariff since 1967, it is still applied by the Canadian railroads to all rail traffic between Canada and the United States.

The program works as follows. When U.S. funds are at a premium in relation to Canadian funds, the Canadian railways collect a surcharge of 60 percent of the current exchange rate differential on any prepaid movement from Canada to the United States without regard to the industry or region involved. When U.S. funds are at a discount in relation to Canadian funds, the shipper who pays in Canadian funds receives a discount of 60 percent of the exchange rate differential. If, however, charges are paid in the United States, the Canadian shipper must pay a surcharge of 40 percent of the prevailing exchange rate. Because the sole purpose of the tariff is to adjust for the differences in the value of the two currencies, it applies only to shipments exported to the United States.

Since 1977, U.S. currency has been at a premium in relation to Canadian currency. Therefore, Canadian shippers have been paying a surcharge on exports to the United States. Because Canadian shippers have been paying a surcharge, no benefits are being bestowed through the currency exchange rate tariff on exports of the products under investigation. Based upon our review of information on the record, the tariff is not intended, nor does it operate, to stimulate exports. Rather, it is a mechanism for maintaining Canadian rail carrier revenue. Therefore, we determine that the currency exchange rate tariff does not confer a subsidy within the meaning of the Act.

c. *Fuel Tax Refund and Fuel Tax Exemption.* The fuel tax refund is a program which applies to the movement of motor carriers operating in interstate service within the United States, in interprovincial service within Canada, or in international service between Canada and the United States. The purpose of this program is to ensure that all states and provinces collect taxes equal to the actual fuel consumed within each jurisdiction but which has been purchased outside that jurisdiction. The tax refund is applied by each jurisdiction uniformly on all truck movements regardless of the type of merchandise carried, if any.

Each motor carrier must keep a log of travel to ensure proper payment of tax. Each jurisdiction may have different means of assessing the tax and the amount of fuel tax refund. Assessments are made on the basis of a motor carrier's log.

The fuel tax refund is a mechanism to ensure that each state or province receives proper payment of its share of fuel taxes. It does not relieve carriers of any tax, nor does it provide any benefits to shipments of the products under investigation.

Within the provinces as well as the states, certain machinery and vehicles are exempt from paying fuel taxes. Exemptions can include stationary machinery, off-road vehicles, airplanes and public transportation. Off-road vehicles and machinery used in agricultural, forestry, and mining operations are generally exempt from paying fuel taxes. In addition, machinery and vehicles used on private roads are exempt because historically, fuel taxes have been used to maintain public roads. Even though some forestry and mining roads may be designated as public roads, certain machinery and vehicles operating on them may be exempt from paying fuel taxes because the forestry and mining operators are responsible for road maintenance. Becaujse a wide range of industries are exempted from fuel tax within each province, we determine that the fuel tax exemption does not provide benefits to a specific industry or group of industries. Therefore, we determine that the fuel tax refund and the fuel tax exemptions do not confer subsidies on the products under investigation.

C. Federal/Provincial Programs

1. *Forestry Subsidiary Agreements.*—a. *Funding for Long-Term Forest Management Under the Forestry Subsidiary Agreements.* As described in the "Programs Determined to Confer Subsidies" section of this notice, DREE entered into ten-year GDA's with all provincial governments except Prince Edward Island. A similar 15-year comprehensive development plan exists for Prince Edward Island. Forestry subsidiary agreements are available to any province with a GDA and to Prince Edward Island, and have been negotiated with seven provinces.

Most of the funding under these agreements is for long-range resource management on public lands and public infrastructure development. Examples of these activities include funding for silviculture camps, tree nurseries and soil and forest inventory studies. A few other programs are funded under the forestry subsidiary agreements; these are discussed in other sections of this notice, as appropriate.

The long-term forest management activities are conducted by the province on provincial lands, and do not relieve any companies of obligations incurred in their licensing arrangements. The benefits from these long-term forest management activities will not be realized until the rotation age (life span from planting to cutting for a tree) is met. This span is at least 40–60 years in eastern Canada and 60–80 years in the west. Further, activities under the forestry subsidiary agreements are primarily designed to help achieve the government's goal of renewing a "sustained-yield" forest. For example, ths silvicultural camps facilitate cone collection for seed supplies of tree nurseries, and soil surveys are for the study of the proper species to plant in certain areas. These benefits would be attributable to the owner of the resource, the government, not to the short- or medium-term licensee, which may have its annual allowable yield reduced as a result of these long-term management practices.

Because these benefits will not be bestowed on the products under investigation until well into the future, if at all, and would be attributable to the government as owner of the resource, we determine that the funding of long-term forest management activities under the forestry subsidiary agreements does not confer a countervailable benefit on producers of the products under investigation in the period for which we are measuring subsidization.

Under the forestry subsidiary agreements, the federal government makes payments to the provincial governments for the construction of forest access roads. The companies using these roads for forestry operations are responsible for all maintenance costs. Although the extraction of wood is one of the primary purposes of building forest roads, access to mineral resources, recreation, environmental protection, general development and forest management are other purposes. Roads built in each province under the FSA's are open to the public at all times, with occasional exceptions, such as during the spring when weather conditions may require closure to prevent damage to the road. Further, the establishment of minimum standards and specifications for various classes of forest roads, above those standards which would be required by those harvesting stumpage, ensures that the roads will meet the needs of not only

those holding stumpage rights, but also the traveling public and other users. For these reasons, we determine that the construction of forest access roads does not confer a subsidy within the meaning of the Act.

b. *Saskatchewan Forestry Subsidiary Agreement: Opportunity Identification and Technological Advancement.* Sector A (Opportunity Identification and Technological Advancement) of the Saskatchewan Forestry Subsidiary Agreement provides for provincial funding of research and feasibility studies. These studies are usually conducted by private counsultants hired by the company receiving the funding. The objectives of the studies are to determine industrial opportunities in forestry, conduct market and feasibility analyses and transfer known technology to an existing or new industrial application. The results of the studies are held by the government and appear to be publicly available on equal terms. Therefore, we determine that the studies do not provide contervailable benefits to producers of the products under investigation.

c. *Forestry Job Program.* The Employment Bridging Assistance Program (EBAP) is a job creation program sponsored by individual provinces and the Canadian government, pursuant to section 38 of the Federal Unemployment Insurance Act of 1971. EBAP contracts have been signed with all provinces.

Established organizations, businesses, partnerships, corporations, federal/provincial/territorial/municipal government departments and agencies are eligible to propose or promote a project. Programs are created according to vocational skills and the industries involved have included mining, forestry, fishing, tourism and energy. The activities provided by a program must not replace existing jobs.

The British Columbia/Canada Employment Bridging Assistance Program (Forest) was created to allow forestry-dependent communities to retain skilled workers during periods of recession.

The federal contribution to project participants consists of unemployment insurance benefits, subject to a maximum of $240 per week per claimant. The maximum allowable amount payable by the Canada Employment and Immigration Commission (CEIC) for project overhead and administrative costs is $40 per claimant per week. Any assets purchased with CEIC funds, which have not been physically incorporated into the project, are sold and the revenue is applied to project costs.

The CEIC contribution is charged to the Special Response Feature Appropriation and is paid to sponsors in three installments. The cost of premiums for worker's compensation is also paid from this appropriation.

We verified that EBAP assistance is not limited to a specific industry, group of industries, or to companies in specific regions. Moreover, such programs have been created in many vocational areas. For these reasons, we determine that this program does not confer a subsidy.

d. *Canada/Nova Scotia and Canada/New Brunswick Forestry Subsidiary Agreements—Grants For Private Woodlot Owners.* The Canada/Nova Scotia and Canada/New Brunswick Forestry Subsidiary Agreements provide grants and technical assistance to private landowners to promote effective management of their forest resources and to support various silvicultural actitives. Producers of the products under investigation appear to have received grants under both of these programs.

We determine that these grants do not confer countervailable benefits because they are available to all private landowners and are not limited to a specific enterprise or industry, or group of enterprises or industries, or to companies in specific regions.

D. Provinicial Programs

1. Alberta—a. *Timber Salvage Incentive Program.* The Timber Salvage Incentive Program was created because of the need to harvest large amounts of timber damaged or destroyed by fire or insects. Alberta currently has an extremely high proportion of damaged timber due to three consecutive years of extensive forest fires. It is in the province's interest to have the timber harvested. If it is not harvested there is a danger that fire and disease will spread, thus impeding the government of Alberta's effective management of its forests.

The government instituted the Timber Salvage Incentive Program effective November 1, 1981 through October 31, 1983. The program provides an incentive of $34 per thousand board feet of timber produced from fire-killed and beetle-killed timber. These payments are available to all present and future timber harvesters.

Therefore, we determine that the Timber Salvage Incentive Program does not cover countervailable benefits because it is not limited to a specific enterprise or industry, group of enterprises or industries, or to companies in specific regions.

b. *Alberta Opportunity Company.* The Alberta Opportunity Company (AOC) is a provincial Crown corporation funded by the government of Alberta. We reviewed with company officials the annual reports and other records of AOC and found that a variety of industries in the manufacturing and service sectors received assistance from AOC and that the lumber and wood products producers received only a small percentage of the total assistance provided by AOC. Therefore, we determine that because AOC aid is not limited to a specific industry, group of industries, or to companies in specific regions, it is not countervailable.

2. *British Columbia—Section 88 Roads.* Under section 88 of BC's Forest Act, certain licensee expenditures for constructing approved roads on Crown lands are credited against total stumpage dues payable to the province. Such costs are beyond those considered to be normal operating costs of an efficient logger, which are taken into account in BC's stumpage appraisal system (described in the "British Columbia" section of Appendix B).

The Ministry of Forests grants section 88 road credits because section 88 roads serve to open up areas to recreationalists and other resource users, and are of higher standards than required by loggers. Licensee expenditures for these main access roads are not considered in the stumpage appraisal system. The companies who build the roads receive a credit against stumpage payments for the agreed-upon construction costs. Section 88 roads are under the jurisdiction of the Ministry of Forests, but licensees are responsible for maintaining them.

We determine that section 88 road credits do not confer a subsidy because these roads are build to higher standards than necessary for normal logging purposes and are open to and used by the general public.

3. *Ontario.* a. *Employment Development Fund.* The Employment Development Fund (EDF) was created in the spring of 1979 by an administrative action of the Cabinet of Ontario. The fund was designed to increase long-term investment and employment in the province through the provision of grants and loan guarantees to companies making investments that had the potential to create new jobs. Funding was generally limited to between $2,000 and $3,000 per job created where the new fixed asset investment was from 10 to 20 times the size of the grant. The EDF was terminated in January 1981, although committed disbursements were made through August 31, 1982. One grant was provided under this program to

producers of the products under investigation in 1979.

EDF funding was provided to a wide range of industries in Ontario and was not limited to a specific industry, group of industries, or to companies in specific regions. Therefore, we determine that the EDF did not confer a subsidy on the products under investigation.

b. *Non-Forestry Subsidiary Agreement Roads.* Under the Ontario Forest Management Agreements (described in detail in the "Ontario" section of Appendix B), the province reimburses companies building primary and secondary roads on Crown lands. These reimbursement provisions are separate from those included in the Canada-Ontario Forestry Subsidiary Agreement (FSA). (Federal/provincial FSA's and roads covered by them are discussed above in this section of the notice.)

These roads are open to the public and must be built to standards set by the province to accommodate other users, such as recreationalists and the mining industries. Reimbursement is on a per-mile basis, up to a set maximum construction cost established by the Ministry of Natural Resources. The companies are responsible for all maintenance.

We determine that assistance provided for road construction under Ontario's forest management agreements does not confer a subsidy because these roads are build to higher standards than necessary for normal logging purposes and are open to and used by the general public.

4. *Québec.*—a. *Caisse de Dépôt et Placement du Québec.* The Caisse de Dépôt et Placement du Québec (CDPQ) was established by an Act of the Assemblée Nationale of Québec in 1965. Under the trusteeship of the provincial Ministére des Finances and the Régie des Rentes of Québec, CDPQ manages several pension funds and insurance programs, namely:

- The universal auto insurance program against physical injury to persons;
- A specific insurance program for farmers;
- The universal pension plan for all citizens of Québec; and
- Specific pension plans for all Québec civil servants and construction workers.

CDPQ is prevented by law from acquiring more than 30 percent of any company's common stock, and from making funds available to companies on other than commercial terms. Indeed, CDPQ is compelled by law, as a fiduciary institution, to invest pension and insurance funds in order to achieve the best possible return on investment for the benefit of its annuitants.

We verified that CDPQ funds are invested over a broad spectrum of industries not only throughout Québec and Canada, but also on the international financial markets. Accordingly, we determine that none of the producers of the products under investigation received any countervailable benefits from CDPQ.

b. *FRI Industrial Incentives Fund for Small and Medium-Sized Businesses.* This program, which falls under the aegis of FRI (see the "Programs Determined to Confer Subsidies" section of this notice), was established to allow small and medium-sized firms to deposit one half of their income tax payable to the province into an escrow fund, from which they could withdraw funds equivalent to 25 percent of the cost of approved development projects (up to the amount of their deposit only). The program was discontinued in June, 1981.

We verified that producers in a wide range of industries in all regions of Québec participated in this program. Because the FRI Industrial Incentives Fund was not limited to a specific industry, group of industries, or to companies in specific regions, we determine that it did not confer subsidies on the products under investigation.

c. *Programme Expérimental de Création d'Emplois Communautaires.* The Programme Expérimental de Création d'Emplois Communautaries (PECEC), administered by the Office de Planification et de Développement du Québec (OPDQ), makes cash payments to entrepreneurs to assist them in maintaining and creating jobs for the chronically unemployed. A few producers of the products under investigation received grants under this program, as did producers in many other industries. We verified that the program was not limited to a specific industry, group of industries, or to companies in specific regions. Accordingly, we determine that this program does not confer subsidies on the products under investigation.

d. *PME-Innovation.* The PME-Innovation (PME-I) program, which was discontinued late in 1981, was administered by the Ministére de l'Industrie, du Commerce et du Tourisme of Québec. Its purpose was to assist small and medium-sized businesses ("petites et moyennes entreprises") in obtaining capital for investment in a production or marketing project. Under this program, one loan was made to a softwood lumber consortium. We verified that PME–I assistance was not limited to a specific enterprise or industry, group of enterprises or industries, or to companies in specific regions of the province of Québec. Therefore, we determine that the program does not confer a subsidy on the products under investigation.

e. *SDI Programs.* The Export Expansion Program administered by SDI is discussed in the "Programs Determined to Confer Subsidies" section of this notice. In addition, SDI manages a number of domestic programs of which producers of the products under investigation availed themselves. These programs fall under two headings: development grant programs and a loan and loan guarantee program, entitled "Financial Assistance to Manufacturing Firms."

(1) *Development Grant Programs.* Grants for SDI domestic development programs are in the form of cash reimbursements for interest costs accrued on a company's investment.

(a) Financial Assistance for High-Growth Firms. To be eligible for this program, a firm must be located and have its headquarters in Québec, and its growth and profitablity rates must equal or exceed the provincial average.

(b) Financial Assistance Program for Mergers and Acquisitions. Under this program, which was discontinued in the summer of 1982, SDI paid a percentage of the investment costs involving stocks or assets in an approved merger. Benefits paid under this program were sometimes combined with reductions in interest rates on loans bestowed under the program described in (2) below.

Under each of these programs, the overall maximum grant amount is a certain percentage of the investment cost. Grants are generally disbursed for five years in equal annual installments. Regardless of the authorized maximum, the annual disbursement can never exceed actual interest paid by the company in a given year.

We note that in our final affirmative countervailing duty determination on "Railcars from Canada" (48 F.R. 6569, February 14, 1983), we erroneously determined SDI's domestic programs to be countervailable on the basis that their availability only in Québec made them region-specific within the broader context of Canada. In fact, since it is a program of the GOQ and is generally available throughout Québec, it is not region-specific.

Further, we erroneously calculated the benefit by considering funds authorized instead of funds actually disbursed. The petition was withdrawn and the case terminated before we discovered these two errors. We have now calculated

that the correct subsidy in that case, after deduction of the improperly applied SDI "benefit" of the U.S. $173 per railcar, was actually U.S. $110,392 per railcar, instead of the U.S. $110,565 as set forth in the final determination (a reduction of 0.16 percent).

(2) Financial Assistance to Manufacturing Firms. Under this program, SDI makes loans and loan guarantees to profitable firms that prove they cannot obtain financing through normal channels. Since 1981, SDI has used a monthly composite of long-term commercial interest rates of the ten major lenders in Canada. We verified that SDI loans are made on terms not inconsistent with commercial considerations. Moreover, their availability is not limited to a specific industry, group of industries or to companies in specific regions.

Therefore, we conclude that the above SDI grant and loan programs do not confer subsidies within the meaning of the Act.

III. Programs Determined Not To Be Used

We determine that the following programs which were listed in the notice of "Initiation of Countervailing Duty Investigations" are not used by the manufacturers, producers, or exporters of the products subject to these investigations.

A. Federal Programs.

Enterprise Development Program—Loans. The Enterprise Development Program includes a component that provides loans to companies, as described in the "Programs Determined Not To Confer Subsidies" section of this notice. We found that no loans under the EDP were issued to producers of the products under investigation. We determine that this part of the EDP program was not used by producers of the products under investigation during the period for which we are measuring subsidization.

B. Federal/Provincial Programs

Canada/Nova Scotia Forestry Subsidiary Agreement—Grants. Subsidiary agreements for forest management could be negotiated under the GDA's. Forestry subsidiary agreements have been reached with seven provinces.

Under the Nova Scotia forestry subsidiary agreement, grants were provided to producers of the products under investigation under two components, the sawmill improvement component and the forest management component. The forest management component grants are discussed in the "Programs Determined Not to Confer Subsidies" section of this notice. The forestry subsidiary agreements with other provinces are discussed in other sections of this notice, as appropriate.

The sawmill improvement component of the Canada-Nova Scotia Forestry Subsidiary Agreement provided grants of up to $50,000 per mill to encourage the adoption of improved sawmilling technology, better safety and improved conditions. We found that the grants under this component were designed and used to offset the short-term operating expenses and the lower productivity associated with the installation of improved sawmilling technology and better safety and working conditions in the recipient mill.

Producers of the products under investigation received improvement grants between 1978–1981, but not in 1982. Because the grants were used to offset short-term operating expenses, we would allocate them to the year received. Because no grants were provided to producers of the products under investigation in 1982, we determine that this program was not used during the period for which we are measuring subsidization.

C. Provincial Programs

1. *Alberta—Inventory Financing.* The Alberta Inventory Financing program was administered by the Alberta Opportunity Company. Although the program was approved, there were no disbursements made under it, and the program is now longer in effect. Producers of the products under investigation did not use the program during the period for which we are measuring subsidization.

2. *British Columbia.–Market Development Assistance (MDA).* The MDA program is designed to benefit manufacturers of new, innovative products who are attempting to develop new export markets. Only two or three producers/exporters of the products under investigation have received support under this program, and all were assessing markets other than the United States. Therefore, we determine that this program was not used by producers/exporters for exports to the United States of the products under investigation during the period for which we are measuring subsidization.

3. *Québec—SDI—Financial Assistance Program to Advanced Techology Firms.* Financial Assistance to Advanced Technology Firms is one of the three domestic development grant programs administered by SDI (see the "Programs Determined Not To Confer Subsidies" section of this notice). To be eligible for assistance under this program, a firm must demonstrate higher-than-average productivity, and the individual investment for which the grant is awarded must be at least $50,000. Since the program's inception in 1974–75, producers of the products under investigation have not met these basic eligibility requirements, and we verified that none of these producers received funds under the program. We determine that this program was not used by any of the producers of the products under investigation during this period for which we are measuring subsidization.

Comments. The issues raised by the parties during of these investigations are discussed in detail in Appendix C to this notice.

Verification. In accordance with section 776(a) of the Act, we verified the data used in making our final determinations. During this verification, we followed normal procedures, including inspection of documents, discussions with government officials at the federal and provincial levels and on-site inspection of manufacturers' operations and records.

Administrative Procedures. The Department has afforded interested parties an opportunity to present oral views in accordance with its regulations (19 CFR 355.35). The only request for a public hearing was withdrawn. In accordance with the Department's regulations (19 CFR 355.34(a)), timely written views have been received and considered.

This notice is published pursuant to section 705(d) of the Act (19 U.S.C. 1671d(d)).

Lawrence J. Brady,

Assistant Secretary for Trade Administration.

Appendix A—Description of Products

The products covered by these investigations are described below:

The term *"softwood lumber"* covers those products included in the *Tariff Schedules of the United States (1982) (TSUS)* in items 202.03–202.30 (rough, dressed, or worked softwood lumber). Specifically excluded are drilled and treated lumber, wood siding, and edge-glued or end-glued wood not over 6 feet in length or over 15 inches in width. "Rough lumber" is lumber just as it comes from the saw, whether in its original sawed size or edged, resawn, crosscut, or trimmed to smaller sizes. "Dressed lumber" is lumber which has been dressed or surfaced by planing on at least one edge or face. "Worked lumber" is lumber which has been matched (tongue-and-grooved), shiplapped (rabbeted or lapped joint), or patterned on a matching machine, sticker, or molder.

2. The term *"softwood shakes and shingles"* refers to wood products most frequently made from red cedar, that are used for roofing or siding. "Softwood shakes" are

approved durable wood of random widths ranging from 4 inches to 14 inches which come in four types: hand-split and resawn, taper-split, straight-split and taper-sawn. "Softwood shingles" are tapered pieces of approved durable wood, sawed both sides, of random widths ranging from 3 inches to 14 inches and in lengths of 16 inches, 18 inches or 24 inches. For purposes of this investigation, the term "softwood shakes and shingles" refers only to those products designated in TSUS as item 200.85.

3. The term *"softwood fence"* refers to three types of fences: picket, stockade, and rail. Picket fences are made of wood pickets nailed to horizontal back rails which are fastened to the supporting posts. The pickets vary in length and thickness, lengths range from 24" to 92", and thickness varies from ½" to 3". The species of wood used in picket fences is usually cedar for the posts and conifers or softwoods for the backrails and pickets. Rail fences consist of line posts and horizontal rails. Cedar is generally used for the line posts and cedar or conifers or northern softwood are used for the rails. Stockade fences vary in height from 3 feet to 10 feet. Widths are usually 7 feet or 8 feet. Line posts are generally cedar, and stockade sections are made from northern softwoods. This investigation covers softwood fences both assembled and unassembled, which fall under TSUS item 200.75.

Appendix B—Provincial stumpage

Provincial Crown lands account for 81 percent of the productive forest lands in Canada. Under the terms of the Canadian Constitution, provincial crown lands fall under the jurisdiction of the provincial governments which are exclusively responsible for the management and administration of the forests on these lands.

Alberta

Background

Approximately two thirds of Alberta is covered by forests, almost all of which are owned by the provincial government. Most of the forested area is inaccessible, and logging can only be carried out during winter when the ground is frozen. According to the provincial government, cold-weather logging increases timber harvesting costs. Managed by the Alberta Forest Service under a long-term sustained yield policy, the forests are divided into forest management units which are allocated under the stumpage allocation arrangements described below. Only 60 percent of the annual allowable cut (AAC) has been allotted under the stumpage allocation arrangements, because supply exceeds demand. Any company, including foreign companies, registered in Alberta or Canada can be awarded stumpage rights under the various allocation arrangements.

Softwood lumber is the only product under investigation manufactured in Alberta. Lumber accounted for 61.7 percent by volume of the coniferous round timber harvested in 1981. Plywood accounted for 8.9 percent pulpwood 25.9 percent.

Stumpage Allocation Arrangements

There are five stumpage allocation arrangements in Alberta:

- Forest Management Agreement (FMA);
- Timber or Coniferous Quota Certificate (Quota);
- Commercial Timber Permit (CTP);
- Local Timber Permits; and
- Forest Products Tags.

FMA's and Quotas are 20-year allocations, while the CTP's can range from one to five years, and Local Timber Permits and Forest Products Tags are limited to terms of one year or less. The rights to cut standing timber under any of these allocation arrangements do not vary by the type of product that will be manufactured from the stumpage, but they do vary by type of allocation arrangement.

These arrangements can cover both coniferous and deciduous timber; however different requirements and dues rates are specified for each type of timber. Under all the allocation arrangements, the Forest Service retains primary responsibility for fire prevention and suppression, as well as for insect and disease control.

Forest Management Agreement

Currently, there are six Forest Management Agreements (FMA's) outstanding which account for 35.8 percent of the total net coniferous AAC. The term of each FMA is 20 years with renewal rights for an additional 20 years. The procedure for acquiring stumpage rights through an FMA is as follows.

The Forest Service advertises a development area and invites proposals for one year. The proposals are analyzed by the Forest Service and public hearings are held, after which the successful proponent is selected by the government. After selection, the actual agreement is negotiated and approved by the Cabinet through an Order-in-Council.

The government's intent in allocating timber under an FMA is good use and development of the resource under a long-term sustained yield policy. In order to achieve this, the company holding an FMA is required to develop a management plan to ensure sustained yield, and to develop inventory studies, conduct reforestation and regeneration, conduct ongoing silviculture, build roads, and make a performance guarantee ranging from $25,000 to $2,000,000 in the development area.

In addition to undertaking these responsibilities, the company must pay stumpage dues on the sawlogs harvested. All FMA holders except one pay the regulation rate of dues set forth in the Timber Management Regulations of the Forest Act of 1971 (one company negotiated a lower rate of dues in view of the inferior quality of the timber and the need for special equipment). The Regulatons state that the General Rate of Crown Dues on green coniferous timber suitable for lumber manufacture is $0.70 per cubic meter. Holders must also pay annual holding and protection charges which cover ground rent and protection costs.

Under the FMA's the provincial government must approve the management plan and the ACC in accordance with Timber Management Regulations.

Timber Quota Certificates

The quota certificate (Quota) is a long-term right to harvest a share of the AAC of a forest management unit. Implemented in 1966, the Quota system replaced the short-term competitive bid system. Currently, the Quota system accounts for 19.9 percent of the total net coniferous AAC. The purpose of the Quota system was threefold:

1. to eliminate abuses inherent in the bid system, such as speculation resulting in timber being held and not cut;
2. to ensure that a fair price would be paid and that timber would be cut; and
3. to provide timber operators with a long-term secure stumpage supply in order to encourage industry to make capital investments in the area.

In 1966, quotas were granted to all established timber operators for up to 20 years based on each operator's average production from 1960 through 1964. Most quotas issued since 1966 have been sold competitively.

The 20-year term of the Quota is divided into five-year periods. At the end of every five-year period, a Quota holder is subject to penalties, including revocation of the Quota, if the amount of timber harvested is not within ten percent of the total of the AAC's for the five-year period.

In order to cut the timber authorized in the Quota, a holder must obtain a Timber License and submit, for Forest Service approval, an annual operating plan for the Timber License. The Quota holder is also responsible for regeneration and reforestation, as well as for road construction and silviculture.

Stumpage dues paid by the Quota holder are determined through an appraisal formula which modifies the regulation rate of dues according to logging conditions. The appraisal factor is based on four elements and is fixed for five years:

1. Average haul distance to nearest usable trackage point;
2. Average gross volume per harvestable acre;
3. Average gross volume per tree; and
4. Average cull as a percentage of gross volume.

Timber Management Regulations provide that the minimum rate of dues under the Quota system, after taking into account the appraisal factor, cannot be less than 25 percent of the regulation rate. The appraisal system takes into account the quality and accessibility of timber. Quota holders must also pay annual holding and protection charges.

Under the Quota system, the Forest Service is responsible for the sustained yield management plan. The Forest Service lays out the cutting sequence and selects the areas to be logged.

Commercial Timber Permit

The Commercial Timber Permits (CTP's) are short-term (one to five years with an average of two to three years) arrangements which are sold at public auction to the highest bidder except when issued to Quota holders for the salvage of dead or damaged timber. Only 2.4 percent of the total net coniferous AAC is allotted under CTP's. Generally, to obtain a CTP the permittee must own or operate a mill within the area

and must not hold any other active stumpage arrangement.

The bidding process for a CTP determines the actual amount of dues to be paid. The minimum starting bid equals the regulation rate of dues plus the appraisal factor which can be a positive or negative number. This starting bid becomes the upset price which is added to the highest bid rate in order to establish the rate of dues to be paid. In addition to dues, the CTP holder must deposit a performance guarantee, pay a reforestation levy, and pay holding and protection charges.

As with the Quota system, CTP holders must submit an annual operating plan for Forest Service approval. Under a CTP, the Forest Service is responsible for selection of the stands to be cut, silviculture and reforestation (the company pays a reforestation levy).

The CTP differs from a Quota in that the CTP represents the right to cut standing timber, while the Quota grants the right to a certain share of the AAC. As such, while the "value" of the stumpage forms the basis of the bid price for a CTP, the Quota cannot be based on the "value" of the stumpage, since the share of AAC provided under the Quota varies in accordance with the changes in the AAC.

Local Timber Permit (LTP)

Issued for a term of one year or less, the LTP authorizes logging for the permittee's own use or to supplement his income by selling logs to local mills. LTP's account for 1.5 percent of the total net coniferous AAC. LTP's are issued on a first-come, first-served basis unless demand is high, in which case they are issued by draw.

The dues charged are the regulation rate in effect at the time the LTP is issued. Permittees are exempt from cruising, holding and protection charges, and only pay a reforestation levy if the volume harvested is over 130 cubic meters.

Forest Products Tag (Tree Tag)

Tree Tags are 30-day authorizations to cut timber for personal use or for small volumes of Christmas trees, firewood and fenceposts. Tree tags are non-renewable and non-refundable. The holder pays the regulation rate of dues, but no other charges. The percentage of AAC allocated under Tree Tags is negligible.

British Columbia

Background

The Forest Act lists seven different forest tenure arrangements available in British Columbia: Tree Farm Licenses, Forest Licenses, Timber Sale Licenses (Major), Timber Sale Licenses (Minor), Timber Sales, Pulpwood Agreements and Woodlot Licenses. Annual rents represent a charge for reserving the use of the resources under license.

On request or independently, the Minister of Forests may advertise and invite applications for licenses. A license may not be entered into unless there has been an advertisement and a public hearing has been held on all applications.

In addition, the province must evaluate the proposal in terms of its objectives, including revenues, management and use, environmental issues, and social benefits such as increased employment. Stumpage rights can be awarded to non-Canadian persons and/or companies doing business in British Columbia. However, a non-Canadian company must register in British Columbia before acquiring the license.

The tenure agreements are described in detail below:

1. *Tree Farm License.* A tree farm license shall:

(a) Be for a term of 25 years, and can be revised at each succeeding ten-year anniversary under an "evergreen arrangement" which initiates a new 25-year replacement license with revised conditions;

(b) Describe a tree farm license area composed of Crown land and private tenures;

(c) Require its holder to pay to the Crown stumpage or royalty, in additon to a bonus bid (which is fully paid when the license is issued);

(d) Require its holder to submit for the approval of the Chief Forester, once every five years, a management and working plan prepared by a registered professional forester;

(e) Grant to its holder the exclusive right to harvest timber (chosen by the licensee) from the tree farm license area during the term of the license;

(f) Provide for cutting permits to be issued by the Crown to its holder authorizing the AAC (determined by the Chief Forester) to be harvested from specific areas in the tree farm license area within plus or minus 50 percent on a yearly basis and within plus or minus ten percent on a five-year basis, subject to a penalty assessment;

(g) Require that each year during its term a volume of timber chosen by the licensee shall be harvested by persons under contract with its holder; and

(h) Reserve to the Crown the right to enter into a free use permit on the tree farm license area with a person other than the holder of the tree farm license.

A tree farm license cutting permit authorizes timber harvesting operations on a specific portion of the tree farm license area. It provides for the determination of stumpage rates payable through an appraisal system established under section 84 of the Forest Act and for periodic rate adjustments based on changes in the average market value of the logs or lumber products. Separate permits are issued for operations on different geographic parts of the license, where separate stumpage rate determinations are appropriate or where different cutting permit conditions are needed.

Tree farm licenses account for 28.6 percent of the Province's total AAC.

2. *Forest Licenses (formerly Timber Sale Harvesting Licenses).* The timber sale harvesting license was a license to harvest timber within a public sustained yield unit at a stipulated annual rate. These licenses, granted under the former Forest Act, were not replaced by forest licenses until the latter part of 1982. We verified that the timber sale harvesting licenses in effect during the period for which we are measuring subsidization are very similar to the forest license explained below.

A forest license:

(a) Shall be for a term not exceeding 20 years, and can be revised at each succeeding five-year anniversary under an "evergreen arrangement," which initiates a new five-year replacement license with revised conditions;

(b) Shall describe a public sustained yield unit of a timber supply area within which timber may be harvested;

(c) Shall specify an AAC (determined by the Chief Forester) that may be harvested under the license from specific areas of land, subject to annual and five-year cut control provisions;

(d) Shall require its holder to pay to the Crown stumpage and a bonus, if any, in the amount offered in the application;

(e) Shall require its holder to submit, for the approval of the regional manager, a management and working plan prepared by a professional forester;

(f) Shall require that if the allowable annual cut of the timber supply area declines, the licensees must accept proportional reduction in harvesting rates without compensation; and

(g) May make provisions for timber to be harvested by persons under contract with its holder.

A forest license cutting permit is indentical to the tree farm license cutting permit.

Forest licenses account for 61 percent of the Province's total AAC.

3. *Timber Sale Licenses (Major).* The timber sale licenses (major) generally have the same requirements as the new "forest licenses." The award of a new timber sale license (major) is by the appropriate Regional Manager or District Manager. The Forest Act requires the award be made to the applicant submitting the highest bonus bid.

This license is used in circumstances where an evergreen replacement feature would not be appropriate; for example, a situation where an ongoing supply of timber is not expected (because of a flood, a fire, or an insect infestation), but where the volume comprises part of the approved AAC and a limit is therefore imposed on the rate of harvesting.

A timber sale license (major):

(a) Shall be for a term not exceeding ten years; there is no provision for replacement, but rights are renewable pursuant to section 18(5);

(b) Shall describe an area of land within which Crown timber may be harvested;

(c) May specify an AAC (determined by the Forest Service) that its holder is eligible to harvest, subject to annual and five-year cut control provisions;

(d) May provide for cutting permits to be issued by the Crown to its holder to authorize an AAC to be harvested, within the limits provided in the license;

(e) Shall require its holder to pay to the Crown stumpage and a bonus, if any, in the amount bid; and

(f) Shall require its holder to submit, for the approval of the Chief Forester, a management and working plan prepared by a registered professional forester.

Timber sale licenses (major) account for 1.3 percent of the Province's total AAC.

4. *Timber Sale Licenses (Minor).* The award of a timber sale license (minor) is made by the appropriate Regional or District Manager of the Forest Service to the highest bidder.

This license is used for sales of timber under the small business enterprise program and in other instances where the volume of timber is not sufficient to warrant delegation of major forest management responsibilities for investments.

A timber sale license (minor):

(a) Shall be granted through a competitive bid process which determines the total amount of stumpage dues payable (although the appraisal system determines the base rate of stumpage due, adjusted monthly and subject to annual reappraisal);

(b) Shall be for a term from one to three years, without provision for replacement;

(c) Shall allow the license to cut the timber, within site-specific areas, at any rate within the terms of the license and the periodic cut control requirements; and

(d) Requires small business enterprises without timber processing facilities to sell all harvested logs, and small business enterprises with timber processing facilities to process a pre-specified portion of the logs harvested.

Timber sale licenses (minor) account for 7.2 percent of the province's total AAC.

5. A *pulpwood agreement* shall:

(a) Be for a term not exceeding 25 years, with "evergreen replacement" at ten-year intervals;

(b) Describe an area of land as a pulpwood area; and

(c) Require its holder to construct, expand or continue a timber processing facility in accordance with his application.

In 1981 and 1982 there were no mills which acquired stumpage rights under a pulpwood agreement.

6. A *woodlot license* shall:

(a) Be for a term not exceeding 15 years, with an "evergreen replacement" at five-year intervals with satisfactory performance;

(b) Describe a woodlot license area determined by the regional manager or district manager to be composed of private land and not more than 400 hectares of Crown land;

(c) Give to its holder the exclusive right to harvest timber on the Crown land for its term subject to five-year cut control provisions (determined by the Forest Service);

(d) Require its holder to pay to the Crown stumpage in respect of timber harvested from land and a bonus bid, if any, in the amount tendered; and

(e) Provide for cutting permits to be issued to its holder to authorize timber to be harvested from specific areas in the woodlot license area.

Woodlot licenses account for 0.7 percent of the province's total AAC; however, there have been no woodlot licenses offered to date.

7. A *timber license* shall:

(a) Describe an area of Crown land over which it is to apply;

(b) (When in a tree farm license area) be for a term that expires with the tree farm license, and (when not in a tree farm license area) be for terms based on a required schedule for the continued orderly logging of all the timber licenses held by the licensee;

(c) Grant to its holder the exclusive right during its term to harvest all merchantable timber in the area of Crown land;

(d) Where the timber license is in a tree farm license area, require its holder to harvest timber in accordance with the tree farm license and the management and working plan approved under it;

(e) Where a timber license is not in a tree farm license area, require its holder to submit an operating plan prepared by a professional forester, which is used by the Forest Service to determine the AAC;

(f) Provide for cutting permits to be issued by the Crown to its holder authorizing timber to be harvested from specific areas of land described in the timber license;

(g) Require its holder to pay to the Crown stumpage or royalty; and

(h) Requires its holder to carry out reforestation or other treatment for the re-establishment of the forest on the land described in the timber license.

Timber licenses comprise approximately five percent of harvest, but are not subject to any allowable cut restrictions. There have been no new timber licenses offered, and the Forest Act does not provide for any to be offered in the future.

Stumpage prices for all forest tenure agreements in the six forest regions of British Columbia are based on the residual value method. This method takes into account three components: The selling price of the end product (logs), allowances for production and operating costs, and allowances for profit and risk. The stumpage price is subject to monthly adjustments based on selling price fluctuations and an annual reappraisal. Licensees pay at the adjusted rate in effect for each species during the month the timber was scaled. Charges due are payable upon receipt, with interest due after 30 days, at prime plus one percent. The Ministry of Forests of the British Columbia provincial government is responsible for fee collection.

Due to the type and quality of trees in British Columbia, there are two appraisal systems in operation. The coastal appraisal system emphasizes quality and the interior appraisal system emphasizes quantity.

A. *Coastal British Columbia Appraisal System.—Sales Value of End Products.* Coastal appraisals are based on log prices. Three-month rolling average prices for each species are established monthly by log grades from a monthly survey of domestic log sales representing arm's length transactions. Coastal appraisals are based on log prices, which vary by species and grade within each species.

Production and Operating Costs. Logging costs account for all costs of development, harvesting, transportation, contractual obligations, administration and tenure agreement responsibilities. The "average efficient operator" concept is used by the Ministry for appraisal purposes. Costs are derived from industry experience (as determined from annual surveys) to estimate what costs would be incurred by an efficient operator in harvesting timber and the expected recovery value of that timber in terms of revenue. In the appraisal, logs are assumed to be transported to the point which would result in the highest total stumpage price. No consideration is given to the location of the purchaser's mill.

Profit and Risk. The six risk factors included in the stumpage appraisal are: market, defect, investment, pioneering, incentive and chance. The ranges of values assigned to each of the risk factors are incorporated in the appraisal manuals. The values assigned differ from year-to-year depending on changing market, log quality and logging difficulty.

Minimum Stumpage Prices. This is the lowest price at which the government would sell its timber resource. The minimum rate is used whenever the appraised rate falls below the minimum rate, and there is no compensation provision.

"Timber quality is determined at the time of the timber cruise, by a determination of percentage of log grades for each species." Log quality influences the logging cost estimate in the appraisal.

B. *Interior British Columbia Appraisal System for Lumber.—Sales Value of End Products.* In the interior, the appraisal system is based on the end value of lumber and by-product pulp chips. Three-month rolling averages are established monthly from lumber sales in the five interior selling price zones, based on sales f.o.b. mill, consummated in each of these zones. Approximately 80 mills report monthly lumber sales transactions, which are audited by the Ministry of Forests. These prices are single averages for each of the species by zone.

Lumber selling prices are in dollars per thousand board feet and standing timber is cruised (measured) for appraisal purposes in cubic meters. A "lumber recovery factor" is used to convert cubic measures of timber into the value of the end product. By-product pulp chip prices are set around $10 per bone-dry unit. The government contends that the introduction of an actual chip value would not have a significant effect on stumpage fees.

Stud producers and small operators (those having annual production less than 3775 cubic meters) are separately classed. Although the appraisal system is identical in structure for all categories, product prices, operating practices and costs which are pertinent to these groups are taken into consideration in the appraisal.

Production and Operating Costs. Manufacturing costs are required for interior appraisals, where lumber and by-product chips are the appraisal products, rather than logs, as is the case on the coast. The manufacturing costs are obtained from an annual survey of about 55 sawmills deemed to represent the efficient segment of the industry. Separate zonal milling costs have been established for the Prince George-Quesnel and Ft. Nelson areas (two isolated milling centers north of Ft. Saint James) and the remainder of the interior of the province. A second survey is made for stud-producing mills.

Profit and Risk. The same method is used as in the coastal appraisal system, supra.

Minimum Stumpage Prices. Interior statutory minimum stumpage rates are established for each species at three percent of the selling price of lumber and by-product pulp chips. The statutory minimum rate may be reduced to 0.75 percent for salvage timber. Timber is cruised and classified according to species, size, and visual defect.

Adjustments to Stumpage

A. *Stumpage Price Adjustment Method.* The stumpage price of any species will change at the beginning of each month: provided the selling price of lumber (interior) of that species departs $5.00 per MBF (thousand board feet) or more from the selling price last used to determine the existing stumpage price; or, whenever the selling price of logs (coast) of that species departs by $1.00 per cubic meter or more from the selling price last used to determine the existing stumpage price. The entire difference in the selling price is used in the recalculation of the stumpage price adjustment.

B. *Annual Stumpage Price Reappraisal.* A full reappraisal, allowing for changes to product prices, logging costs, milling costs and profit ratio, is made annually at the anniversary date of the contract or cutting permit. Again, the entire difference in the selling price is used in the recalculation of the stumpage price adjustment.

C. *Credits to Stumpage.* Section 88 of the Forest Act stipulates that licensee expenditures for the construction of a logging access road, or the application of reforestation or other silvicultural treatment on Crown land, not considered in the stumpage appraisal system, shall be credited against total stumpage payable. The stumpage appraisal system makes allowances for estimated costs for the construction of roads essential to the actual cutting and removal of timber from the licensed cutting permit area, and for the performance of basic silviculture treatments required under the license agreement. These cost components (estimated cost allowances in the appraisal) are considered to be normal operating costs of an efficient logger and any costs exceeding the allowance given in the stumpage appraisal must be absorbed by the permittee. The work must be agreed upon, approved in advance, and completed to the satisfaction of the BC regional forest manager.

Manitoba

Background

Manitoba is a farm-oriented province with its timber resources in the north. Most of its timber (89 percent) is not very large (10" or less in diameter). Forest harvesting operations are small and include a fair proportion of part-time operators.

Stumpage Rights and Payments

Prior to 1965, timber rights were allocated through a competitive process, by auction or sealed tender, for one to five years. In 1965, the Timber Quota System was introduced. This system provided long-term (15 years) fixed allocations to established operators at set (regulation) stumpage rates. Surplus timber was advertised and sold competitively.

The Timber Quota System was revised in 1980 to continue for another ten years. Stumpage rates were increased and set to be revised annually thereafter according to the national forest product price indices for lumber and paper and pulp companies, weighted as they are produced in Manitoba.

Uncommitted surplus timber is either offered for sale at established stumpage rates plus a lump sum bid, or available for development and allocation on a negotiable basis for companies with sufficient capital to undertake the commitments involved.

Cutting rights for Manitoba Crown timber are allocated by the Forestry Branch, and are classified as "major" or "minor." "Minor" allocations are based on volume and area where mature timber is ready for harvest. They run for a 10-year period, renewable depending on performance of the licensee. Prices are based on regulation rates (mentioned above), reviewed and indexed annually to reflect product price increases. Prices also reflect location of timber relative to mill and distance of mill from market.

For "major" licenses an initial rate is negotiated at the start of the contract (contracts run for 20 years with a renew option). The initial rate takes into account geography, timber supply and demand, and basic (regulation) stumpage rates. Prices are adjusted according to dates and indices specified in each contract.

The province of Manitoba is responsible for timberland management and silviculture. One Forest Management License company does its own silviculture but is reimbursed for its expenditures. All licensees use public roads, but are responsible for all cost of timber extraction roads. Manitoba is responsible for forest fire protection, but licensees must have a fire protection plan for initial fire suppression within their area. Additionally, licensees are held responsible for the cost of fire suppression in instances where it is demonstrated that a fire resulted from company negligence.

New Brunswick

Background

The three categories of ownership of timberland in New Brunswick are: the province (Crown lands—48.5 percent), the "forest industry" (industrial holdings—21.0 percent), and individual (non-industrial—30.5 percent).

The products under investigation are all manufactured from the primary product, softwood logs. Over half of these logs have come from the private sector during the past five years. The actual breakdown is: Crown lands, 46.6 percent; company-owned lands, 30.4 percent; and private lands, 23.0 percent.

New Brunswick has no surplus timber to allocate to new plants or for expansion. The current annual supply of softwood species is 7.6 million cubic meters. This accounts for 80 percent of the industrial timber requirement for softwood species. Of the 7.6 million cubic meters harvested, only 5.5 million cubic meters are reforested naturally. The deficiency is made up by silviculture inputs.

The province has undergone a major restructuring of its forest management policy. The change was instituted in March 1982. The purpose of the change was to effect the organizational structure of the licensing system. The previous 85 licensees were divided into 6 licensees and 79 sub-licensees which were issued 10 licenses and 105 sub-licenses, respectively.

Stumpage Allocation under Old System

Stumpage rights were allocated by area-based licenses under the old system. The issuance varied from 1 to 50 years and 250 to 450,000 hectares. The licenses were renewable upon satisfactory review. The differences in the licenses were a result of fluctuating supply and applicant's demand.

The licensee was responsible for operational costs, including operational cruising, inventories, and some management planning. The province retained overall responsibility for forest management, including silviculture and reforestation. Areas of dual responsibility were pest control and, through the application of a fee, fire protection. Road construction and maintenance were the responsibility of the licensee.

Stumpage Allocation under New System

Under the new system, there is a license and sub-license classification. The license is area-based and conveys responsibility for many of the duties previously carried out by the province. The sub-license is volume-based, and is issued to parties either not wanting to carry out, or incapable of carrying out, the forest management duties.

The license is a 25-year renewable license, with five-year reviews. The licensee must submit a 25-year forest management plan and is responsible for forest management. This includes: Road construction and maintenance planning; inventory and records; specified silviculture; boundary lines maintenance; management activities, including sub-license obligations; fire protection of harvest operation; submission of management plans for private lands; and payment of stumpage royalties.

The sub-license is issued for five years and is renewable depending upon satisfactory performance. The sub-licensee must submit a ten-year operating plan and must maintain and operate a processing plant as specified in the plan. Other responsibilities include submission of a plan for private lands, cooperation with the licensee and payment for his services, and payment of royalty on stumpage harvested.

Newfoundland

Background

The sawmill industry in Newfoundland is very small and the great majority of sawmills is not mechanized. Newfoundland's only lumber exports are approximately 100 MBF/yr. of dunnage, which is rough-sawn softwood lumber used for blocking (i.e., as packing material) in shipments of rolls of newsprint. This production is only about 0.19 percent of the total harvest or two percent of the total lumber production.

Stumpage Rights and Payments

Stumpage rights are allocated on the basis of an annual permit, which is renewable. A sawmill permit costs $20, and a cutting permit

costs $10. A sawmill applies to the Province for stumpage rights, specifying the volume and location of timber required (in accordance with established regulations). Rights are granted depending on availability of timber and previous performance of the applicant. Anyone is eligible to apply.

Stumpage fees are paid to the Department of Forest Resources and Lands on the basis of harvested volume, currently $7 per MBF. The price is set legislatively and, as of January 1983, is indexed annually to the implicit price index of government goods and services and selling price index of lumber. The price is lower in designated salvage areas, or higher where government-built roads are used for harvesting sawlogs (see below). No stumpage is sold through competitive sale.

The government assumes responsibility for the construction of main roads, as well as for forest management, silviculture, fire and disease protection, etc. The roads become public upon their completion with unrestricted access. Where these roads are used for harvesting sawlogs, the stumpage rate is 40 percent higher than in areas where the operator provides his own access.

Stumpage and tenure rights differ for pulpwood, but the same formula is used for setting stumpage rates for both pulpwood and lumber.

Nova Scotia

Background

Nova Scotia is the second smallest province in Canada. About 25 percent of all forested area is Crown land. Average annual harvest for the province over the last five years has been slightly in excess of 3.3 million cubic meters of softwood timber. The sawmilling industry is of the small, local variety. About 73 percent of the annual harvest is used in the production of pulp and paper; 27 percent is used for sawlogs.

Stumpage Rights and Payments

Prior to 1970, Crown timber was allocated by means of long-term licenses (40 years or more). Under such licenses, mills have the right to harvest standing timber within certain defined areas, up to annual allowable limits set by the provincial government. Pulp and paper companies were the only applicants for these licenses. Although no long-term licenses have been issued since 1970, the province may issue new ones.

Under these licenses, the province is responsible for fire prevention and suppression, as well as insect and disease protection (although licensees share the cost of the latter). Licensees perform silviculture, regeneration, and reforestation, and build roads. They are reimbursed for forest management work at rates set by the province, based on known industry and past departmental costs for such work. Stumpage rates are negotiated between the province and the licensee, and reflect the quality and accessibility of the timber involved. The timber harvested must be used in the mill(s) operated by the licensee, unless otherwise approved by the Ministry.

Durign the 1970's, the province inaugurated shorter-term licenses to harvest Crown timber. These licenses run for ten years (with an option to renew for ten years), and the province retains forest management responsibilities, the licensees pay for road construction and maintenance, and for the preparation of management plans.

Base softwood stumpage rates are determined by the province when the license is issued, taking into account tender sales prices in the area and the rate accorded under similar agreements elsewhere in the province. Provisions for regular review and adjustment are included in the agreements; adjustments are based on an indexing mechanism which relates to the market price for softwood lumber of various sizes. The Nova Scotia government responds to applications for license agreements on a "first-come first-served" basis. One agreement was awarded in 1981, and one in 1982. All stumpage fees are collected by the Nova Scotia Department of Lands and Forests.

In addition to long-and shorter-term licenses, the province disposes of small lots of sawlogs by public tender, either as standing timber or as logs piled at road side. These sales involve a small amount of timber, with the volume and location set by the province. Prices are established under a competitive bidding system, with an upset price based on the knowledge of prevailing rates in the area.

Ontario

Licensing System

The primary type of timber cutting license in Ontario traditionally has been the Order-in-Council License (OCL). OCL's were introduced in the 1920's to accommodate the timber needs of scattered pulp and paper mills in northern Ontario. During the 1940's and 1950's, sawmill operators began using the system, first for salvage operations and then increasingly for undamaged timber. Technological advances during the 1960's and 1970's led to higher volume demand by sawmill operators, until most of the available yield in the province's forest land was alloted.

OCL's are being replaced gradually by Forest Management Agreements (FMA), which cover large areas and convey many forest management responsibilities to the licensee. Other types of licenses in Ontario are Salvage Licenses, which permit expedient harvesting of damaged timber; District Cutting Licenses, which are issued primarily to individuals; and a few competitively bid Sale Licenses, which are awarded to the highest tendered bidder in small areas of high demand.

To acquire stumpage rights on Crown lands in Ontario, an applicant must be incorporated to carry on timber harvesting activities in the province, or own and operate a mill, or have a contract to supply wood to a mill. Stumpage licenses are managed by the Ministry of Natural Resources of Ontario.

Ontario identifies 12 criteria used by the Ministry to evaluate license applications. These fall under three paramount factors, which are timber and land characteristics, viability of the applicant, and impact on the provincial economy. The province usually re-issues licenses to companies already operating mills in a given area.

In Ontario, the Crown approves management and operating plans which specify the volume to be cut annually on each license. These plans also allow provincial direction of all forest management activities. The extent to which the province also performs these activities depends on the license type or the amount of area which has been licensed to one company within a management unit. The Ministry has divided the provincially owned forest into Crown or Company Management Units to administer its forest management policies.

Stumpage rights in Ontario are granted under equal terms to Canadian and non-Canadian companies, although exports of logs are banned by the province. A study in 1972 indicated that approximately 40 percent of the total area under license was granted to non-Canadian controlled companies, and the province estimates that this percentage is still accurate.

Payment for Stumpage

The payment system for stumpage in Ontario is also managed by the Ministry of Natural Resources, which maintains procedures for wood measurement and financial services. Stumpage fees consist of an area charge, Crown dues, a bonus price, and, in the case of sale licenses, a tendered bid. Interest is charged at one percent per month for all overdue stumpage payments.

The area charge in Ontario is rent for ground used and is not related to the volume of timber cut. It is designed to cover fire protection and other management costs. The charge is uniform and increases by 10 percent a year; it is currently $60.60 per square mile.

Crown dues cover most of the total stumpage fees. They are calculated pursuant to the regulations of the Crown Timber Act of 1980, broken down into major species and product categories, which take into account differences in species and products manufacturered from the timber. Ontario states that the dues are designed to provide a fair return to the province and are based on past provincial costs to maintain, improve, and regenerate the resource.

The Crown Timber Act specifies two sets of Crown dues. The first set, with a bonus price added on, is used as a minimum price for the competitively bid sale licenses and also applies to district cutting licenses. The second set applies to OCL's and FMA's.

Regulation 234 of the Crown Timber Act sets out the schedule for the two sets of Crown dues. The second set of dues consists of a base rate which is adjusted in proportion to one of four six-month, rolling-average Commodity Selling Price Indices produced by Statistics Canada, a federal agency. The base rate for non-integrated producers is set at 90 percent of the base rate for integrated producers. The rates were set in July, 1978 based on the old Crown dues, which were also set administratively. The rolling average is updated quarterly, so the second set of Crown dues change with it on a quarterly basis. The first set of Crown dues is not indexed and is reset by the province on an annual basis.

The bonus price is a negotiated payment in addition to Crown dues. It is expected to take

into account material differences in the location and quality of stumpage obtained by a firm. It is updated much less frequently than Crown dues, ranging in review period from one to five years depending on the license type.

Order-in-Council Licenses

Order-in-Council Licenses, originating in the 1920's, are still the most widespread vehicle for stumpage allocation in Ontario. OCL's currently cover 74 percent of timber area under license and represent 83 percent of licenses in issuance. 398 OCL's are outstanding, but most are expected to be phased out in favor of Forest Management Agreements during the 1980's.

The duration and the area of coverage of OCL's vary widely and are at the discretion of the Ministry of Natural Resources. Other terms and conditions of OCL's are negotiated, but they tend to be consistent from one license to the next. Renewals are permitted on OCL's only to complete the harvesting intended for the original term. OCL's may be transferred, but not for the profit of the original licensee.

Forest management activities under OCL's are managed by the Crown through the negotiation of long-term and annual operating and management plans, paid for by the companies. Normally, the province supervises the harvesting and is responsible for the renewal and improvement of the forest. Fire prevention and insect and disease protection are also largely performed by the Crown. Some forest management activities may be performed by the company, with reimbursement by the Crown at administrative rates based on past provincial costs. All roads are constructed and maintained by the companies at their expense.

Stumpage fees for OCL's consist of the basic Crown dues and the negotiated bonus price. The bonus price is reviewed every three years, unless otherwise specified in the license.

Forest Management Agreements

After all softwood in Ontario became fully committed in the 1960's, the province made plans to intensify forest management. Such extensive improvements were needed that major responsibilities had to be assigned to timber licensees. Thus, FMA's were developed to replace existing licenses.

Currently these agreements have been reached primarily with pulp and paper manufacturers, but anyone is eligible to apply for stumpage rights under an FMA. The province expects to extend FMA coverage to all Crown forest areas over the next 10 years.

FMA holders perform various forest management activities at reimbursement rates identical to those described above, under OCL's. Unlike OCL holders, these licensees are also reimbursed for the costs of building primary and secondary roads, up to a set maximum. The province requires public access for these roads and dictates the standards to which they are built. FMA holders pay for other roads and pay maintenance costs for all their roads, as do OCL holders. FMA holders fund the preparation of four types of management plans for their operation: a 20-year management plan, a five-year operating plan, annual cutting plans and annual silvicultural plans.

Stumpage fees under FMA's consist of Crown dues and the negotiated bonus price. The bonus price is reviewed at five-year intervals only.

Other Licenses

Ontario issues Salvage Licenses to hasten harvesting of damaged timber. Fifty Salvage Licenses are outstanding, covering less than one percent of the total area under license. They are issued normally for one-year periods and generally convey no management responsibilities to the license. Stumpage fees are negotiated and may be less than the applicable Crown dues.

District Cutting Licenses are issued in Ontario to cover very small areas for one year. Roughly 20,000 of these licenses are issued annually to individual or small commercial operators. The total area under these licenses is less than one percent of the area under license.

Forest management responsibilities under District Cutting Licenses are retained by the Crown. Stumpage fees are comprised of the first set of Crown dues and a bonus price set by the province.

Ontario also issues about 15 competitively bid Sale Licenses per year which cover less than one percent of the total area under license. These are used for the sale of small areas of timber in locations where demand exceeds available supply, usually in high quality hardwood stands. Sale Licenses are normally issued for one or two years and convey no forest management responsibility to the licensee.

For Sale Licenses, the Crown dues and a bonus price set by the district office form the starting bid price. Sealed tender offers above the starting price become the basis for issuance of the license.

Prince Edward Island

Background

There are approximately 20.9 million cubic meters of standing timber in Prince Edward Island, most of which is generally poor quality. The province owns about 10 percent of the total volume. Many of the 50 small mills comprising the lumber industry are part-time operations supplementing other sources of income.

Most of the lumber is not graded according to official standards and is of non-exportable quality. The response shows that none of the lumber produced was exported during 1981 and 1982. No shakes, shingles or fence were exported from Prince Edward Island.

Stumpage Rights and Payments

There is no allocation process. Stumpage rights and prices for standing timber on Crown land are determined through a competitive bid process. The Crown advertises "stump tenders" (offers of blocks of standing timber) once a year. Advertisements appear in provincial newspapers at least three weeks prior to closing date, and bids are opened at a public meeting. The highest bidder is normally awarded the contract, except where that bidder's record of past performance is demonstrably poor. Stumpage prices are in effect for one year; *i.e.*, the duration of the contract.

A minimum base price ("upset price") may be established by the provincial Forest Service to ensure that bids do not come in below known stumpage rates in the industry. Estimation of expected stumpage values are based on the Forest Service staff estimations of the volume of logs, pulpwood, etc. which could be removed. The price of finished products, transport costs, recovery factor, or mill costs are not used in setting stumpage upset prices.

Rights do not differ between millers and pulpwood contractors. The P.E.I. Forest Service establishes the volume of timber allowed to be cut under the contracts. Once the timber has been paid for and removed, the contractor may dispose of it within any market at will.

Quebec

Background

Québec's supply of standing timber is a mixture of deciduous and coniferous species, generally sparsely scattered and consisting of rather small trees. The vast majority of these timber resources (approximately 90 percent) is located on Crown lands. Until the early 1970's, the relatively poor quality of Québec's timber combined with inadequate technology, made it inefficient and uneconomical for use in the sawmill industry. Consequently, most of Québec's timber was used by the pulp and paper industry, and the only timber allocation system in the province—the timber limit (also known as the forest concession)—had been set up with the needs of that industry for long-term timber supplies in mind.

Early in the 1970's, however, technological advances in the sawmill industry in the form of sophisticated, computerized machinery, made it possible to process this timber into lumber and its by-products. As a result of these changes Québec started to allocate stumpage under a new system—supply agreements from domanial forests—whose purpose was to increase the profits dereived from provincial timberlands and to make the the timber resource more accessible to other possible users, including the sawmill industry.

Accordingly, no additional timber limits have been awarded since 1969; all new concessions since then have been in the form of supply agreements from domanial forests. The province, through the retrocession or outright revocation of timber limits as they come up for renewal, aims to make domanial forests the only form of tenure and supply agreements the sole form of allocation of stumpage.

Under both systems, all fees and dues are administratively set by the province through Orders-in-Council, sometimes through negotiation. There is no system of competitive bidding for stumpage in Québec. The specific features of both allocation systems are described below.

Timber Limits

Under the timber limit system, "limit holders" are assigned all rights to standing

timber in a given area. Limit holders are responsible for forest management and silviculture within their respective areas. Accordingly, they must submit on a regular basis a forest management plan to the provincial authorities. The government grants an annual cutting license to each limit holder, based on its estimate of the concession's sustained yield possibilities.

The various fees paid by the timber limit holders to the province of Québec for stumpage are as follows:

- The *purchase price* of a timber limit, which has varied between $500 and $1500 per square mile depending on the location of the concession and the quality of the timber thereon;
- The cutting license, renewable annually, which is contingent upon payment of a *ground rent* (currently $15.40 per square kilometer); and
- The *stumpage dues*, which vary according to species and end use, currently amounting to:

—pulpwood (softwood): $3.36 per cubic meter;

—sawlogs (softwood): $0.77 per cubic meter.

The stumpage dues for pulpwood are based on a percentage of the price per ton of newsprint delivered in New York; the basis of the stumpage dues for sawlogs is undocumented.

In addition to the payments and fees listed above, the limit holders also bear a number of additional costs, *i.e.*:

- *Road building and maintenance:* the limit holders build all their forest roads. They bear 100 percent of the cost of secondary roads, but only 50 percent of the cost of main access roads on the grounds that they are intended for common use. All these roads remain the province's property and are accessible to the public.
- *fire prevention and suppression:* this is carried out by private, non-profit forest protection agencies created by the industry.
- *Insect and disease protection:* limit holders pay a calculated percentage depending on area and circumstances.

Supply Agreements (Domanial Forests)

Domanial forests are public lands managed by the provincial government of Québec. The province enters into supply agreements for standing timber from these forests with any interested company. For sawmills, the duration of these agreements varies from five to twenty years, depending on each mill's size. In effect, these are fixed-term timber purchase agreements in which the holder's rights to timber are limited to areas specified by the province. This contrasts with the earlier system, whereby the holder could select the areas to be harvested each year within the concession area up to the total amount specified by the cutting license. Another difference between the two systems is that under supply agreements, timber cut from a domanial forest can be used only to supply the holder's mills and cannot be resold.

A supply agreement always specifies an annual maximum authorized consumption of wood for each mill covered by the agreement. This amount, expressed in cubic meters, also appears on the mill's annual operating license. Renewal of supply agreements depends on the yield and performance of the agreement holders. The province is responsible for devising and implementing forest management plans. Agreement holders prepare an annual logging plan for submission to the provincial authorities, who then issue annual cutting permits for a specific volume of wood defined by species.

Although agreement holders pay no fee *per se* to acquire their contracts, they must pay the provincial government the following fees for each cubic meter harvested:

- *Stumpage fees* based on the following factors:

—Location of forest,

—Product cut by species,

—Size of standing timber,

—Density of timber,

—Logging difficulties;

- *Road building costs* (same as under the timber limit system);
- *Management costs*, $0.09 per cubic meter;
- *Fire prevention costs*, $0.13 per cubic meter;
- *Fire suppression costs*, $0.04 per cubic meter; and
- *Insect and disease protection costs*, $0.05 per cubic meter;.

In addition, agreement holders are responsible for scaling costs and for specific silvicultural activities, such as reforestation, in the amount of at least $0.05 per cubic meter harvested in any given year.

Deferral, Suspension or Waiver of Stumpage Payments

The province of Québec does not allow the deferral, suspension, or waiver of any stumpage payments.

Saskatchewan

Background

Saskatchewan's major industries are farming and mining. Its industrial usage of forest products is underdeveloped, and its softwood timber is small and scattered. In order to attract mills, long-term agreements with negotiable conditions were initiated.

Stumpage

In Saskatchewan, stumpage rights are allocated in two ways: (1) under a timber permit, which is granted annually; and (2) under Forest Management License Agreements (FMLA's). About 13 percent of the production in Saskatchewan of the softwood industry under investigation is allocated by permit, and the balance by FMLA's.

A timber permit authorizes the holder to harvest a stated volume of timber, is valid for one year, and is renewable. Because FMLA's are negotiated separately with each company, their terms vary. Stumpage rights can be awarded for up to 20 years, with an option to renew. Under both arrangements, the Forestry Branch of the provincial government specifies the AAC. The area to be harvested is selected by the permittee or company, subject to government approval.

For timberland under the permit system, the province is responsible for management, silviculture, main road construction, reforestation, fire and disease prevention, etc. In contrast, under FMLA's, the company is completely responsible for forestry management, but other services may be carried out by the province with the company paying partial costs, according to the individual agreement; *e.g.*, the company might pay $0.20 per cord on all timber harvested toward the costs of reforestation. The province is always responsible for fire and disease protection. Main roads are constructed by the province up to a negotiated quantity specified in each contract. A company may construct additional roads at its own expense.

Stumpage fees are paid on a monthly (or sometimes quarterly) basis to the Forestry Branch. Timber permit allocations pay on the lumber out-turn of the mill. Rates take into account timber quality. FMLA's are of two types: volume agreements and area agreements. Volume agreement stumpage dues are paid on the mill out-turn and can be renegotiated periodically. Area agreement fees are paid on scaled volume delivered to the mill yard and are indexed.

Federal Stumpage

Federal Crown lands represent 11 percent of productive timberlands in Canada. Of that, 90 percent is too inaccessible to economically supply North American timber markets. In fiscal year 1981–82, 0.8 percent of total Canadian timber (hardwoods plus softwoods) harvested from Crown lands was cut in small quantities from tracts of federal lands in five provinces and two territories. Most of the volume was cut on Indian Reserves. Stumpage from federal lands is usually allocated according to "volume agreements," whereby an allowable cut is specified. The particular volume agreement procedures of the province in which the timber is located generally apply.

Four federal agencies, none of which has land management as a primary function, have jurisdiction over different portions of federal lands.

Some Department of National Defence (DND) land is used for forest research. Environment Canada administers all DND land, and any timber sales tend to be inspired by the need to clear areas rather than to generate revenue. An individual or company may hold only one annual permit at a given time. Each permit is issued to cut timber up to a volume valued at not more than $2,000 based on prevailing local rates.

The Department of Parks Canada (DPC) reserves most of its land for recreational use. Logging is prohibited with one exception: when the Wood Buffalo Park was created in 1956 in northern Alberta, a pre-existing sawmill situated there was granted a license for long-term cutting rights. The license runs through May 2002 and will not be renewed.

About 95 percent of all federal Crown lands fall under the jurisdiction of the Department of Indian and Northern Affairs (DINA), which is the combination of two agencies with quite separate functions. The Department of Northern Development has administrative responsibility for the territories. Timber in the territories is remote and scattered; nevertheless, the supply is much greater than can be used by the sparse

population. Annual cutting permits are granted on a small-volume basis according to the Territorial Lands Act. Approximately 50,000 m^3 of cut timber comes from the territories annually, and none is exported.

The other agency of DINA is the Department of Indian Affairs, which governs the 1,500 existing Indian Reserves in Canada. Timber sales on Indian lands are conducted by local band councils according to the federal Indian Timber Regulations. The Regulations provide for small-volume annual cutting permits as well as licenses for "larger" volume supply (volume cut cannot exceed a value of $2,500 based on prevailing local rates). All revenue is returned by the federal government to the Indians.

Many permittees on federal timber are harvesters only, who in turn sell the logs to small non-commercial operators or individuals requiring fuelwood. Indians often cut very small amounts of timber for their own use.

Appendix C—Issues and Comments

Petitioner's Comments

Comment 1. Petitioner contends that the Department, in determining that stumpage programs are generally available because they are provided to all potential users without government limitation, has created an unfounded distinction between *de jure* availability and *de facto* availability.

DOC Position. The statute requires that a countervailable domestic subsidy be provided to a specific industry, or group of industries. The DOC determined that the industries using stumpage are not a "specific industry or group of industries" within the meaning of the law (see Section 771(b)(B) of the Act). While it is true that not all industries currently use stumpage, this is not the result of any governmental action. The government of Canada is not limiting the users of stumpage, either *de facto* or *de jure*. Under our interpretation of the statute, we would not, for example, find generally available a program which on its surface appeared to have broad eligibility criteria, but which was administered by government in such a manner as to benefit a particular industry group. *See, e.g., Certain Steel Products from France*, 47 FR 39332, 39334 (Sept. 7, 1982).

Comment 2. Petitioner contends the Department incorrectly defined the users of stumpage as many groups of industries without support in the record. Petitioner specifically argues that:

- The Department found the Act's requirement that a domestic subsidy be provided to a specific industry or group of industries to be met where subsidies were provided to the "steel industry," subsidies fall within more than one major industry group in both the European Communities and the United States classification systems (as do the users of stumpage in these investigations).
- The Department mischaracterized as "a list of products produced by industries holding stumpage permits," a list of products made from stumpage submitted by the government of Canada.

DOC Position. Concerning the "steel industry," our investigations of certain carbon steel products from various countries covered forged as well as rolled steel, which are included in two major industry groups. Yet the forged steel involved was insignificant amounts of forged bar and structurals. Certain size ranges of these products can only be made through the forged process as opposed to a rolled process. Since the *Tariff Schedules of the United States, Annotated* (TSUSA) do not differentiate between the forged and rolled process, these could not be separated out.

Concerning petitioners second argument, the Canadian government did submit lists of products of different industries holding stumpage rights, and we verified that producers of products classified in a number of different industry groups hold stumpage rights.

Comment 3. Petitioner contends that the Department refused to acknowledge the existence of a "commonly recognized Canadian forest products industry."

DOC Position. While it is true that one often sees references to a so-called "forest products industry" or "forest products sector," use of such terms for convenience is not controlling for purposes of the countervailing duty statute. Significantly, the ITC, in its preliminary determinations, found that lumber, shakes and shingles, and fencing constitute three distinct industries. Moreover, under the Canadian and United States industrial classification systems, lumber, shakes and shingles, veneer and plywood, furniture, sashes and doors, and pulp and paper are identified as separate industries and are listed under several major industry groups.

Comment 4. Petitioner contends that the Department's treatment of "the forest products industry" as "a group of * * * industries" for purposes of non-stumpage programs is inconsistent with its finding that stumpage programs are generally available.

DOC Position. The non-stumpage programs which the Department has found to be countervailable involve benefits which would be of use to all or to a large number of industries, not merely to those industries manufacturing products from stumpage. Therefore, the governments of Canada have targeted these programs to benefit certain industries. In our opinion, it is appropriate to take into account the distinction between these programs and stumpage practices in terms of targeting. Otherwise, these targeted programs and stumpage practices in terms of targeting. Otherwise, these targeted programs would escape the purview of the countervailing duty law, because they arguably are provided to more than one group of industries.

Comment 5. Petitioner contends that using cut data instead of bid data does not make a significant difference in the calculation of subsidies. They further state that the Department ignored significant information on the record that most United States stumpage sales are of private timber which is not sold significantly in advance of use.

DOC Position. First, as described in the section entitled "Stumpage Programs of the Canadian Federal and Provincial Governments," it is not the Department's policy to make cross-border comparisons in determining whether, or to what extent, subsidies are conferred. Second, it would be inappropriate in these investigations to compare United States and Canadian stumpage prices in view of *inter alia*, the significant differences in quality and accessibility of stumpage and 7 of the requirement frequently imposed in Canada but not in the United States that in-kind services be performed by companies allowed to harvest stumpage. Third, even if we were to compare United States and Canadian stumpage prices, some information on the record indicates that such prices do not significantly vary when appropriately adjusted for the above-described differences. In any event, in recent years, bid prices in the United States have usually been higher than cut prices. (Such data is not available for private sales of United States timber. Indeed, petitioner has presented and relied on United States public sales data.) Therefore, United States prices would not be a reasonable assessment of current prices paid. Our review of data compiled by the United States Forest Service for forest regions 6 and 9, the Pacific Northwest and the Eastern regions of the United States show that significantly lower cut prices (16 to 60 percent) are paid for softwood timber when compared to bid prices, except in the case of White Mountain Forest. As petitioner argues, the record in these investigations reflects that only sales of timber on national forest lands have recently been bid significantly in advance of use. The record does not contain such information concerning private United States sales.

Comment 6. Petitioner contends that the Department's intepretation of subsection 771(5)(B)(iv) is arbitrary and not in accordance with laws. Petitioner argues that the statutory language covers any governmental action which reduces an industry's raw material acquisition costs.

DOC Position. As stated in our preliminary determinations and in these final determinations, we maintain that the best interpretation of subsection (iv) is that it covers the relief by a government of a pre-existing statutory or contractual obligation. While these investigations represent the first time the DOC has construed subsection (iv) definitively, we think that our interpretation is supported by prior precedent, the legislative history of the Act, and basic rules of statutory construction. While counsel has cited cases involving the European Communities Common Agricultural Policy (CAP), those cases involve cash payments which we would not consider to be the assumption of costs under subsection (iv).

From the evidence on the record, the Canadian governments do not, through their stumpage programs, relieve a specific group of industries of any pre-existing statutory or contractual obligations.

Comment 7. Petitioner argues that the Department should use competitively set United States stumpage prices to establish a commercial benchmark for Canadian stumpage.

DOC Position. It is not the DOC's policy to use cross-border comparisons in establishing commercial benchmarks, because such comparisons fail to account for differences in

comparative advantage between countries. Futhermore, such comparisons would be particularly inappropriate in these investigations because of differences in such factors as species combination, density, qualitry, size, age, accessibility, terrain and climate between standing timber in different areas. Moreover, there is evidence in the record that the United States government restricts supply of publicly-owned timber, thereby increasing the price of such timber in the United States.

Respondent's Comments

Comment 1. Respondent contends that RDIP is not targeted to any specific industry or group of industries, but rather is available to all industries throughout the vast majority of Canada, with the boundaries of DREE eligibility serving to implement geographically neutral criteria.

DOC Position. We find RDIP to be targeted to specific regions because the criteria for designation of areas eligible for assistance from DREE are not objective, identifiable criteria. The use of subjective criteria leaves the designation of eligible areas to the discretion of national and provincial DREE ministers.

Comment 2. Respondent contends that the amount of RDIP grant payments to producers of the products under investigation which subsequently went bankrupt, were closed or were sold in arm's length transactions provide no current benefit to the production of softwood lumber, and should not be countervailed because they provide no current benefit.

DOC Position. We agree in principle, but we could not verify the amounts of grants given to firms which went bankrupt, were closed, or were sold in arm's length transactions.

Comment 3. Respondent argues that we improperly allocated as untied grants funds that were explicitly provided by the government of Québec to REXFOR to cover losses sustained in previous years by Samoco, one of REXFOR's subsidiaries.

DOC Position. We allocate the subsidy benefit of funds generally provided to cover losses to the year of receipt to reflect the nature of the liabilities giving rise to the loss. These liabilities are the basic costs of operations (*e.g.*, wages, materials, certain overhead expenses), which are generally expensed in the year incurred. To the contrary, we allocate any countervailable funds provided to cover losses in multiple previous fiscal years over a broader period of time. Any losses incurred previously by Samoco had already been written off by REXFOR. In addition, allocating funds for multi-year loss coverage solely to the year of their receipt, as respondent advocates, would open a loophole in the countervailing duty law. Funds could be provided allegedly for this purpose, but intended to have a long lasting future effect.

Comment 4. The Special ARDA grants made to native bands located in isolated areas were used to produce softwood products for non-commercial use. This production is not included in the official shipment figures for the industry and would not be included in the denominator used in the subsidy calculation.

DOC Position. During verification we determined that some Special ARDA funds made to native bands were used commercially. Grants were used to acquire logging equipment, to perform subcontracting work, and to establish a shake and shingle operation to supply local markets.

Comment 5. There is no justification for aggregating Special ARDA and General ARDA assistance in calculating benefits. The programs have different purposes and different legal bases.

DOC Position. While the General ARDA is a rural development program, and the Special ARDA is an ongoing program which seeks to improve employment and income opportunities for Canada's native population, both were created under the federal Agriculture and Rural Development Act. In any event all benefits are aggregated in calculating the final amount of the subsidies.

[FR Doc. 83-14290 Filed 5-27-83; 8:45 am]

BILLING CODE 3510-25-M

Numerically Controlled Machine Tool Technical Advisory Committee; Partially Closed Meeting

A meeting of the Numerically Controlled Machine Tool Technical Advisory Committee will be held June 21, 1983, at 10:00 a.m., Herbert C. Hoover Building, Room 3708, 14th Street and Constitution Avenue, N.W., Washington, D.C. The Committee advises the Office of Export Administration with respect to technical questions which affect the level of export controls applicable to numerically controlled machine tools or technology.

General Session:

1. Opening remarks by the Chairman.
2. Presentation of papers of comments by the public.
3. Nomination and election of a new chairman.
4. New Business.

Executive Session:

Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria.

The general session will be open to the public with a limited number of seats available. A Notice of Determination to close meetings or portions of meetings of the Committee to the public on the basis of 5 U.S.C. 552b(c)(1) was approved on September 29, 1981, in accordance with the Federal Advisory Committee Act.

A copy of the Notice is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, (202) 377-4217.

For further information or copies of the minutes contact Margaret Cornejo, (202) 377-2583.

Dated: May 25, 1983.

Milton Baltas,

Director of Technical Programs, Office of Export Administration.

[FR Doc. 83-14478 Filed 5-27-83; 8:45 am]

BILLING CODE 3510-25-M

Viscose Rayon Staple Fiber From Sweden; Preliminary Results of Administrative Review of Countervailing Duty Order

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of preliminary results of administrative review of countervailing duty order.

SUMMARY: The Department of Commerce has conducted an administrative review of the countervailing duty order on rayon staple fiber from Sweden. The review covers the period October 1, 1980 through September 30, 1981. As a result of the review, the Department has preliminarily determined the net subsidy to be 7.32 percent *ad valorem* for both modal and regular fiber. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: May 31, 1983.

FOR FURTHER INFORMATION CONTACT: Bernard Carreau or Joseph Black, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On December 10, 1981, the Department of Commerce ("the Department" published in the **Federal Register** (46 FR 60486) the final results of its last administrative review of the countervailing duty order on viscose rayon staple fiber from Sweden (44 FR 28319) and announced its intent to conduct the next administrative review. As required by section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department has now conducted that administrative review.

Scope of the Review

The merchandise covered by the review is regular viscose rayon staple fiber and high-wet modulus ("modal") viscoe rayon staple fiber, imported directly or indirectly from Sweden. Such merchandise is currently classifiable under items 309.4320 and 309.4325 of the Tariff Schedules of the United States Annotated.

The review covers the period October 1, 1980 through September 30, 1981 and

the following programs: (1) Capital loans/grants and (2) elderly employment compensation. The sole known Swedish producer of the merchandise is Svenska Rayon AB.

Analysis of Programs

The Swedish government and Svenska did not respond to our questionnaire on the status of benefits during the review period.

Therefore, we have used the information provided during our previous review as the best information available to calculate the benefits received during the current review period.

(1) Interest-free government loans/grants. For the purpose of national defense, the Swedish government subsidizes the establishment of productive capacity for modal rayon staple fiber. Accordingly, the government lent to Svenska, on an interest-free basis, investment capital needed to establish productive capacity for modal fiber. The loans were to be forgiven if Svenska maintained these production facilities for ten years. The loans provided to Svenska under this first agreement, referred to as Project 77, totaled 14 million kroner.

Government bill 1977/78: 125, adopted on March 16, 1978, approved a second larger investment loan program, referred to as Project 81, under which Svenska has received additional interest-free loans for the development of its modal fiber plant. Under this latter program, the government authorized a 67.3 million kroner loan and, by the end of September 1981, Svenska had received the total budgeted amount. In February 1979 the Swedish government provided separately an additional 1.8 million kroner loan to Svenska for environmental improvements to the plant.

We concluded in our last review that the Swedish government forgave 10 percent per year of Svenska's obligation of 14 million kroner under Project 77 in 1978, 1979, and 1980. As best evidence, we preliminarily conclude that Svenska maintained its modal production facilities in 1981 and that the government forgave in 1981 another 10 percent of the project 77 loans. We are therefore treating 10 percent of the Project 77 funds as a grant during the review period. Additionally, we are considering the unforgiven portion of the Project 77 funds together with the 67.3 million kroner that Svenska received under Project 81 as interest-free loans during the period of review. We have calculated the subsidy on the relevant Project 77 and Project 81 funds on the basis of the interest Svenska would have paid if it had borrowed the money commercially at the time that the loans were granted. We have used as the benchmark rates the Swedish prime rates in 1975 (for Project 77 funds) and 1978 (for Project 81 funds) and added to that the difference between prime and the average rate paid by Svenska on other commercial loans. We then calculated the present value of the payment differentials in each year of the loans using as the discount rate the "risk-free" rates for long-term government debt that were available during the relevant periods. This amount was then allocated evenly over the life of each loan using the same discount rates to yield the annual subsidy amounts. For the period of review, we preliminarily determine that the net subsidy under the interest-free government loans/grants program is 3.88 percent *ad valorem.*

Absent a response to our questionnaire, we are assuming that the forgiveness period for Project 81 loans, which were fully disbursed by September of 1981, began in 1982 at the rate of 10 percent per year. We are therefore treating 10 percent of these funds as a grant in calculating future cash deposits of estimated countervailing duties. Accordingly, we preliminarily determine, for purposes of cash deposits of estimated countervailing duties, that the net subsidy attributable to this program is 6.96 percent *ad valorem.*

In our last administrative review, we assumed that the assets purchased through Project 77 and Project 81 funds were not convertible to the production of regular fiber. We therefore determined that the net subsidy should apply only to modal fiber. However, we have received new information indicating that Svenska, by no later than the end of 1982, had achieved the capacity to utilize the modal plant for the production of "non-modal improved-type fibers". When combined with the failure to respond to our questionnaire (which also addresses the issue of convertibility), we preliminarily conclude that the one net subsidy rate will apply to both modal fiber and regular fiber.

(2) Elderly Employment Program. The Swedish government provides a subsidy to certain companies within the textile industry through a special employment contribution by the government for older workers. This program was established by Swedish government bill 1976/77: 105, adopted on March 3, 1977. While the program is designed to encourage the retention of redundant employees, compensation is provided to a company based upon the number of hours worked by employees over 50 years of age. A company participating in the program must agree not to dismiss or release redundant employees of any age for any reason other than normal attrition. The payments can total up to 15 percent of the company's total labor cost. Svenska participated in this program. For this review, we have preliminarily used the same rate determined in our previous review, 3.44 percent *ad valorem, as the best information available.*

Preliminary Results of Review

As a result of our review, we preliminarily determine that the aggregate net subsidy conferred by the Government of Sweden on the production of both modal and regular viscose rayon staple fiber during the period October 1, 1980 through September 30, 1981 is 7.32 percent *ad valorem.*

Accordingly, the Department intends to instruct the Customs Service to assess countervailing duties of 7.32 percent of the f.o.b. invoice price on all shipments of regular and modal fiber exported on or after October 1, 1980 and entered, or withdrawn from warehouse, for consumption on or before October 29, 1980.

On October 30, 1980, the International Trade Commission ("the ITC") notified the Department that the Swedish government had requested an injury determination for this order under section 104(b) of the Trade Agreements Act of 1979. On March 15, 1983, the ITC notified the Department of its determination that an industry in the United States would be materially injured or threatened with material injury if the order were revoked. As a result, the Department will instruct the Customs Service to assess countervailing duties, in the amount of the prevailing deposit rate at the time of entry, on all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after October 30, 180 and on or before March 15, 1983.

Further, as provided for by section 751(a)(1) of the Tariff Act, the Department intends to instruct the Customs Service to collect a cash deposit of estimated countervailing duties of 10.40 percent of the f.o.b. invoice price on all shipments of regular or modal fiber entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of the current review. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 45 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made no later than 5 days after the date of publication. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any such written comments or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)), section 104(b)(4)(A) of the Trade Agreements Act (19 U.S.C. 1671 note) and section 355.41 of the Commerce Regulations (19 CFR 355.41).

Dated: May 24, 1983.

Gary N. Horlick,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 83-14477 Filed 5-27-83; 8:45 am]

BILLING CODE 3510-25-M

Stanford University; Decision on Application for Duty-Free Entry of Scientific Instrument

The following is a decision on an application for duty-free entry of a scientific instrument pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued pursuant thereto (15 CFR Part 301 as amended by 47 FR 32517).

A copy of the record pertaining to this decision is available for public review between 8:30 AM and 5:00 PM in Room 1523, Statutory Import Programs Staff, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Docket No.: 82-0026R. Applicant: Stanford University, 851 Welch Road, Stanford, CA 94305. Instrument: Excimer Laser, TE-861T with Stanford Electrodes and Model 525 Capacitor and Accessories. Original notice of this resubmitted application was published in the **Federal Register** of September 8, 1982.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign instrument, for such purposes as this instrument is intended to be used, was being manufactured in the United States at the time the foreign instrument was ordered (June 24, 1982).

Reasons: This application is a resubmission of Docket Number 82-00267 which was denied without prejudice to resubmission on January 11, 1983 for informational deficiencies. The foreign instrument provides a pulse energy of at least ten millijoules with repetition rates greater than 150 pulses per second. The National Bureau of Standards advises in its memorandum dated April 12, 1983 that: (1) The capability of the foreign instrument described above is pertinent to the applicant's intended purpose and (2) it knows of no instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use which was being manufactured in the United States at the time the foreign instrument was ordered.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign instrument, for such purposes as this instrument is intended to be used, which was being manufactured in the United States at the time the foreign instrument was ordered.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Stanley P. Kramer,

Program Manager, Florence Agreement Program, Statutory Import Programs Staff.

[FR Doc. 83-14480 Filed 5-27-83; 8:45 am]

BILLING CODE 3510-25-M

Syracuse University; Decision on Application for Duty-Free Entry of Scientific Instrument

The following is a decision on an application for duty-free entry of a scientific instrument pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued pursuant thereto (15 CFR Part 301 as amended by 47 FR 32517).

A copy of the record pertaining to this decision is available for public review between 8:30 AM and 5:00 PM in Room 1523, Statutory Import Programs Staff, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C. 20230.

Docket No.: 82-00075R. Applicant: Syracuse University, Department of Chemistry, Bowne Hall, Syracuse, NY 13210. Instrument: Superconducting Fourier NMR Spectrometer, Model WM-360 WB and Components. Original notice of this resubmitted application was published in the **Federal Register** of February 2, 1982.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign instrument, for such purposes as this instrument is intended to be used, was being manufactured in the United States at the time the foreign instrument was ordered (November 13, 1980).

Reasons: This application is a resubmission of Docket Number 82-00075 which was denied without prejudice to resubmission on September 29, 1982 for informational deficiencies. The foreign instrument provides data acquisition in any of the three memory areas of its computer. The Department of Health and Human Services advises in its memorandum dated April 7, 1983 that: (1) the capability of the foreign instrument described above is pertinent to the applicant's intended purpose and (2) it knows of no instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use which was being manufactured in the United States at the time the foreign instruement was ordered.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign instrument, for such purposes as this instrument is intended to be used, which was being manufactured in the United States at the time the foreign instrument was orderded.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Stanley P. Kramer,

Program Manager, Florence Agreement Program, Statutory Import Programs Staff.

[FR Doc. 83-14479 Filed 5-27-83; 8:45 am]

BILLING CODE 3510-25-M

National Bureau of Standards

National Voluntary Laboratory Accreditation Program; Preliminary Finding of Need To Accredit Laboratories That Test Government Procurred Commercial Items

Correction

In FR Doc. 83-13602, beginning on page 22771 in the issue of Friday, May 20, 1983, make the following corrections:

1. On page 22772, second column, in the third line under the heading "Preliminary Finding of Need," the phrase "there is no need" should read, "there is a need".

2. On page 22772, second column, in the ninth line under the heading "**Preliminary Finding of Need,**" the

letters "MVLAP" should read, "NVLAP".

3. On page 22772, third column, in the third line under the heading *"Basis of Need (§ 7a.4(b)(4))."* the letters "NVLP" should read, "NVLAP".

4. In the table on page 22774, the ninth, tenth and sixty-fourth designations under the heading, "Paint and Related Coatings and Materials—Paint," should read, "ASTM B117–73 (1979)", "ASTM D34–73 (1979)," and "ASTM D1397–80" respectively.

BILLING CODE 1505-01-M

National Oceanic and Atmospheric Administration

Receipt of Application for Permit; LGL Ltd.

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), the Endangered Species Act of 1973 (16 U.S.C. 1531–1544), the National Marine Fisheries Service regulations governing endangered fish and wildlife permits (50 CFR Parts 217–222).

1. Applicant: LGL Ltd., Suite 414, 44 Eglinton Avenue, West, Toronto, Canada M4R 1A1.

2. Type of Permit: Scientific Research/Scientific Purposes.

3. Name and Number of Animals: Bowhead whales (Balaena mysticetus) 250.

4. Type of Take: Potential harassment by sound and aircraft during studies of seismic exploration sounds affecting bowhead whales.

5. Location of Activity: Canadian Beaufort Sea.

6. Period of Activity: Two (2) years.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, D.C. 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street NW., Washington, D.C.; and

Regional Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, Alaska 99802.

Dated: May 24, 1983.

R. B. Brumsted,

Acting Chief, Protected Species Division, National Marine Fisheries Service.

[FR Doc. 83-14447 Filed 5-27-83; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

Arcata Graphics—Buffalo; Application for Certification of the use of Natural Gas to Displace Fuel Oil

[ERA Docket No. 83-Cert-095]

Arcata Graphics-Buffalo (ARCATA), T. C. Industrial Park, Depew, New York 14043, filed an application on May 16, 1983, with the Economic Regulatory Administration (ERA) for certification of an eligible use of natural gas to displace fuel oil at its facility in Depew, 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, ARCATA indicates that the volume of natural gas for which it requests certification is approximately 1,273 Mcf per day. This volume is estimated to displace the use of approximately 8,375 gallons of No. 6 fuel oil (1.7 percent sulfur) per day.

The eligible seller is American Penn Energy, P.O. Box 443, Fredonia, New York 14063. The gas will be transported by National Fuel Gas Supply Corporation, 308 Seneca Street, Oil City, Pennsylvania 16301; and by National Fuel Gas Distribution Corporation, 10 Lafayette Square, Buffalo, New York 14203, a local distribution company.

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 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 ARCATA and any person filing comments and will be published in the **Federal Register**.

Issued in Washington, D.C., on May 24, 1983.

James W. Workman,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 83-14404 Filed 5-27-83; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 83-Cert-068]

A. W. Breidenbach Environmental Research Center, U.S. Environmental Protection Agency; Application for Certification of the Use of Natural Gas To Displace Fuel Oil

A. W. Breidenbach Environmental Research Center (AWBERC), U.S. Environmental Protection Agency, 26 West St. Clair Street, Cincinnati, Ohio 45268, filed an application on May 5, 1983, with the Economic Regulatory Administration (ERA) for certification of an eligible use of natural gas to displace fuel oil at its environmental research facility in Cincinnati, Ohio, 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, AWBERC indicates that the volume of natural gas for which it requests certification is approximately 220,500 Mcf per year. This volume is estimated to displace the use of approximately 1,631,700 gallons of No. 3 fuel oil (0.25 percent sulfur) per year.

The eligible sellers are Exxon USA, P.O. Box 2810, Houston, Texas 77001; and Texas Gas Transmission Corporation, 3800 Frederica Street, P.O. Box 1160, Owensboro, Kentucky 42301. The gas will be transported by Columbia Gas Transmission Corporation, P.O. Box 1273, Charleston, West Virginia 25325; Texas Gas Transmission Corporation, 3800 Frederica Street, P.O. Box 1160, Owensboro, Kentucky 42301; and by the Cincinnati Gas and Electric Company, P.O. Box 960, Cincinnati, Ohio 45202, a local distribution company.

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 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 AWBERC and any person filing comments and will be published in the **Federal Register.**

Issued in Washington, D.C., on May 24, 1983.

James W. Workman,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 83-14456 Filed 5-27-83; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 83-Cert-098]

Capitol Products Corp.; Application for Certification of the Use of Natural Gas To Displace Fuel Oil

Capitol Products Corporation (CAPITOL), P.O. Box 3070, Harrisburg, Pennsylvania 17105, filed an application on May 13, 1983, with the Economic Regulatory Administration (ERA) for certification of an eligible use of natural gas to displace fuel oil at its manufacturing facility in Mechanicsburg, Pennsylvania, 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, CAPITOL indicates that the volume of natural gas for which it requests certification is approximately 525,600 Mcf per year. This volume is estimated to displace the use of approximately 3,100,000 gallons(74,000 barrels) of No. 2 fuel oil (0.05 percent sulfur) per year.

The eligible seller is Exxon USA, 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; and by UGI Corporation (Gas Utility Division), 225 Morgantown Road, Reading, Pennsylvania 19611, a local distribution company.

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 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 CAPITOL and any person filing comments and will be published in the **Federal Register.**

Issued in Washington, D.C., on May 24, 1983.

James W. Workman,

Diretor, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 83-14465 Filed 5-27-83; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 83-Cert-044]

Emery Realty, Inc.; Application for Certification of the Use of Natural Gas to Displace Fuel Oil

Emery Realty, Incorporated (EMERY), 2400 Carew Tower, P.O. Box 447, Cincinnati, Ohio 45201, filed an application on May 5, 1983 with the Economic Regulatory Administration (ERA) for certification of an eligible use of natural gas to displace fuel oil at its Carew Tower Boiler Plant in Cincinnati, Ohio, pursuant to 10 CFR Part 595 (44 FR 47920, August 16, 1979). The application was amended on May 7, 1983, to add an eligible supplier and on May 11, 1983, to clarify the volumes 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, EMERY indicates that the volume of natural gas for which it requests certification is approximately 82,500 Mcf per year. This volume is estimated to displace the use of approximately 580,800 gallons of No. 2 fuel oil (0.23 percent sulfur) per year.

The eligible sellers are Exxon USA, P.O. Box 2810, Houston, Texas 77001; Texas Gas Corporation, 3800 Frederica Street, P.O. Box 1160, Owensboro, Kentucky 45302; and Ohio Gas Marketing Corporation, 3933 Price Road, Newark, Ohio 43055. The gas will be transported by Columbia Gas Transmission Corporation, P.O. Box 1273, Charleston, West Virginia 25325; Texas Gas Transmission Corporation, 3800 Frederica Street, P.O. Box 1160, Owensboro, Kentucky 42301; and by the Cincinnati Gas and Electric Company, P.O. Box 960, Cincinnati, Ohio 45202, a local distribution company.

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 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 EMERY and any person filing comments and will be published in the **Federal Register.**

Issued in Washington, D.C., on May 24, 1983.

James W. Workman,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 83-14457 Filed 5-27-83; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 83-Cert-077]

Great Lakes Carbon Corp.; Application for Certification of the Use of Natural Gas to Displace Fuel Oil

Great Lakes Carbon Corporation (GLCC), P.O. Box 667, Niagara Falls, New York 14302, filed an application on May 7, 1983, and amended it on May 20, 1983, with the Economic Regulatory Administration (ERA) for certification of an eligible use of natural gas to displace fuel oil at its carbon products manufacturing facility in Niagara Falls, 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, GLCC indicates that the volume of natural gas for which it requests certification is approximately 1,000 Mcf per day., This volume is estimated to displace the use of approximately 7,140 gallons of No. 2 fuel oil (1.0 percent sulfur) per day.

The eligible sellers are U.S. Energy Development Corporation, 610 Statler Building, Buffalo, New York 14202; Envirogas, Inc., One Grimsby Drive, Hamburg, New york 14075; Goetro, Inc., Route #1, Albion, Pennsylvania 16401; and P & S Drilling, Inc., 10305 Main Street, Clarence, New York 14031. The gas will be transported by National Fuel Gas Supply Corporation, 308 Seneca Street, Oil City, Pennsylvania 16301; and National Fuel Gas Distribution Corporation, 10 Lafayette Square, Buffalo, New York 14203, a local distribution company.

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 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 GLCC and any person filing comments and will be published in the **Federal Register.**

Issued in Washington, D.C., on May 24, 1983.

James W. Workman,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 83-14461 Filed 5-27-83; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 83-Cert-069]

Ramco/Fitzsimons Steel Co.; Application for Certification of the Use of Natural Gas to Displace Fuel Oil

Ramco/Fitzsimons Steel Company (RAMCO/FSC), P.O. Box 399, Buffalo, New York, 14240, filed an application on May 6, 1983, with the Economic Regulatory Administration (ERA) for certification of an eligible use of natural gas to displace fuel oil at its steel processing plant in Buffalo, New York 14220, 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, RAMCO/FSC indicates that the volume of natural gas for which it requests certification is approximately 600 Mcf per day. This volume is estimated to displace the use of approximately 4,000 gallons of No. 6 fuel oil (1.0 percent sulfur) per day.

The eligible seller is Midwest Exploration, Inc., 1401 Park Harvey Center, 200 North Harvey, Oklahoma City, Oklahoma 73120. The gas will be transported by National Fuel Gas Supply Corporation, 308 Seneca Street, Oil City, Pennsylvania 16301; and by National Fuel Gas Distribution Corporation, 10 Lafayette Square, Buffalo, New York 14203, a local distribution company.

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 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 the ten (1) 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 RAMCO/FSC and any person filing comments and will be published in the **Federal Register.**

Issued in Washington, D.C., on May 24, 1983.

James W. Workman,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 83-14458 Filed 5-27-83; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 83-Cert-072]

Schoenling Brewing Co.; Application for Certification of the Use of Natural Gas to Displace Fuel Oil

Schoenling Brewing Company (SCHOENLING), 1625 Central Parkway, Cincinnati, Ohio 45214, filed an application on May 9, 1983, with the Economic Regulatory Administration (ERA) for certification of an eligible use of natural gas to displace fuel oil at its brewery facility in Cincinnati, Ohio, 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, SCHOENLING indicates that the volume of natural gas for which it requests certification is approximately 5,000 Mcf per month. This volume is estimated to displace the use of approximately 35,000 gallons of No. 2 fuel oil (0.49 percent sulfur) per month.

The eligible sellers are Exxon U.S.A., P.O. Box 2810, Houston, Texas 77001; Texas Gas Corporation, 3800 Frederica Street, P.O. Box 1160, Owensboro, Kentucky 45302; and Ohio Gas Marketing Corporation, 3933 Price Road, Newark, Ohio 43055. The gas will be transported by Columbia Gas Transmission Corporation, P.O. Box 1273, Charleston, West Virginia 25325; and Texas Gas Transmission Corporation, 3800 Frederica Street, P.O. Box 1160, Owensboro, Kentucky 42301; and by The Cincinnati Gas & Electric Company, P.O. Box 960, Cincinnati, Ohio 45202; and The Union Light, Heat & Power Company, P.O. Box 32, Covington, Kentucky 41012, local distribution companies.

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 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 SCHOENLING and any person filing comments and will be published in the **Federal Register.**

Issued in Washington, D.C., on May 24, 1983.

James W. Workman,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 83-14459 Filed 5-27-83; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 83-Cert-075]

Shepherd Chemical Co.; Application for Certification of the Use of Natural Gas to Displace Fuel Oil

The Shepherd Chemical Company (SHEPHERD), 4900 Beech Street, Cincinnati, Ohio 45212, filed an application on May 9, 1983, with the Economic Regulatory Administration (ERA) for certification of an eligible use of natural gas to displace fuel oil at its chemical manufacturing facility in Cincinnati, Ohio, 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 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, SHEPHERD indicates that the volume of natural gas for which it requests certification is approximately 100 million cubic feet per year. This volume is estimated to displace the use of approximately 17,000 barrels of No. 2 fuel oil (Max. 0.5 percent sulfur) per year.

The eligible sellers are Exxon U.S.A., P.O. Box 2810, Houston, Texas 77001; and Ohio Gas Marketing Corporation, 3933 Price Road, Newark, Ohio 43055. The gas will be transported by Columbia Gas Transmission Corporation, P.O. Box 1273, Charleston, West Virginia 25325; and Texas Gas Transmission Corporation, 3800 Frederica Street, P.O. Box 1160, Owensboro, Kentucky 42301; and by The Cincinnati Gas & Electric Company, P.O. Box 960, Cincinnati, Ohio 45202, a local distribution company.

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 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 SHEPHERD and any person filing comments and will be published in the **Federal Register.**

Issued in Washington, D.C., on May 24, 1983.

James W. Workman,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 83-14460 Filed 5-27-83; 8:45 am,

BILLING CODE 6450-01-M

[ERA Docket No. 83-Cert-079]

Textile Printing & Finishing Co., Inc.; Application for Certification of the Use of Natural Gas to Displace Fuel Oil

Textile Printing & Finishing Company, Inc. (TPFC), 120 North 25th Street, P.O. Box 209, Lebanon, Pennsylvania 17042, filed an application on May 9, 1983 with the Economic Regulatory Administration (ERA) for certification of an eligible use of natural gas to displace fuel oil at its screen printing facility in Lebanon, Pennsylvania, 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, TPFC indicates that the volume of natural gas for which it requests certification is approximately 84,000 Mcf per year. This volume is estimated to displace the use of approximately 559,440 gallons of No. 6 fuel oil (2.8 percent sulfur) per year.

The eligible seller is Exxon USA, 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; and by UGI Corporation (Gas Utility Division), 225 Morgantown Road, Reading, Pennsylvania 19611, a local distribution company.

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 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 TPFC and any person filing comments and will be published in the **Federal Register.**

Issued in Washington, D.C. on May 24, 1983.

James W. Workman,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 83-14482 Filed 5-27-83; 8:45 am]

BILLING CODE 6450-01-M

Pittston Petroleum Inc.; Action Taken on Consent Order

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of action taken on Consent Order.

SUMMARY: The Economic Regulatory Administration ("ERA") of the Department of Energy ("DOE") announces that it has adopted a Consert Order with Pittston Petroleum Inc. as a final order of the Department.

EFFECTIVE DATE: May 31, 1983.

FOR FURTHER INFORMATION CONTACT: Robert J. McKee, Jr., Director, Philadelphia Field Office, ERA, 1421 Cherry Street, Philadelphia, Pennsylvania 19102 (215-597-4550).

SUPPLEMENTARY INFORMATION: On April 5, 1983, Vol. 48, No. 66, **Federal Register** 14740, the ERA published a notice in the **Federal Register** that on March 22, 1983 it had executed a Proposed Consent Order with Pittston Petroleum Inc. ("Pittston"), which would not become effective sooner than thirty (30) days after publication of that notice. Pursuant to 10 CFR 205.199J(c), interested persons were invited to submit comments concerning the terms and conditions of the Proposed Consent Order.

As the notice of April 5, 1983 stated, the remedial aspect of the Proposed Consent Order required Pittston to refund an aggregate amount of $1,150,000 to identified No. 2 heating oil reseller customers of Pittston by check or credit memorandum within twenty-five (25) calendar months. The Proposed Consent Order provided other pertinent details, including general procedures to identify those customers eligible to receive refunds and that the amount of the refund was subject to the approval of DOE. Those customers and amounts have been identified and approved by DOE.

Only three comments about the Proposed Consent Order were received, two of which were claims by specific Pittston customers of No. 2 oil for refund. One comment was submitted on behalf of the State of Oregon.

The comment from the State of Oregon did not criticize any aspect of the Proposed Consent Order except the form of relief. The comment suggested that the states should be the recipients of certain funds obtained by the Department of Energy in Consent Orders. While the states may be recipients or relief in appropriate cases, the comment made no indication of why this particular Proposed Consent Order was similar to any other case. Indeed, the Proposed Consent Order terms provided for identification of the particular eligible customers to receive the entire refund of $1,150,000 and the amount of refunds per customer subject to DOE approval. There was no indication by the State of Oregon of involvement by purchase directly or indirectly by that state. The comment did not identify what Oregon end-users purchased directly or indirectly from Pittston, if any (and DOE believes there are none) and the comment did not identify what portion of the refund Oregon or any state should receive.

As stated previously, a specific class of purchaser has already been identified as being eligible to receive the refunds of $1,150,000 and DOE received two notices of claim by putative Pittston customers. Of the two claimants/comments, one is an eligible refund recipient and the other is not.

The Proposed Consent Order is therefore made final and effective on the date of publication of this Notice.

Issued in Philadelphia, Pennsylvania on this 11th day of May, 1983.

Robert J. McKee, Jr.,

Director, Philadelphia Field Office, Economic Regulatory Administration.

[FR Doc. 83-14484 Filed 5-27-83; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 83-Cert-080]

Georgia-Pacific Corp., Application for Certification of the Use of Natural Gas To Displace Fuel Oil

The Georgia-Pacific Corporation (G-P), 133 Peachtree St. N.E. (30303), Atlanta, Georgia 30348, filed an application on May 9, 1983, with the Economic Regulatory Administration (ERA) for certification of an eligible use of natural gas to displace fuel oil at its labelling plant in Cincinnati, Ohio, 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, G-P indicates that the volume of natural gas for which it requests certification is approximately 70 million cubic feet per year. This volume is estimated to displace the use of approximately 12,000 barrels of No. 2 fuel oil (0.20 percent sulfur) per year.

The eligible sellers are Exxon U.S.A., P.O. Box 2810, Houston, Texas 77001; Texas Gas Corporation, 3800 Frederica Street, P.O. Box 1160, Owensboro, Kentucky 45302; and Ohio Gas Marketing Corporation, 3933 Price Road, Newark, Ohio 43055. The gas will be transported by Columbia Gas Transmission Corporation, P.O. Box 1273, Charleston, West Virginia 25325; and Texas Gas Transmission Corporation, 3800 Frederica Street, P.O. Box 1160, Owensboro, Kentucky 42301; and by the Cincinnati Gas and Electric Company, P.O. Box 960, Cincinnati, Ohio 45202; and The Union Light, Heat & Power Company, P.O. Box 32, Covington, Kentucky 41012, local distribution companies.

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 G-P and any person filing comments and will be published in the **Federal Register**

Issued in Washington, D.C., on May 24, 1983.

James W. Workman,

Director Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc.83–14463 Filed 5–27–83; 8:45 am]

BILLING CODE 6450–01–M

Langham Petroleum & Development, Inc.; Action Taken on Consent Order

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of action taken on consent order.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) announces that it has adopted a Consent Order with Langham Petroleum & Development, Inc. as a final order of the Department.

EFFECTIVE DATE: May 26, 1983.

FOR FURTHER INFORMATION CONTACT: Sandra K. Webb, Director, Houston Office, Economic Regulatory Administration, One Allen Center, 500 Dallas Avenue, Suite 660, Houston, Texas 77002; (713) 229–3715.

SUPPLEMENTARY INFORMATION: On April 22, 1983, the ERA published a notice in the **Federal Register** that it had executed a proposed Consent Order with Langham Petroleum & Development, Inc. (Langham) which would not become effective sooner than 30 days after publication of the notice. 48 FR 17371. Pursuant to 10 CFR 205.199J(c), interested persons were invited to submit comments concerning the terms and conditions of the proposed Consent Order.

The Consent Order resolves Langham's potential civil liability arising out of the Mandatory Petroleum Allocation and Price Regulations and related regulations, 10 CFR Parts 205, 210, 211 and 212, in connection with the firm's transactions involving the resale of crude oil and refined petroleum products during the period December 1, 1977 through January 27, 1981. The Consent Order requires Langham to remit $32,000,000 to DOE in installments as follows: $5,000,000 within 180 days of the effective date of the Consent Order and the balance in 15 annual installments of $1,800,000 each. Langham further agrees that to the extent that its actual net revenues exceed net revenues reported in its Form ERA–69 filings by more than 3 percent, Langham will pay $1,000,000 for each full percentage point above 3 percent.

Comments from 14 states were received. None of the states contested the validity of the proposed Consent Order, but addressed the question of the ultimate disposition of the funds to be paid by Langham. The commenters proposed that the funds be distributed to the states for energy-related projects.

Because the comments addressed only the disposition of the funds, the ERA has decided to make the proposed Consent Order final without modification. The ultimate disposition of the funds will depend upon several factors, such as the type of alleged violations underlying the Consent Order and the ability of ERA to identify the persons who ultimately bore the burden of the alleged violations. The states' suggestions regarding the distribution of the funds will be considered in determining the appropriate ultimate disposition.

The proposed Consent Order with Langham Petroleum & Development, Inc., therefore, was made final and effective on May 26, 1983.

Issued on the 26th day of May 1983.

Sandra K. Webb,

Director, Houston Office Economic Regulatory Administration.

[FR Doc. 83–14589 Filed 5–27–83; 8:45 am]

BILLING CODE 6450–01–M

Robert Stephen Langham; Action Taken on Consent Order

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of action, on consent order.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) announces that it has adopted a Consent Order with Robert Stephen Langham as a final order of the Department.

EFFECTIVE DATE: May 26, 1983.

FOR FURTHER INFORMATION CONTACT: Sandra K. Webb, Director, Houston Office, Economic Regulatory Administration, One Allen Center, 500 Dallas Avenue, Suite 660, Houston, Texas 77002; (713) 229–3715.

SUPPLEMENTARY INFORMATION: On April 22, 1983, the ERA published a notice in the **Federal Register** that it had executed a proposed Consent Order with Robert Stephen Langham (R. S. Langham) which would not become effective sooner than 30 days after publication of the notice. 48 FR 17372. Pursuant to 10 CFR 205.199J(c), interested persons were invited to submit comments concerning the terms and conditions of the proposed Consent Order.

The Consent Order resolves R. S. Langham's potential civil liability arising out of the Mandatory Petroleum

Allocation and Price Regulations and related regulations, 10 CFR Parts 205, 210, 211, and 212, during the period December 1, 1977 through January 27, 1981. The Consent Order requires R. S. Langham to pay an amount up to $10,000,000 based upon the after-tax income of R. S. Langham and certain related entities. The amount to be paid will be one-third of the amount by which such income exceeds $13,500,000 over the five year period following the effective date of the Consent Order.

Comments from 12 states were received. None of the states contested the validity of the proposed Consent Order, but addressed the question of the ultimate disposition of the funds to be paid by R. S. Langham. The commenters proposed that the funds be distributed to the states for energy-related projects.

Because the comments addressed only the disposition of the funds, the ERA has decided to make the proposed Consent Order final without modification. The ultimate disposition of the funds will depend upon several factors, such as the type of alleged violations underlying the Consent Order and the ability of ERA to identify the persons who ultimately bore the burden of the alleged violations. The states' suggestions regarding the distribution of the funds will be considered in determining the appropriate ultimate disposition.

The proposed Consent Order with Robert Stephen Langham, therefore, was made final and effective on May 26, 1983.

Issued on the 26th day of May 1983.

Sandra K. Webb,

Director, Houston Office, Economic Regulatory Administration.

[FR Doc. 83-14590 Filed 5-27-83; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. CP81-107-002 and CP81-108-002]

Boundary Gas, Inc.; Second Amendment to Applications

May 24, 1983.

Take notice that on May 2, 1983, Boundary Gas, Inc. (Boundary), 110 Tremont Street, Boston, Massachusetts 02108, filed in Docket Nos. CP81-107-002 and CP81-108-002 a second amendment to its pending applications in Docket Nos. CP81-107-000 and CP81-108-000 pursuant to Sections 3 and 7 of the Natural Gas Act so as to reflect, *inter alia*, a reduction in the quantity of natural gas to be purchased from TransCanada Pipelines Limited (TransCanada) and to be resold to the fourteen Boundary customers an agreement to phase the proposed deliveries of Canadian gas, a reallocation of volumes among the Boundary customers, and corporate name changes affecting two Boundary customers, all as more fully set forth in the second amendment which is on file with the Commission and open to public inspection.

Boundary states that, as a result of the January 27, 1983 decision of the National Energy Board of Canada (NEB) reducing the quantity of gas authorized for export for sale to Boundary, Boundary has amended its precedent agreement with TransCanada and the *pro forma* gas purchase contract and gas sales agreement to reflect the reduced volumes. Boundary states that the total quantity of gas originally sought to be imported was approximately 675,254,000 Mcf to be delivered at a daily rate of 185,000 Mcf per day and that the NEB decision only authorized the exportation of 330,070,000 Mcf of gas to be delivered at a maximum daily rate of 92,500 Mcf.

Boundary further states that, due to anticipated limitations on pipeline capacity at the time the Boundary imports are scheduled to commence [i.e., November 1, 1984], Boundary and TransCanada have agreed that deliveries of gas would commence at reduced quantities and would remain at reduced levels until sufficient pipeline capacity is available to deliver the full amounts authorized. The quantity of gas agreed to be delivered by TransCanada during the initial phase commencing on or about November 1, 1984, is 40,000 Mcf per day, it is said. Further, it is submitted that due to limitations on pipeline capacity in the United States, the 40,000 Mcf per day initial quantity purchased by Boundary would be resold to four Boundary customers as follows: The Brooklyn Union Gas Company (14,721 Mcf per day), New Jersey Natural Gas Company (10,558 Mcf per day), Bay State Gas Company (9,814 Mcf per day) and The Connecticut Light and Power Company (4,907 Mcf per day). It is asserted that at such time as sufficient pipeline capacity is available, deliveries would increase to the full level of 92,500 Mcf per day. Boundary advises that the precedent agreement with TransCanada, *pro forma* gas purchase contract, *pro forma* gas sales agreement, and the memorandum of agreement among the Boundary stockholders have been amended to reflect the aforementioned phased deliveries.

Boundary further states that the allocation of gas among the fourteen Boundary customers during the full delivery phase has been amended as follows:

	New percentage entitlement	Old percentage entitlement	New volumes [1]
The Brooklyn Union Gas Co	.3240	.2254	29,970
Bay State Gas Co	.1351	.1027	12,500
New Jersey Natural Gas Co	.1163	.0785	10,760
Boston Gas Co	.1131	.0752	10,460
The Connecticut Light & Power Co	.1023	.0511	9,460
Consolidated Edison Co. of New York, Inc	.0540	.2254	5,000
National Fuel Gas Supply Corp	.0486	.0487	4,500
Long Island Lighting Co	.0270	.1297	2,500
Essex County Gas Co	.0174	.0174	1,610
Manchester Gas Co	.0168	.0116	1,550
Gas Service, Inc	.0168	.0057	1,550
Valley Gas Co	.0115	.0115	1,060
Berkshire Gas Co	.0114	.0114	1,050
Fitchburg Gas & Electric Light Co	.0057	.0057	530
Total	1.0000	1.0000	92,500

[1] Million cubic feet per day.

Boundary states that this reallocation is based, among other things, upon a greater relative need for the Boundary gas in the New England region and New Jersey in the time frame of the Boundary project. Boundary advises that the *pro forma* gas sales agreement and the Boundary stockholders' memorandum of agreement have been amended to reflect this reallocation.

Finally, Boundary states that the corporate name of Connecticut Gas Company has been changed to The Connecticut Light and Power Company and that the corporate name of Haverhill Gas Company has been changed to Essex County Gas Company. Bay State Gas Company intends to assign its entire interest in the Boundary project to its affiliated company, Granite State Transmission, Inc., which, pursuant to Commission order issued January 11, 1982, in Docket No. CP80-426, is the sole purchaser of natural gas supplies and long-term transportation services from Tennessee Gas Pipeline Company, a Division of Tenneco Inc., for the Bay State group. Boundary states that no name change has any substantive effect on its applications.

Pursuant to the Further Procedural Schedule established by the Presiding Administrative Law Judge at a prehearing conference held on May 9, 1983, in *Boundary Gas, Inc.*, Docket No. CP81-107, *et al.*, hearings on the initial phase of Boundary deliveries will commence on June 28, 1983, at 10:00 a.m.

Any person desiring to be heard or to make any protest with reference to said second amendment to Boundary's applications should on or before June 8, 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 385.213 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. Persons who have previously intervened in this proceeding need not file a new motion to intervene.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-14390 Filed 5-27-83; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 4219-002]

City of Albuquerque, New Mexico; Surrender of Preliminary Permit

May 24, 1983.

Take notice that the City of Albuquerque, New Mexico, Permittee for the proposed Abiquiu Project No. 4219 has requested that its preliminary permit be terminated. The permit was issued on July 15, 1981, and would have expired on June 30, 1983. The project would have been located on the Rio Chama in Rio Arriba County, New Mexico.

The City of Albuquerque through studies, has found, the development of hydropower at Abiquiu to be marginally advantageous. The Permittee has therefore elected not to proceed further.

Permittee filed its request on May 3, 1983. The surrender of the preliminary permit for Project No. 4219 will become effective thirty days from the date of issuance of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-14391 Filed 5-27-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP83-306-000

Columbia Gas Transmission Corp.; Application

May 24, 1983.

Take notice that on May 3, 1983, Columbia Gas Transmission Corporation (Applicant), 1700 MacCorkle Avenue, S.E. Charleston, West Virginia 25314, filed in Docket No. CP83-306-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for The New Jersey Zinc Company, Inc. (NJZ), 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 up to 3,700 dt equivalent of natural gas per day for NJZ on an interruptible basis for six months. Applicant proposes to receive the gas at an existing point of interconnection with the facilities of Atlas Resources, Inc. in Green Township, Indiana County, Pennsylvania, and deliver it to Transcontinental Gas Pipe Line Corporation (Transco) for the account of NJZ at an existing point of delivery in Chapmen Township, Clinton County, Pennsylvania. It is stated that Transco would thereafter deliver the gas to Union Gas Company for the account of NJZ with ultimate delivery to NJZ at or near its plant site in Palmerton, Pennsylvania. Applicant also states that the gas to be transported would be purchased by NJZ from Industrial Energy Services Company in order to resume operation of NJZ's Palmerton, Pennsylvania, ammonia plant.

It is further stated that Applicant's transportation charge for the proposed service is its average system-wide unit storage and transmission costs, exclusive of company-use and unaccounted-for gas, as reflected in Applicant's rate filings which charge is presently 40.11 cents per dt equavalent with retainage for company-use and unaccounted-for gas of 2.85 percent of the total quantity of gas received for the account of NJZ. Applicant's transportation charge is subject to adjustment to reflect revised average system-wide unit storage and transmission costs, exclusive of company-use and unaccounted-for gas, contained in future rate filings by Applicant.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 14, 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 unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-14392 5-27-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER83-516-000]

Connecticut Light and Power Co.; Notice of Filing

May 24, 1983.

The filing Company submits the following:

Take notice that on May 18, 1983, the Connecticut Light and Power Company (CL&P) tendered for filing as an initial rate schedule and agreement (the Agreement) between CL&P, Western Massachusetts Electric Company (WMECO, and together with CL&P, the NU Companies) and Pennsylvania Power and Light Company (PP&L). The Agreement, dated as of March 1, 1983, provides for the NU Companies to sell the PP&L power from the systems of the Northeast Utilities Companies (system power) that may be available on a daily basis (a transaction). CL&P states that the timing of transactions cannot be accurately estimated but that the NU Companies would offer to sell system power to PP&L only when it was economic to do so. PP&L would only accept such offer if it was economical to do so.

PP&L will pay an energy reservation charge to the NU Compaines for each transaction in an amount equal to the megawatthours of system power reserved for PP&L by the NU Companies during each hour of a transaction

multiplied by the energy reservation charge rate which is negotiated prior to each transaction. PP&L will pay any energy charge to the NU Companies for each transaction in an amount equal to the megawatthours delivered by the NU Companies during such transaction times an energy charge rate. The energy charge rate is based on the heat rate and the replacement fuel price of the generating unit(s) which the NU Companies determine to be available to provide energy at the time of a transaction.

CL&P requests an effective date of May 16, 1983, and therefore requests waiver of the Commission's notice requirements.

Copies of this filing have been mailed to WMECO and PP&L.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before June 9, 1983. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kennth F. Plumb,

Secretary.

[FR Doc. 83-14393 Filed 5-27-83; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 3375-001]

Continental Hydro Corp.; Notice of Surrender of Preliminary Permit

May 24, 1983.

Take notice that Continental Hydro Corporation, Permittee for the proposed East Fork Dam Project No. 3375, has requested that its preliminary permit be terminated. The permit was issued on June 9, 1981, and would have expired on May 31, 1983. The project would have been located on the East Fork of the Little Miami River near Batavia, Clermont County, Ohio.

The Permittee filed its request on April 28, 1983, and the surrender of the preliminary permit for Project No. 3375 is deemed accepted 30 days after issuance of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-14394 Filed 5-27-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER83-517-000]

Detroit Edison Co.; Notice of Filing

May 24, 1983

The filing Company submits the following:

Take notice that Detroit Edison (Detroit Edison), on May 18, 1983, tendered for filing a letter agreement dated April 18, 1983, between Detroit Edison and General Public Utilities which constitutes a redetermination of the fixed charge rate applicable to transactions under Amendment No. 6 among Consumers Power Company, The Detroit Edison Company and the Toledo Edison Company, dated June 1, 1982, for the sale of Specific Capacity Power to General Public Utilities. This Amendment has been denoted as The Detroit Edison Company Rate Schedule FERC No. 11. Detroit Edison states that the redetermination of the fixed charge rate was made pursuant to the terms of Amendment No. 6.

Detroit Edison states that the letter agreement establishes the fixed charge rate at 16.325 percent for service provided on and after April 1, 1983, and is subject to redetermination during the term of Amendment No. 6 in accordance with Section 7.12. Detroit Edison states that the redetermination reflects the currently authorized return on equity contained in the Michigan Public Service Commission Order No. U-6949, dated March 31, 1983. This determination will increase the monthly demand charge from $1,173,673 to $1,194,154 in accordance with Sections 7.11 and 7.12(b) of Service Schedule G.

Detroit Edison requests waiver of the notice requirements to permit an effective date of April 1, 1983.

Copies of the filing were served upon Consumers Power Company, the Cleveland Electric Illuminating Company, General Public Utilities Corporation, the Toledo Edison Company, and the Michigan Public Service Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before June 9, 1983. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-14395 Filed 5-27-83; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 5770-001]

Energenics Systems Inc.; Notice of Surrender of Preliminary Permit

May 24, 1983.

Take notice that Energenics Systems Inc., Permittee for the proposed Keyhole Dam Project No. 5770, has requested that its preliminary permit be terminated. The permit was issued on May 25, 1982, and would have expired on November 1, 1983. The project would have been located on the Belle Fourche River in Crook County, Wyoming.

The Permittee filed its request on April 15, 1983, and the surrender of the preliminary permit for Project No. 5770 is deemed accepted 30 days after issuance of this notice.

Kenneth F. Plumb,

Secretary

[FR Doc. 83-14396 Filed 5-27-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER83-515-000]

Minnesota Power & Light Co.; Notice of Filing

May 24, 1983.

The filing Company submits the following:

Take notice that Minnesota Power & Light Company (Minnesota Power) on May 17, 1983, tendered for filing an executed Amendment to Interchange Service Agreement (Rate Schedule FERC No. 118 as supplemented) between Minnesota Power and Superior Water, Light & Power Company (SWL&P).

Minnesota Power states that the executed Amendment provides an administrative clarification as to non-assignment of losses to the SWL&P system relating to regional power pool transactions in which Minnesota Power utilizes SWL&P transmission lines.

Minnesota Power requests an effective date of October 25, 1982, and

therefore requests waiver of the Commission's notice requirements.

Copies of the filing were served upon SWL&P, the Minnesota Public Utilities Commission and the Wisconsin Public Service Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before June 9, 1983. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-14397 Filed 5-27-83; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 5868-000]

Partnership of Cohen, Romano and Rice; Surrender of Preliminary Permit

May 24, 1983.

Take notice that the Partnership of Cohen, Romano and Rice, Permittee for the Old Forge Project No. 5868 located on the Middle Branch of the Moose River in Herkimer County, New York, has requested that its preliminary permit be terminated. The preliminary permit was issued on June 7, 1982, and would have expired on December 31, 1983. The Permittee states that it does not intend to proceed with the feasibility investigations leading to the development of this project.

The Permittee's request was filed on May 2, 1983. The surrender of the permit for Project No. 5868 is in the public interest and is effective 30 days from the date of issuance of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-14398 Filed 5-27-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP83-86-000]

Public Service Company of Colorado; Notice of Complaint

May 24, 1983.

In the matter of Public Service Company of Colorado, Western Slope Gas Company and Cheyenne Light, Fuel and Power Company v. Colorado Interstate Gas Company, Respondent.

Take notice that on May 16, 1983, Public Service Company of Colorado, 550 15th Street, Denver, Colorado 80202; Western Slope Gas Company, One Park Central, Denver, Colorado 80202; and Cheyenne Light, Fuel and Power Company, 108 West 18th Avenue, Cheyenne, Wyoming 82003 (Complainants), filed in the above-captioned docket, pursuant to Section 5(a) of the Natural Gas Act and Commission Rule 206, a Complaint against Colorado Interstate Gas Company (CIG).

In their Complaint, Complainants state that CIG's rates to them are unjust and unreasonable, because they include systemwide storage and transmission costs which should be, but are not, allocated to CIG's customers taking service under CIG's FERC Rate Schedules F-1 and F-2, as well as certain direct industrial sales. Complainants aver that CIG's failure to allocate systemwide storage and transmission costs properly results in CIG's current rates to Complainants and CIG's other transmission system customers being excessive by $14,888,081.00 annually.

The procedures applicable to complaints before the Commission are found in Rule 206 of the Commission's Rules of Practice and Procedure (18 CFR 385.206).

Any person desiring to be heard or to protest said complaint should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before June 23, 1983. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this complaint are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-14399 Filed 5-27-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP81-296-003]

Tennessee Gas Pipeline Co., a Division of Tenneco Inc.; Amendment to Application

May 24, 1983.

Take notice that on May 2, 1983, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP81-296-003 an amendment to its pending application filed in Docket No. CP81-296-000, as amended, pursuant to Section 7(c) of the Natural Gas Act so as to reflect certain changes in the original proposals in this proceeding, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

Tennessee states that in its pending application, as amended, Tennessee requested authority to render a transportation service for fourteen gas companies (Boundary gas customers) which are shareholders of Boundary Gas, Inc. (Boundary), and to construct and operate certain pipeline loop, compression, and measurement facilities to enable Tennessee to transport up to 185,000 Mcf of natural gas per day which Boundary proposed to import from Canada at a point near Niagara Falls, New York, less fuel and shrinkage, to the Boundary gas customers and to receive up to 609,000 Mcf per day of gas Tennessee proposed to import from Canada at Niagara Falls, New York, for its own system supply in Docket Nos. CP81-298-000 and CP81-470-000.

Tennessee states that the instant amendment is filed to reflect the reduced quantities of gas which the National Energy Board of Canada (NEB) has authorized for exportation in its Decision issued January 27, 1983, and the filing with the Commission of an application by Niagara Interstate Pipeline System (NIPS) in Docket No. CP83-170-000, as amended, in Docket No. CP83-170-001, for authorization pursuant to Section 7 of the Natural Gas Act to construct and operate a pipeline system extending from an interconnection with TransCanada Pipelines Limited (TransCanada) near Niagara Falls, New York, to Tamarack, Pennsylvania, which would transport gas received from Canada for Tennessee and others.

Tennessee further states that the NEB authorized, *inter alia*, the exportation of a maximum daily quantity of 92,500 Mcf of gas to be delivered to Boundary, rather than the maximum daily quantity of 185,000 Mcf that had been requested

for export; that Tennessee has entered into a precedent agreement with NIPS for the transportation of up to 500,000 Mcf of gas per day from the Canadian border near Niagara Falls, New York, to the proposed points of interconnection between the NIPS system and Tennessee's system near East Aurora, New York, and Coudersport, Pennsylvania. Tennessee states that such agreement is sufficient to cover the volumes proposed to be imported by Tennessee and Boundary and, if authorized, would eliminate the need for the facilities previously proposed to be constructed in the instant proceeding on Tennessee's Niagara Spur extending from the Canadian border near Niagara Falls, New York, to East Aurora, New York, as well as certain other facilities.

Tennessee states that, in view of the above developments, the facilities downstream of the proposed interconnections with NIPS have been modified to reflect the reduced volumes required to be transported for the Boundary gas customers. Accordingly, by its amendment, Tennessee requests authority to construct and operate the following facilities located in New York, Pennsylvania, New Jersey, Connecticut, Massachusetts, and New Hampshire:

MAIN LINE LOOP

Location	Original designation loop No.	Size (inches)	Miles
MLV 239+4.2 to MLV 240	2	30	8.0
MLV 243 to MLV 243+5.7	3	30	5.7
MLV 246+4.9 to MLV 247	4	30	8.9
MLV 250+3.9 to MLV 251	5	30	6.8
MLV 254+4.5 to MLV 255	6	30	5.0
MLV 258+9.7 to MLV 259+3.7	7	30	7.0
MLV 263 to MLV 264+3.6	8	30	15.2
MLV 314+7.1 to MLV 315-1A	9	30	12.0
MLV 320+11.9 to MLV 321	11	30	5.0
MLV 325 to MLV 325+5.0	12	30	5.0
Total			76.6

LATERAL LINE LOOP

Location	Original loop No.	Size (inches)	Miles
Val 256A-101+3.8 to Val 256-102 (Adams)	15	10¾	6.1
Val 260A-101 to Val 260A-102 (Northampton)	16	12¾	5.7
Val 270B-301+3.0 to Val 270B-302 (Haverhill)	19	12¾	6.4
Val 270B-104+1.9 to Val 270B-104+7.9 (Concord)	18	12¾	6.0
Val 339-101 to Val 339A-102 (Norwalk Replacement)	20	10¾	1.7
Total			25.9

COMPRESSION

Location and county	State	Horsepower
Station 267 Middlesex	MA	[1]1,000
Station 313 Potter	PA	[2]2,000
Station 315 Tioga	PA	[3]1,800
Station 319 Bradford	PA	[1]4,500
Station 325 Sussex	NJ	[2]7,000
Total		16,300

[1] Addition.
[2] Upgrade.
[3] New station.

Measurement and Regulation

Location

White Plains Meter Station (Upgrade)
New Jersey Natural Meter Station (New)
Regulation at MLV 325

Tennessee states that the total estimated cost of the above facilities, based on 1983 dollars, is $126,143,000.

Tennessee also requests authority to transport gas for the Boundary gas customers pursuant to the *pro forma* transportation agreements and tariff in the amended application, involving the maximum daily volumes as follows:

Company	Maximum transportation volume[1] (Mcfd at 14.73 psia)
Redelivered on Tennessee's Niagara Spur: National Fuel Gas Supply Corporation	4,446
Redelivered in Tennessee's Canadian Gas Transportation New York Rate Zone:	
The Brooklyn Union Gas Co	29,119
Consolidated Edison Co of New York, Inc	4,858
Long Island Lighting Co	2,429
New Jersey Natural Gas Co	10,454
Subtotal, New York Rate Zone	46,860
Redelivered in Tennessee's Canadian Gas Transportation New England Rate Zone:	
Granite State Gas Transmission, Inc.[2]	11,879
The Berkshire Gas Co	996
Boston Gas Co	9,940
Connecticut Light & Power Co.[3]	8,990
Fitchburg Gas & Electric	504
Gas Service, Inc	1,473
Essex County Gas Co.[4]	1,530
Manchester Gas Co	1,473
Valley Gas Co	1,007
Subtotal, New England Rate Zone	37,794
Total Daily Transportation Volume	89,100

[1] These volumes reflect the maximum daily volume which Tennessee proposes to transport and deliver for each Boundary gas customer after deduction of a volume required by Tennessee for fuel and use requiremetns in connection with the proposed transportation.
[2] Formerly Bay State Gas Company.
[3] Formerly named the Connecticut Gas Company.
[4] Formerly named Haverhill Gas Company.

Tennesse further states that, because of the present status of the applications before the Commission and the Economic Regulatory Administration (ERA) related to the NIPS project and the lead times required to complete all of the facilities related to the NIPS and the instant application, it is very unlikely that those projects can be completed in time for service to commence with the 1984–85 winter season. Tennessee states that it has, therefore, been requested by four of the Boundary gas customers to render a transportation service commencing with the 1984–85 winter season (referred to as firm initial service) by means of Tennessee's existing facilities and the construction of a portion of the proposed facilities in the instant proceedings.

In order to render the firm initial service commencing with the 1984–85 winter season, Tennessee requests that a certificate of public convenience and necessity be issued by the early fall of 1983 authorizing Tennessee to construct, operate, and lease the following facilities:

MAIN LINE LOOP

Location	Original loop No.	Size (inches)	Miles
MLV 239+4.2 to MLV 240	2	30	8.0
MLV 243 to MLV 243+5.7	3	30	5.7
MLV 246+4.9 to MLV 247	4	30	8.9
MLV 250+3.9 to MLV 251	5	30	6.8
MLV 254+4.5 to MLV 255	6	30	5.0
MLV 258+9.7 to MLV 259+3.7	7	30	7.0
Total			41.4

LEASED COMPRESSION

Location	Horsepower
Val 230B-101 (E. Aurora, N.Y.)	1,000
MLV 233 (Genesee, N.Y.)	3,500
Total	4,500

Measurement

Location

White Plains Meter Station (Upgrade)
New Jersey Natural Meter Station (New)

Tennessee avers that, if a certificate is issued by the early fall of 1983, the above facilities can be completed and ready for service by the 1984–85 winter season. Tennessee states that the estimated cost of the above facilities is $42,812,000 stated in 1983 dollars. Tennessee also states that the above facilities would enable Tennessee to render a maximum daily transportation service of 38,400 Mcf of gas per day. Tennessee states that it would use it existing Niagara Spur facilities to receive gas from TransCanada and that TransCanada has advised Tennessee that, if authorizations are issued by the fall of 1983, TransCanada would be able to install the necessary facilities to provide the firm daily volumes of gas proposed for the interim service.

Tennessee proposes and requests authorization to render the firm initial service to the following customers:

Maximum transportation volumes [1]

[Mcfd at 14.73 psia]

The Brooklyn Union Gas Co	14,132
New Jersey Natural Gas Co	10,136
Granite State Gas Transmission Inc	9,421
Connecticut Light & Power Co	4,711
Total	38,400

[1] These volumes reflect the maximum daily volumes which Tennessee proposes to transport and deliver for each Boundary gas customer after deduction of a volume required by Tennessee for fuel and use requirements in connection with the proposed transportation.

Tennessee further states that the two skid-mounted compressors which it proposes to install in connection with the rendition of the firm initial service would no longer be needed upon completion of the facilities for the proposed service to the Boundary gas customers. Accordingly, Tennessee requests authority pursuant to Section 7(b) of the Natural Gas Act to abandon the above-described skid-mounted compressors upon completion of the facilities required for the proposed service to the fourteen Boundary gas customers.

At a pre-hearing conference held on May 9, 1983 before Presiding Adminstrative Law Judge Bruce L. Birchman in *Boundary Gas Inc.*, Docket Nos. CP81–107, *et al.*, it was decided to set the firm initial service for hearing in accord with a procedural schedule which includes a hearing commencing June 28, 1983.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before June 8, 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 and 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. Except for these persons that have previously been permitted to intervene in this proceeding, any person wishing to become a party herein as to participate in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-14400 Filed 5-27-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP81-298-001]

Tennessee Gas Pipeline Company, a Division of Tenneco Inc.; Amendment to Application

May 24, 1983.

Take notice that on May 2, 1983, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP81–298–001 an amendment to its pending application filed in Docket No. CP81–298–000 pursuant to Section 3 of the Natural Gas Act so as to reflect a change in the maximum daily quantity of natural gas proposed to be imported from Canada to the United States from 300,000 Mcf to 150,000 Mcf, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

Tennessee states that due to export licenses issued by the National Energy Board of Canada (NEB), TransCanada Pipe-Lines Limited (TransCanada) is authorized to export for delivery to Tennessee a total daily maximum quantity of natural gas of only 150,000 Mcf pursuant to the two precedent agreements. Therefore, Tennessee is amending its import applications to reflect this lower quantity.

Tennessee seeks to recover the cost of the gas which it would import under the authorizations requested in its instant application by means of its purchased gas adjustment provision in Article XXIII of the General Terms and Conditions of its FERC Gas Tariff and by means of a waiver of Section 154.38(d)(4) of the Commission's Regulations to the extent that the Commission determines that such waiver is necessary.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before June 8, 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 and 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. Except for those persons that have previously been permitted to intervene, 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. 83-14401 Filed 5-27-83; 8:45 am]

BILLING CODE 6717-01-M

Southeastern Power Administration

Revised Proposed Rate Adjustment, Public Forum, and Opportunities for Public Review and Comment

AGENCY: Southeastern Power Administration (Southeastern), DOE.

ACTION: Notice of revised proposed rate adjustment for Georgia-Alabama Systems of Projects, cancellation of public forum on original proposed rates, notice of public forum and opportunity for review and comment.

SUMMARY: Southeastern proposes to revise existing schedule of rates and charges applicable to the sale of power from the Georgia-Alabama System of Projects effective for a one-year period, October 1, 1983, through September 30, 1984.

Opportunities will be available for interested persons to review the present rates, the revised proposed rates and supporting studies, to participate in a forum and to submit written comments. Southeastern will evaluate all comments received in this process.

DATES: Written comments are due on or before July 22, 1983. A public information and comment forum will be held in Atlanta, Georgia, on July 7, 1983. Persons desiring to speak at the forum should notify Southeastern at least 4 days before the forum is scheduled, so that a list of forum participants can be prepared. Others may speak if time permits.

The public information and comment forum scheduled for June 2, 1983, is cancelled.

ADDRESSES: Five copies of written comments should be submitted to: Administrator, Southeastern Power Administration, Department of Energy, Samuel Elbert Building, Elberton, Georgia 30635. The public information and comment forum for the Georgia-Alabama System of Projects will begin at 10 a.m. on July 7, 1983, in the Hartsfield Conference Room at the Holiday Inn, North-Airport, 1380 Virginia Avenue, Atlanta, Georgia 30320.

FOR FURTHER INFORMATION CONTACT: Leon Jourolmon, Jr., Chief, Division of Fiscal Operations, Southeastern Power Administration, Department of Energy, Samuel Elbert Building, Elberton, Georgia 30635; (404) 283-3261.

SUPPLEMENTARY INFORMATION: The Federal Energy Regulatory Commission (FERC) by order issued April 8, 1981, in Docket No. EF79-3011, confirmed and approved Wholesale Power Rate Schedules GAMF-1-B, GAMF-2-B, ALA-1-B, MISS-1-B, SC-1-B, SC-2-B, CAR-1-B, and CAR-2-B applicable to Georgia-Alabama System of Projects' power for a period ending September 30, 1983. The FERC by order issued April 9, 1982, in Docket No. EF82-3011, confirmed and approved Rate Schedules CAR-1-C as a replacement for CAR-1-B for a period ending September 30, 1983 and eliminated CAR-2-B.

Additional time is needed to negotiate contracts to implement the new written power marketing policy for the Georgia-Alabama System of Projects. Therefore, Southeastern is proposing to establish short-term rates to allow time to negotiate contracts and permit development of appropriate rates applicable to the new policy.

Discussion

Existing rate schedules are predicated upon a March 1979 repayment study and other supporting data all of which are contained in FERC Docket No. EF79-3011, and upon a September 1981 repayment study and other supporting data all of which are contained in FERC Docket No. EF82-3011. The current repayment study prepared in March of 1983 shows that existing rates are not adquate to recover all costs required by present repayment criteria.

On April 18, 1983, SEPA published notice of proposed rate adjustment on the Georgia-Alabama rates. Subsequent to that date, it was determined that the wheeling costs estimated in the repayment study to the Georgia, Alabama, Mississippi, and Gulf Power companies were not adequate.

A revised repayment study with a $6,279,000 revenue increase in each future year over the current repayment study and a $563,000 increase over the repayment study used to support the original proposed adjustment demonstrates that all costs are paid within their repayment life. Therefore, Southeastern is proposing to revise existing rates so as to recover that additional $6,279,000. The increase is primarily due to escalated costs at the generating projects and increased wheeling costs. The overall increase amounts to a 19.1 percent increase in rates, and Southeastern is proposing to increase all applicable rates in the system uniformly by 17.5 percent and to provide a $.06/kw/month additional wheeling charge to the customers directly effected by the increased wheeling charge. It is proposed that revised rate schedules applicable to Customers purchasing power from the Georgia-Alabama System of Projects contain the following unit rates:

PROPOSED UNIT RATES

Dependable capacity/mo-except preference customers Duke area	$1.20
Dependable capacity/mo-preference customers Duke area	2.73
Delivered energy/kwh (mills)	4.29
Energy at projects/kwh (mills)	3.53
Dump and excess energy/kwh (mills)	2.64
Standby capacity/kw/mo	0.33
Standby Use charge/kw/day	0.041
Additional Wheeling charge to preference customers served by Georgia, Alabama, Mississippi, Gulf Power Companies/kw/mo	0.06

The referenced March 1983 current repayment study along with revised repayment study dated May 1983 and previous system repayment studies are available for examination at the Samuel Elbert Building, Elberton, Georgia 30635. Proposed Rate Schedules GAMF-1-C, GAMF-2-C, ALA-1-C, MISS-1-C, SC-1-C, SC-2-C, CAR-1-D, and CAR-2-C (a replacement rate schedule for CAR-2-B, which was eliminated in rate filing contained in FERC Docket No. EF82-3011) are also available.

Issued in Elberton, Georgia, May 18, 1983.

Harry C. Geisinger,

Administrator.

[FR Doc. 83-14403 Filed 5-27-83; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPRM-FRL 2372-6]

Agency Forms Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 3507(a)(2)(B) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.) requires the Agency to publish in the **Federal Register** a notice proposed information collection requests that have been forwarded to the Office of Management and Budget (OMB) for review. The information collection requests listed are available to the public for review and comment.

FOR FURTHER INFORMATION CONTACT: David Bowers; Office of Standards and Regulations; Information Management Section (PM-223); U.S. Environmental Protection Agency; 401 M Street, SW.; Washington, D.C. 20460; telephone (202) 382-2742 or FTS 382-2742.

SUPPLEMENTARY INFORMATION:

Air Programs

• Title: Environmental Radiation Ambient Monitoring System (ERAMS) (EPA ID 0877).

Abstract: The Environmental Radiation Ambient Monitoring System is the only nationwide radiation monitoring network. This system is designed to monitor radioactive fallout, assess population exposure, and take public health actions when necessary. Air, milk and water are analyzed from samples obtained for EPA by state agencies.

Respondents: State and local governments.

Emergency Response Programs

• Title: Spill Prevention Control and Countermeasure Plan and Review (EPA ID 0328).

Abstract: All facilities storing oil in excess of amounts specified in the Clean Water Act must maintain a Spill Prevention Control ans Countermeasure Plan (SPCCP). Facilities experiencing one oil spill of 1,000 gallons or more, or two spills of any size, into navigable waters within 12 months must send their SPCCP to EPA for review for adequacy.

Respondents: Facilities storing oil.

Agency Forms Cleared By OMB Between April 18 and May 18, 1983

EPA ID 0827, Construction Grants Program Information, was cleared on April 18 (OMB #2040-0027).

EPA ID 1014, Certification for Exemption from Effluent Monitoring

Requirements, was cleared on May 18 (OMB #2040-0033).

EPA ID 1015, Certification of Sulfide Pretreatment Standard Applicability, was cleared on May 18 (OMB #2040-0033).

EPA ID 1016, Survey of Nonferrous Metals Manufacturing Industry, Phase 2, was cleared on April 19 (OMB #2040-0035).

EPA ID 1033, State Reports Evaluating Progress in the Clean Water Program, was cleared May 5 (OMB #2040-0036).

Comments on all parts of this notice should be sent to:

David Bowers, U.S. Environmental Protection Agency, Office of Standards and Regulations (PM-223), 401 M Street, SW., Washington, D.C. 20460, or

Anita Ducca, Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building (Room 3228), 726 Jackson Place, NW., Washington, D.C. 20503.

Dated: May 23, 1983.

John Warren,

Acting Chief, Statistical Policy Staff.

[FR Doc. 83-14273 Filed 5-27-83; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL HOME LOAN BANK BOARD

[No. 83-277-A]

Biscayne Federal Savings and Loan Association; Trading Suspension Order

Dated: May 16, 1983.

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice of trading suspension order.

SUMMARY: The Federal Home Loan Bank Board, pursuant to section 12(k) of the Securities Exchange Act of 1934, has temporarily suspended exchange and over-the-counter trading in the securities of Biscayne Federal Savings and Loan Association, Miami, Florida, ("Biscayne Federal"), which is a federally-chartered institution under the receivership of the Federal Savings and Loan Insurance Corporation. The order of trading suspension was adopted pursuant to the Board's subsequent announcement that it is considering the terms and possible effects of bids received for New Biscayne Federal Savings and Loan Association, Miami, Florida, including whether any of the bids will have an effect on the shareholders of Biscayne Federal.

EFFECTIVE DATE: May 16, 1983.

FOR FURTHER INFORMATION CONTACT: John P. Harootunian, Attorney, Securities and Corporate Analysis Division, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552, at 202-377-6415.

SUPPLEMENTARY INFORMATION: The Federal Home Loan Bank Board ("Board"), pursuant to section 12(k) of the Securities Exchange Act of 1934 ("Exchange Act"), Has temporarily suspended exchange and over-the-counter trading in the securities of Biscayne Federal Savings and Loan Association, Miami, Florida ("Biscayne Federal"), a federally-chartered insured institution in receivership, with its principal executive offices located at 1790 Biscayne Boulevard, Miami, Florida, 33132, for a ten-day period commencing at 2:00 p.m. (e.d.s.t.) on May 16, 1983, and terminating at midnight (e.d.s.t.) on May 25, 1983.

The Federal Savings and Loan Insurance Corporation ("FSLIC") was appointed as the receiver of Biscayne Federal on April 6, 1983. The Board suspended for a ten-day period trading in the securities of Biscayne Federal pending a regulatory announcement. Immediately following the Board's issuance of the order of trading suspension, the Board announced that it is considering the terms and possible effects of bids received for New Biscayne Federal, Miami, Florida, including whether any of the bids will have an effect on the shareholders of Biscayne Federal.

The Board cautions broker-dealers, shareholders and prospective purchasers that they should carefully consider the foregoing information along with all other currently available information and any information subsequently issued by Biscayne Federal.

Furthermore, brokers and dealers should be alert to the fact that, pursuant to Rule 15c2-11 under the Exchange Act, at the termination of the trading suspension, no quotation may be entered unless and until they have strictly complied with all of the provisions of such rule. If any broker or dealer has any questions as to whether or not he has complied with such rule, he should not enter any quotations but immediately contact the staff of the Board's Office of General Counsel, Division of Securities and Corporate Analysis, in Washington, D.C. If any broker or dealer is uncertain as to what is required by Rule 15c2-11, he should refrain from entering quotations relating to the securities in question until such time as he has familiarized himself with such rule and is certain that all of its provisions have been met. If any broker or dealer enters any quotation which is in violation of such rule, the Board will consider the need for prompt enforcement action.

Any broker-dealer or other person who has any information which may relate to this matter is encouraged to call the Board's Office of General Counsel, Divsion of Securities and Corporate analysis, at (202) 377-6415.

In the matter of trading in the securities of Biscayne Federal Savings and Loan Association, Miami, Florida, FHLBB No. 5999, Securities Exchange Act of 1934 Section 12(k). Order of trading suspension; Federal Home Loan Bank Board, Re: Resolution No. 83-277, dated May 16, 1983.

The Federal Home Loan Bank Board ("Board") intends to make a regulatory announcement which will relate to the securities of Biscayne Federal Savings and Loan Association, Miami, Florida ("Biscayne Federal"), an association for which the Federal Savings and Loan Insurance Corporation is the receiver. The Board is of the opinion that the public interest and the protection of investors require a summary suspension of trading in the securities of Biscayne Federal.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that exchange trading and over-the-counter trading in the securities of Biscayne Federal are suspended, for a period of ten days, from 2:00 p.m. (e.d.s.t.) on May 16, 1983, and terminating at midnight (e.d.s.t.) on May 25, 1983.

By the Federal Home Loan Bank Board.

Gregory B. Smith,

Acting Secretary.

[FR Doc. 83-14476 Filed 5-27-83; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL RESERVE SYSTEM

Acquisition of Bank Shares by Bank Holding Companies; Financial Growth Systems, Inc. et al.

The companies listed in this notice have applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire voting shares or assets of a bank. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank indicated for that application. With respect to

each application, interested persons may express their views in writing to the address indicated for that application. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Financial Growth Systems, Inc.*, Inverness, Flordia; to acquire 100 percent of the voting shares or assets of Citizens First National Bank of Hernando County, Hernando County, Florida. Comments on this application must be received not later than June 23, 1983.

2. *SouthTrust Corporation*, Birmingham, Alabama; to acquire 80 percent of the voting shares or assets of The First Bank of Alabaster, Alabaster, Alabama. Comments on this application must be received not later than June 23, 1983.

Board of Governors of the Federal Reserve System, May 24, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-14365 Filed 5-27-83; 8:45 am]

BILLING CODE 6210-01-M

Bank Holding Company; Proposed de Novo Nonbank Activities; BankAmerica Corp. et al.

The organization identified in this notice has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(1) of the Board's Regulation Y (12 CFR 225.4(b)(1)), for permission to engage *de novo* (or continue to engage in an activity earlier commenced *de novo*), directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to the application, interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any comment on the application that requests a hearing must include a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may by inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated. Comments and requests for hearings should identify clearly the specific application to which they relate, and should be submitted in writing and received by the appropriate Federal Reserve Bank not later than the date indicated.

A. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 400 Sansome Street, San Francisco, California 94120:

1. *BankAmerica Corporation*, San Francisco, California (securities brokerage and incidental activities; *de novo* offices; all fifty (50) states and the District of Columbia): To engage, through its indirect subsidiary, Charles Schwab & Co., Inc., in the activities of securities brokerage, consisting principally of buying and selling securities solely upon the order and for the account of customers, and of extending margin credit in conformity with Regulation T. These activities will be conducted from five *de novo* offices located in Bakersfield, Fresno, Modesto and Stockton, California and New York, New York; each of the five proposed offices will be serving all fifty (50) states and the District of Columbia. Comments on this application must be received not later than June 22, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-14387 Filed 5-27-83; 8:45 am]

BILLING CODE 6210-01-M

Formation of Bank Holding Companies; First Lacon Corp. et al.

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. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Lacon Corp.*, Lacon, Illinois; to become a bank holding company by acquiring 80 percent of the voting shares of The First National Bank of Lacon, Lacon, Illinois. Comments on this application must be received not later than June 22, 1983.

2. *Halbur Bancshares, Inc.*, Halbur, Iowa; to become a bank holding company by acquiring 90 percent or more of the voting shares of Farmers Savings Bank, Halbur, Iowa. Comments on this application must be received not later than June 20, 1983.

3. *Illini Financial Corp.*, Galesburg, Illinois; to become a bank holding company by acquiring 90 percent of the voting shares of Community Bank of Galesburg, Galesburg, Illinois. Comments on this application must be received not later than June 22, 1983.

B. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Webster Bancorp, Inc.*, Clay, Kentucky; to become a bank holding company by acquiring 80 percent of the voting shares of The Farmers Bank, Clay, Kentucky. Comments on this application must be received not later than June 23, 1983.

Board of Governors of the Federal Reserve System, May 24, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-14388 Filed 5-27-83; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 75N-0184; DESI 597]

Certain Drug Products Containing an Anticholinergic in Combination With a Barbiturate; Drugs for Human Use; Drug Efficacy Study Implementation; Revocation of Exemption; Opportunity for Hearing

Correction

In FR Doc. 83-12136 beginning on page 20495 in the issue of Friday, May 6, 1983, make the following corrections:

1. On page 20496, middle column, second complete paragraph, second line, "43 FR 27490" should have read "43 FR 26490".

2. Same page, third column, sixth paragraph, fifth line, "Warton Laboratories, Inc." should have read "Wharton Laboratories, Inc.".

3. On page 20500, first column, in the table for Epigastric Pain, footnote 2, the symbol used is "≦".

4. On the same page, middle column, twenty seven lines from the bottom of the page, the equation should have read "P>.01".

BILLING CODE 1505-01-M

[Docket No. 82N-0373]

Clinical Studies of Effects of Orphan Products; Grants

Correction

In FR Doc. 83-12445, beginning on page 20992 in the issue of Tuesday, May 10, 1983 make the following correction.

On page 20993, first column, the first word of the second complete paragraph reading "Ward" should read "Award".

BILLING CODE 1505-01-M

[Docket No. 83N-0081]

Codex Standard for Dried Edible Fungi

Correction

In FR Doc. 83-12245 beginning on page 20994, in the issue of Tuesday, May 10, 1983, make the following correction.

On page 20994, third column, directly above paragraph "3.1", the heading "*Essential Quality Factors*" should read "*3. Essential Quality Factors*".

BILLING CODE 1505-01-M

Advisory Committee; Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also sets forth a summary of the procedures governing committee meetings and methods by which interested persons may participate in open public hearings conducted by the committees and is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I)), and FDA regulations (21 CFR Part 14) relating to advisory committees. The following advisory committee meeting is announced:

Pulmonary-Allergy Drugs Advisory Committee

Date, time, and place. June 20, 8 a.m., Conference Rm. D, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, 8 a.m. to 9 a.m.; open committee discussion, 9 a.m. to 12 m.; closed committee deliberations, 1 p.m. to 4 p.m.; Conrad J. Ledet, National Center for Drugs and Biologics (HFN-160), Food and Drug Administration; 5600 Fishers Lane, Rockville, MD 20857, 301-443-3500. Any special arrangements or accommodations should be made with the contact person listed above by June 10.

General function of the committee. The committee reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational prescription drugs for use in the treatment of pulmonary disease and diseases with allergic and/or immunologic mechanisms.

Agenda—open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee.

Open committee discussion. The committee will discuss sulfiting agents used as antioxidants in drug products.

Closed committee deliberations. The committee will discuss pharmacokinetics and labeling of 24-hour sustained release theophylline preparations. Trade secret and confidential commerical information relevant to pending new drug applications for 24-hour sustained release theophylline preparations will be reviewed. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairman determines will facilitate the committee's work.

Meeting of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral representation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairman's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

A list of committee members and summary minutes of meetings may be requested from the Dockets Managment Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday. The FDA regulations relating to public advisory committees may be found in 21 CFR Part 14.

The Commissioner, with the concurrence of the Chief Counsel, has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA), as amended by the Government in the Sunshine Act (Pub. L. 94-409), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commerical or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, notably deliberative sessions to formulate advice and recommendations to the agency on matters that do not independently justify closing.

Dated: May 24, 1983.

Mark Novitch,

Acting Commissioner of Food and Drugs.

[FR Doc. 83-14412 Filed 5-27-83; 8:45 am]

BILLING CODE 4160-01-M

Blood Products Advisory Committee; Request for Nominations for Representatives of Consumer and Industry Interests

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting nominations for one consumer and one industry representative to serve on the Blood Products Advisory Committee of the National Center for Drugs and Biologics when it serves as a medical device panel under the Medical Device Amendments of 1976 (21 U.S.C. 360c–360k). Nominations are requested for these newly authorized positions under the revised charter of the committee. FDA has a special interest in ensuring that women, minority groups, the physically handicapped, and small businesses are adequately represented on advisory committees and therefore extends particular encouragement to nominations for appropriately qualified female, minority, and physically handicapped candidates, and for nominations from small businesses that manufacture medical devices subject to the regulations.

DATE: Nominations by July 15, 1983.

ADDRESS: All nominations and curricula vitae for the consumer representative must be submitted in writing to Naomi Kulakow, Office of Consumer Affairs (HFE–40), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

All nominations and curricula vitae, which should include nominee's office address and telephone number, for the industry representative must be submitted in writing to Mary Ann Tourault, National Center for Drugs and Biologics, Office of Biologics (HFN–830), 8800 Rockville Pike, Bethesda, MD 20205.

FOR FURTHER INFORMATION CONTACT: For consumer interests: Naomi Kulakow, at the address above (301–443–5006).

For industry interests: Mary Ann Tourault at the address above (301–496–5241).

SUPPLEMENTARY INFORMATION: FDA is requesting nominations for members representing consumer and industry interests for the Blood Products Advisory Committee when it serves as a medical device panel under the Medical Device Amendments of 1976. The revised charter of the committee was signed by the Secretary of health and Human Services on March 11, 1983. Devices that may come before the committee are those dedicated systems for use in collecting, processing, or administering licensed biologicals such as blood bank products and also unlicensed in vitro diagnostic devices (reagents) intended for use in the processing or administration of licensed biologicals. The function of the committee when serving as a medical device panel is to: (1) Review and evaluate available data concerning the safety and effectiveness of devices currently in use, (2) advise the Commissioner of Food and Drugs on recommended classification of these devices into one of three regulatory categories, (3) recommend the assignment of a priority for the application of regulatory requirements for devices classified in the standards or premarket approval category, (4) advise on any possible risks to health associated with the use of devices, (5) advise on formulation of product development protocols and review premarket approval applications for these devices classified in the premarket approval category, (6) review classification of devices to recommend changes in classification as appropriate, (7) recommend exemption to certain devices from the application of portions of the act, (8) advise on the necessity to ban a device, and (9) respond to requests from the agency to review and make recommendations on specific issues or problems concerning the safety and effectiveness of devices.

Consumer and Industry Representation

Section 513 of the act (21 U.S.C. 360c) provides that each medical device panel include as members one nonvoting representative of consumer interests and one nonvoting representative of interests of the device manufacturing industry.

Nomination Procedure

Any interested person may nominate one or more qualified persons to represent consumer interests as identified in this notice. To be eligible for selection, applicants' experience and/or education will be evaluated against Federal Civil Service criteria for the position to which they will be appointed.

Any organization in the medical device manufacturing industry ("industry interests") wishing to participate in the selection of an appropriate member of a particular committee, panel, or section may nominate one or more qualified persons to represent industry interests. Persons who nominate themselves as industrial representatives will not participate in the selection process. Therefore, it is recommended that all nominations be made by an organization or firm. Nominations shall include a complete curriculum vitae of each nominee and shall state that the nominee is aware of the nomination, is willing to serve as a member, and in the case of the consumer representative, appears to have no conflict of interest. The term of office is 4 years.

Selection Procedure

Selection of members representing consumer interests is conducted through procedures developed under 21 CFR 14.84(c). The procedures include use of a consortium of consumer organizations that recommends two candidates to the agency for the agency's selection.

Regarding nominations for members representing the interests of the device manufacturing industry, a letter will be

sent to each organization that has made a nomination and to those organizations indicating an interest in participating in the selection process, together with a complete list of all such organizations and the nominees. This letter will state that is it each organization's responsibility to consult with the others in selecting a single member representing industry interests for that particular committee within 60 days after receipt of the letter.

This notice is issued under the Federal Advisory Committee Act (Pub. L. 92-463), 86 Stat. 770-776 (5 U.S.C. App. I) and 21 CFR Part 14, on advisory committes.

Dated: May 23, 1983.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 83-14413 Filed 5-27-83; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 83m-0061]

C. C. Kelly Enterprises; Premarket Approval of Eyerisol Salt Capsule System™

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application for premarket approval under the Medical Device Amendments of 1976 of the EYERISOL Salt Capsule System™ for use in heat disinfection of all soft (hydrophilic) contact lenses, sponsored by C. C. Kelly Enterprises, Huntington Beach, CA. The EYERISOL Salt Capsule System™ is intended for use in the preparation of 200 milliliters (mL) of normal saline (0.9 percent) solution to be used in heat disinfection of all soft (hydrophilic) contact lenses. After reviewing the recommendation of the Ophthalmic Device Section of the Ophthalmic; Ear, Nose, and Throat; and Dental Devices Panel, FDA notified the sponsor that the application was approved because the device had been shown to be safe and effective for use as recommended in the submitted labeling.

DATE: Petitions for administrative review by June 30, 1983.

ADDRESS: Requests for copies of the summary of safety and effectiveness data and petitions for administrative review may be sent to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Charles H. Kyper, National Center for Devices and Radiological Health (HFK-402), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7445.

SUPPLEMENTARY INFORMATION: On May 18, 1982, C. C. Kelly Enterprises, Huntington Beach, CA, submitted to FDA an application for premarket approval of the EYERISOL Salt Capsule System™ for use in heat disinfection of all soft (hydrophilic) contact lenses. The application was reviewed by the Ophthalmic Device Section of the Ophthalmic; Ear, Nose, and Throat; and Dental Devices Panel, an FDA advisory committee, which recommended approval of the application. On February 23, 1983, FDA approved the application by a letter to the sponsor from the Associate Director for Device Evaluation of the Office of Medical Devices. FDA determined that sale and distribution of the device to patients through eye care practitioners was necessary to provide reasonable assurance of the safe and effective use of the device. Therefore, as a condition of approval, FDA restricted the device to sale and distribution through eye care practitioners.

Before enactment of the Medical Device Amendments of 1976 (the amendments) (Pub. L. 94-295, 90 Stat. 539-583), lens care solutions and related products for preparing such solutions for use in heat disinfection of soft (hydrophilic) contact lenses were regulated as new drugs. Because the amendments broadened the definition of the term "device" in section 201(h) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(h)), such products are now regulated as class III devices (premarket approval). As FDA explained in a notice published in the **Federal Register** of December 16, 1977 (42 FR 63472), the amendments provide transitional provisions to ensure continuation of premarket approval requirements for class III devices formerly considered new drugs. Furthermore, FDA requires, as a condition to approval, that sponsors of applications for premarket approval of soft contact lenses and accessory lens care products comply with the records and reports provisions of Subpart D of Part 310 (21 CFR Part 310) until these provisions are replaced by similar requirements under the amendments.

A summary of the safety and effectiveness data on which FDA's approval is based is on file in the Dockets Management Branch (address above) and is available upon request from that office. A copy of all approved final labeling is available for public inspection at the Office of Medical Devices—contact Charles H. Kyper (HFK-402), address above. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

The labeling of the EYERISOL Salt Capsule System™ states that the solution prepared from the salt capsules is designed for use in heat disinfection of all soft (hydrophilic) contact lenses. Sponsors of any soft (hydrophilic) contact lenses that have been approved for marketing and whose approved labeling provides for the use of heat disinfection are advised that whenever FDA publishes a notice in the **Federal Register** of the agency's approval of a new solution for use with an approved soft contact lens, the sponsor of each lens shall correct its labeling to refer to the new solution at the next printing or at such other time as FDA prescribes by letter to the sponsor. A sponsor who fails to update the restrictive labeling may violate the misbranding provisions of section 502 of the act (21 U.S.C. 352) as well as the Federal Trade Commission Act (15 U.S.C. 41-58), as amended by the Magnuson-Moss Warranty-Federal Trade Commission Improvement Act (Pub. L. 93-637). Furthermore, failure to update the restrictive labeling to refer to new salt capsules that may be used with an approved lens may be grounds for withdrawing approval of the application for the lens under section 515(e)(1)(F) of the act (21 U.S.C 360e(e)(1)(F)). The corrected labeling shall state that the EYERISOL Salt Capsule System™ is sold only through eye care practitioners.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of FDA's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and of FDA's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration of FDA action under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish notice of its decision in the

Federal Register. If FDA grants the petition, the notice will state the issues to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before June 30, 1983, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 23, 1983.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 83-14414 Filed 5-27-83; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

Medicaid Program; Medicaid Management Information Systems; Performance Standards

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

ACTION: General notice.

SUMMARY: The purpose of this notice is to respond to the comments we received on the Medicaid Management Information Systems Performance Standards that we published in a notice with comment period on June 30, 1981 (46 FR 33653).

FOR FURTHER INFORMATION CONTACT: Newton Dikoff, (301) 594-8190.

SUPPLEMENTARY INFORMATION: Section 1903(a)(3) of the Social Security Act (42 U.S.C. 1396b(a)(3)) authorizes Federal matching funds at 75 percent for the operation by States of approved Medicaid Management Information Systems (MMIS), which are mechanized claims processing and information retrieval systems designed in accordance with basic Federal guidelines. The purpose of these systems is to provide more efficient, economical and effective administration of State Medicaid plans.

On March 5, 1980, we published amendments to regulations (42 CFR Part 433, Subpart C) to implement section 1903(a)(3) of the Act (45 FR 14211). Those regulations require us to publish for public comment in the **Federal Register** changes we make in the conditions used for approval and periodic reapprovals of systems, including new performance standards. We then must issue the final requirement in the State Medicaid Manual (SMM) (referred to as the Medical Assistance Manual in 42 CFR 433.115), and allow an appropriate period for the State agencies to meet the requirement.

Section 1903(r) of the Social Security Act, 42 U.S.C. 1396b(r), as enacted by section 901 of the Mental Health Systems Act, Pub. L. 96-398 (October 7, 1980), requires us to review each system yearly to determine whether it meets performance standards and system requirements. Changes to performance standards and system requirements must be published at least one quarter before the fiscal year in which we conduct each yearly systems review. We must reduce Federal financial participation (FFP) if standards or system requirements are not met. The requirements of that legislation provide for incremental reductions of FFP in State expenditures for operating an MMIS from 75 percent to 50 percent if a State MMIS does not meet the performance standards or system requirements. (The law requires FFP to be reduced by no less than 5 percent and by no more than 25 percent. Further, a State's FFP may not be reduced by more than 10 percent in any one-year period.) We published a notice of proposed rulemaking on this subject (reduction of FFP) on March 3, 1983 (48 FR 9038).

On June 30, 1981, we published performance standards to be used during the reapproval process starting in fiscal year 1982 (46 FR 33653). We solicited comments on those standards. The purpose of this notice is to respond to the comments we received.

Analysis and Response to Comments

We received 31 comments from nine entities: eight States and one hospital. A number of comments concerned the system performance review (SPR) materials as published in the SMM, rather than the material published in the notice. The SPR materials were developed to implement the reapproval process and are the materials from which the MMIS performance standards in the **Federal Register** were derived. Those comments were directed at specific methodological issues on conducting the MMIS system performance review. We have relayed the concerns expressed in those comments to the HCFA Regional Offices and to the State advisory groups and have modified the system performance review for fiscal year 1983 as appropriate. Those modifications were sent to the States on June 24, 1982, meeting the requirement that States must be notified of changes in conditions of reapproval at least three months before the beginning of the fiscal year 1983 review period. Thus, we already have acted on many of the concerns submitted by the commenters through modifications that have been made to the SPR materials currently in use for fiscal year 1983.

The standards, elements and factors are very technical in nature and we believe there is no need to repeat them in this notice in detail as the affected sector has a working knowledge of them. Anyone interested in reviewing all the standards, elements and factors may obtain a copy of Part 11 of the SMM by telephoning the Inquiries Staff of the Bureau of Program Operations at (301) 594-8715. Individuals with questions concerning the performance standards should call Newton Dikoff at (301) 594-8190.

Below is a discussion of the comments. The order of the comments is based on the number of the standard at which the comment was directed.

1. Standard 1—Recipient Eligibility Information

a. Two commenters were concerned that failure to meet the requirements for making accurate eligibility determinations would result in the State being penalized twice for the same failure (once under the Medicaid quality control program and a second time under the MMIS review). One of the commenters stated that the State should be accountable only to the extent that the MMIS recipient eligibility data base reflects accurate eligibility data and the application of that data to the entire MMIS process is accurate.

With respect to the latter comment, we view the accurate determination of individual eligibility as critical to the proper payment of Medicaid claims. As the basic, initial step in claims processing and a highly frequent cause of inappropriate payments, eligibility determinations are a key element in the effective administration of State medical assistance programs. We do not consider an MMIS burdened by a seriously flawed eligibility process to be capable of quality operations deserving 75 percent FFP. Therefore, this impact has convinced us of the need to include eligibility case error rates in the SPR.

Concerning the issue of a double penalty, we believe there is a need for certain key activities to be included in multiple HCFA evaluation processes. When the activities have broad effects on both the administrative and program aspects of medical assistance, it would be inappropriate to ignore their total program impact. In the specific case of

potential penalties under Medicaid quality control (MQC) and SPR for poor eligibility determinations. MQC is restricted to medical assistance payments, while SPR is limited to MMIE operational administrative funding. Therefore, failure to meet the reqirements for making accurate eligibility determinations would not result in a State's being subjected to the same penalty twice for the same failure. The different impacts of the State deficiency are therefore appropriately addressed by the different evaluation programs.

b. One commenter noted that the law in his State prohibits the release of eligibility data except to county hospitals, making it impossible to comply with the factor requiring timely responses to provider requests for eligibility data. The commenter requested we change the factor so that the State could comply; otherwise, it would have to seek a specific exemption from it.

If a State law or policy forbids an activity assessed by the SPR but not required *per se* as a condition for Federal funding, we will consider the State's performance acceptable. There is no need for a State to seek a formal waiver of the requirement. However, a State should inform the servicing HCFA regional office of its law or policy that prohibits the activity that is subject for review by the SPR. This should be done as early as possible in the review period so that the activity can be removed from consideration before the review of the activity in question begins.

c. One commenter stated that there is a potential conflict between Standard 1, Element A and Standard 7, Element O. The former requires responsiveness to provider requests for eligibility data; the latter requires adequate internal system integrity and safeguards for information on recipients. The commenter recommended that Element A incorporate a reference to Element O and provide for a clear and distinct compatibility between the two elements. Also, HCFA should provide technical assistance to the States so that they are not in the untenable position of trying to comply with potentially conflicting standards.

We have eliminated the SPR factors under Standard 1, Element A, which measured timely and accurate response to provider requests for eligibility data. This change was due, in part, to the comment received. Also, it proved quite difficult to assess performance under those factors and the results indicated that no significant problems existed in that area. The requirements remain concerning safeguards and limitations related to disclosing information on recipient eligibility data.

d. One commenter stated that if HCFA insists on using the Medicaid quality control (MQC) eligibility error rates as a standard, the acceptable performance level should be comparable to that of MQC; i.e., the error rate should be no greater than the 4 percent error rate required under the Michel Amendment to the Department of Health and Human Resources appropriations act, the Fiscal Year 1980 Labor-HEW Appropriation bill (Pub. L. 96–123). (Note: The MQC error rate was changed to 3 percent by section 133 of the Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L. 97–248, enacted September 3, 1982); that section is effective for periods beginning April 1, 1983. This change does not affect the comment.)

We do not agree. The MMIS performance standards are designed to improve overall performance of mechanized claims processing systems and to encourage States to achieve savings in the Medicaid program. It is appropriate to treat MQC differently from MMIS because although Congress has mandated that there be a fixed eligibility error rate in MQC, Congress also gave the Department the discretion to establish the performance standards it uses for MMIS in section 1903(r) of the Act without mandating that a fixed error level be used. The absolute cutoff used by MQC is approprite for reviewing eligibility as an isolated activity. SPR, however, views eligibility in a systems context. The SPR process recognizes a broad range of performance. In any given functional area performance can fall below the normal level without necessarily resulting in failure. In applying the MQC error rate, the SPR uses a sliding scale, recognizing that higher error rates progressively undermine the MMIS's value. By contrast, MQC does not provide for a flexible range of performance. In line with the Department's commitment to maximize State flexibility, we believe it is appropriate to use a floating (not fixed) error rate as the method most responsive to State conditions and most consistent with State flexibility. In the absence of a statutory requirement or compelling reason, we have taken this approach to provide the desired flexibility in deriving the appropriate level for proper performance.

e. Two commenters suggested that the review requirement for factors 1B1 and 1B2 should be changed to require review of the entire universe only when it is less than eight items.

We agree with this comment. The review requirement for factors 1B1 and 1B2 was changed from a review of the entire universe to a sample of the universe. If the universe is eight or less, all items in the universe must be reviewed.

2. Standard 3—Timely Claims Processing

a. One commenter stated that the word "timely," used in several places in Standard 3, should be further defined to specify the average time periods by which the systems must comply.

The SPR materials already contain the time periods by which the system must comply and the States have this information. The notice published on June 30, 1981 contained illustrative factors that also included specifications on average time periods by which the systems must comply.

b. One commenter stated that he believed that Element F of Standard 3 should use the word "provider" rather than "practitioner".

We do not agree. In this instance we have made the SPR consistent with the regulations at 42 CFR 447.45. The regulations explain the use of the word "practitioner" and specifically exlude, at § 447.45(b)(4), providers, health maintenance organizations, hospital cooperative shared services organizations, and any public entities.

c. One commenter stated that clean claims should be paid or denied, as appropriate, within 15 days of receipt, rather than within 30 days of receipt.

We have retained the 30-day requirement, based upon the fact that Congress established this as the standard for the State plan requirement (42 U.S.C. 1396a(a)(37)). We believe that our experience with those requirements and our review procedures has shown that this continues to be a reasonable time period for use in the standard for the payment or denial of clean claims.

3. Standard 4—Accurate Claims Processing and Review

One commenter was concerned about the extent of the definition of a provider "signature or certification", especially now that there is a movement toward magnetic tape and electronic claims submittal. The commenter assumed that provider certifications are acceptable in the absence of hard copy submittals containing signatures.

We believe the commenter's concerns are settled by the SPR and existing regulations. Current regulations (42 CFR 455.18 and 455.19) are specific about what can be considered "signature or certification". All provider claims forms must be imprinted with a statement of certification and signed by the provider. An acceptable alternative method is to

imprint the wording on the provider's check or warrant above the space where the provider endorses the check or warrant. In the case of magnetic tape and electronic claims submittal, this alternative is appropriate in establishing the required link between claim submission and payment. In addition, the SPR requires written agreements between States and providers or their billing services regarding the specific requirements for acceptable electronic billing.

4. Standard 5—Management and Administrative Reporting Subsystem

a. One commenter suggested that the requirement for the HCFA–80 (Quarterly Report on Sterilization and Hysterectomies) be modified to allow changes or that the requirement for the report be deleted because of possible changes in the sterilization regulations.

The HCFA–80 report was removed as a reporting requirement from the SPR and from the Medicaid program in general for fiscal years 1982 and 1983. If it is used again, we will review it carefully to ensure it does not conflict with current regulations.

b. One commenter believed that because of potential postal delays, the postmark date on a required report should be used instead of the date of receipt to measure timely submission of reports.

Use of the postmark date has sometimes been found to be unreliable, as in the case of metered mail, when used to determine timely submission of reports. The existing method of evaluation of timely submission of reports is reasonable; it includes a five-day tolerance following the established due date for the reports in order to allow for postal delays. We believe that this method will adequately handle situations in which delivery is delayed. Therefore, we are not adopting the suggestion in lieu of our own method of dealing with postal delays because we believe the five-day tolerance to be sufficient. If extraordinary conditions can be documented by the States, they would be taken into consideration in establishing the actual SPR performance levels.

c. One commenter desired the evaluation of the HCFA–156 (Quarterly Child Health Status Report) be postponed until the State finishes automating its case management and data system, which will result in an automated HCFA–156.

The HCFA–156 report has been discontinued as a reporting requirement from the SPR and from the Medicaid program in general for fiscal years 1982 and 1983.

d. One commenter expressed problems with the term "missing signature" in the instructions in the SPR because many reports no longer require signatures.

We agree with this comment and have revised the current SPR and clarified the instructions so that only in the cases where a signature is required will the term "missing signature" apply.

e. Two commenters believed that a review of an ongoing use of a Management and Administrative Reporting Subsystem (MARS) by State management staff for third party collection was inappropriate.

We agree with this comment. This review factor has been revised. The current SPR requires that the State demonstrate that management staff utilize the MARS capabilities to perform 10 of 21 functions as specified in the MMIS General Systems Design (GSD). Thus, the State is not restricted to demonstrating the capability to perform only certain specified functions, but is given a choice. It can demonstrate adequate use of any 10 of the 21 functions for a satisfactory performance result.

f. Another commenter suggested that the review of State use of MARS by State management staff should be limited to the use of MARS reports for policy/action implications.

We accept this comment. Earlier, HCFA required specific applications for the individual MARS reports. Subsequently, HCFA changed the requirement and gave States the opportunity to use the reports as specified within the context of the functions set out in the MMIS GSD. In the GSD are 21 functions that represent the policy/action implications. The use of the MARS report for policy/action implications is tantamount to the State's analysis of the reports to determine the impact the data have upon a State's current policies. The report analysis of selected functions will enable the State to decide if any action should be taken to make its policies more efficient and effective. The current SPR materials require that the State demonstrate that management staff perform the 10 of 21 specified functions. These functions, generally, are analysis-type functions; e.g., analysis of various areas of expenditure to determine the greatest areas of cost in comparison to the return in services and providing data essential to the development and formulation of program policies. The changed requirement permits HCFA to limit its evaluations. The change also allows States to use the MARS to support the specified functions in order to provide greater flexibility in the use of those reports for policy/action implications.

5. Standard 6—Requirements for a Surveillance and Utilization Review Subsystem (S/URS)

a. One commenter believed it was inequitable to apply a quarterly provider report cycle standard for some States and a monthly cycle standard for others. The commenter requested that the same standard be applied to all States regardless of the original MMIS certification basis. Another commenter wanted to know how a State knows whether its original MMIS certification was based on a requirement to produce the reports on a monthly or quarterly basis.

Our response to these comments was to change the requirement in the SPR. It is now only necessary to generate provider reports on at least a quarterly cycle. This requirement is now the same for all States.

b. One commenter wanted clarification of the term "exception process". He requested that this term be defined to relate to the Exception Ranking Report.

We do not agree with the latter part of this comment, but we will clarify the term. The term "exception process" refers to identification of potential misutilizers of the State's Medicaid program through reports. The process and reports may vary from State to State and it would be confusing to be more detailed in relating the term "exception process" to a specifically titled report.

c. One commenter wanted clarification of how to determine the number of minimum reviews of active recipients for S/URS as indicated in factor 6K1 of the SPR. He stated that we needed to clarify to which quarter or to which run the number of reviews relate.

We agree with this comment. We have clarified in the current SPR that a State must review each quarter at least .0001 (.01%) of the total body of active recipients but not less than 25. The value should be computed from the State's most recent eligibility data showing a total of active recipients that does not duplicate any recipients.

d. One commenter requested a definition of what is meant by statistical factors and what is meant by medical factors as they affect case review in factor 6K1(d).

Statistical factors involve the analysis of the data relating to cases previously identified as potentially fraudulent or abusive. The analysis should take into consideration the quantitative factors concerning patterns of care for recipients and provider utilization.

Statistical factors also involve analyzing patterns of care and utilization (such as the number of office visits, or the number of prescribed drugs).

Medical factors are those that take into consideration the qualitative factors regarding acceptable medical practices and their relation to recipient and provider activity. Medical factors involve qualitative reviews to determine if the activities or services were necessary and appropriate.

e. Two commenters suggested that we change the classification and definition of provider services in the SPR to conform to those in the GSD. The commenters requested that we clarify the service type grouping for outpatient hospital services.

We do not agree with these comments. The data elements and design of the GSD are intended as a guide and States are not required to design systems that are identical to the GSD. States have the flexibility to design their systems to fit the needs of their particular State's operational circumstances. The SPR definitions, appearing in Appendix A of the instructions to State Medicaid agencies for completion of Federal reports (HCFA-AT-79-76, dated August 31, 1979), are designed to take into consideration all of the system differences nationwide. That material is more recent than the GSD and is considered the most important source for definitions on all Medicaid activities. Those definitions include outpatient hospital services and outpatient clinics under the Physician Services and Clinic Services classification (service type groupings).

f. One commenter pointed out that the wording in 6K2(d) needed clarification. The language leads one to believe that States need only identify Inpatient Hospital Services and Long Term Care Service providers for case review, when the intention was to review a given number of cases in those areas.

We agree with this comment. The wording in the most recent SPR specifies the number of Inpatient Hospital reviews that must be conducted in individual States and the language for the Long Term Care providers states specifically that "the State must review annually at least .005 (.5%) but not less than 10 of the active institutional providers of Long Term Care Services".

g. One commenter stated they had very tight pre-payment utilization and quarterly controls on Long Term Care Services and believed that S/URS reviews are unnecessary for this type of provider.

We do not agree with this comment. Long Term Care costs account for the largest single component in Medicaid program expenditures. Because of this, we believe that States should use all available management tools to assure that payments are appropriate and to detect potentially abusive or fraudulent utilization patterns. S/URS provides valuable information capabilities not otherwise available to the States.

h. One commenter requested a clarification of Item (6) in factor 6K3(b), which refers to ongoing monitoring as a follow-up action on any problems discovered through S/URS reviews. The commenter requested examples of what should be done, when, and by whom.

We agree with this request for clarification. "Ongoing monitoring" refers to a continuous type of review of certain cases that may not merit more punitive action without further evidence of fraud or abuse. This activity should be conducted by S/URS or claims processing staff. Typically, State staff monitors the provider's billing activity utilizing the capabilities and information provided by S/URS, as the information becomes available, to detect additional indications of inappropriate service delivery.

i. One commenter requested a clarification of Item (8) in factor 6K3, which refers to Suspensions and Terminations as followup actions on problems discovered through S/URS reviews. The commenter requested clarification as to whether this mechanism pertains to recipients or providers, because the mechanism has implications affecting the laws and regulations of the State as they relate to Medicaid recipients.
The Suspension and Termination followup actions pertain exclusively to Medicaid providers.

j. One commenter stated that the timeliness requirement for S/URS Summary Profile Report production was more stringent for larger States because of the amount of data to be analyzed (15 months' history). The commenter suggested that timeliness requirements should take into consideration the review and action phases, because producing reports is of little concern if the reports are not utilized timely.

We do not agree with this comment. First, the amount of data to be analyzed has been reduced to a maximum of 9 months. Second, larger States should have greater resources to handle the larger workload. However, we agree that production of the reports is of little concern if the reports are not utilized, but we believe that both production and utilization activities are equally important.

k. One commenter requested that the term "reports from current histories" be more specifically defined as reports related to the current processing cycle. The term "reports from purge history" could also be more clearly defined. Another commenter requested a clarification of "intent" and a definition of "purge history".

These comments are no longer relevant to the current SPR. We have eliminated from the review reports the term "reports from purge history". Thus, there is no longer a need to define the difference between those two former sources for the reports, and a further clarification of "intent" and definition of "purge history" is also unnecessary.

l. One commenter stated that a qualitative review of Summary Profile Reports and Management Summary Reports requires each report cycle to contain all GSD-defined minimum report items. The commenter also said that this conflicts with another requirement that states "Report production without clear indication of use of any major component is deemed to be a major problem."

We do not agree with these comments. The GSD requires defined minimum report items that are necessary to support the S/URS function. All required report items are usable S/URS for analysis. If there is no indication of use of reports that only reflect minimum data requirements, there could be a question of the quality of the S/URS reviews. Therefore, there is no conflict.

m. One commenter requested a clarification of 6M1(c). This item concerned the meaning of "patterns of care and rates of institutional care". The commenter also requested examples of which S/URS reports should be used in this area and exactly how they are to be used.

We agree that the language to which the commenter referred was unclear and we have eliminated this language from the method of evaluation for factor 6M1. However, we are not providing the requested examples because when States are approved for MMIS operation, they are not required to have a specified format for all reports produced by the MMIS. Consequently, reports for each State MMIS are designed specifically for the State's particular circumstances. There is no uniformity of approach on a national level. Therefore, it is not possible to have a single explanation of reports utilization for this factor. The HCFA reviewer determines from each State's current S/URS report set which reports are applicable for the current year's review. States that want information or

assistance can contact their appropriated regional office.

6. Standard 7—Effectiveness in Administrative Responsibilities, Element N

One commenter suggested that it is not necessary to require a written agreement for an emergency backup computer as compliance is impractical in his State's case.

We have accepted this suggestion after reevaluating the benefits of requiring a written agreement for an emergency backup computer. Because we determined the requirement to be both unenforceable and impractical, we have deleted the requirement. Currently, a State's capability to deal with emergency situations is measured in terms of its control (arranged according to State needs) over staff, facilities, equipment and funds.

7. Application of Performance Standards to Overall Factors

Three commenters remarked that the SPR goes beyond internal system components and includes for evaluations overall factors not affecting the MMIS *per se*. One commenter said the performance standards, to be effective, must be applicable only to internal system components. Another commenter objected to having the 75 percent FFP jeopardized by failure to meet standards for systems not covered under the GSD for MMIS. The third commenter suggested that those standards the States must meet that go beyond those used to approve the MMIS initially should be funded at 90 percent FFP for corrective action. These comments are similar to but broader than those at 1a. above.

We do not agree with these comments. Among the comments we received, this was a major issue. Because section 1903(a) of the Social Security Act authorizes enhanced FFP only for MMIS systems that the Secretary determines are likely to provide more efficient, economical and effective administration of the State medical assistance plan, we regard the MMIS as being integrated into the total plan operation. This concept is reflected in the SPR design.

It was Congress' intention that the effective operation of an MMIS fully realize its cost savings potential (125 Cong. Rec. 29511–29514 (1979) and 126 Cong. Rec. S9725–S9726 (daily ed. July 24, 1980)). Certain activities outside the MMIS affect the system's ability to achieve this statutory goal. Thus, if high eligibility error rates inevitably lead to inappropriate payments, we would find it impossible to conclude that the system could significantly contribute to more cost-effective State operations.

Further, Congress specifically intended that the performance standards assure that MMIS systems meet certain broad program objectives (125 Cong. Rec. 29511–29514 (1979) and 126 Cong. Rec. S9725–S9726 (daily ed. July 24, 1980)) and in no way limited the Secretary's authority to establish performance standards, system requirements, or other conditions of reapproval to narrow technical issues of system capability.

Therefore, the performance standards, to be effective, must apply beyond the internal system components; i.e., those within the MMIS GSD, the files, and MMIS processes. Given the impact of overall influences (i.e., the resource data going into the system and the use made of the data that is generated by it) on the effectiveness of the operations and performance of State MMIS systems, it would not be prudent for us to ignore their existence either in assessing or funding the MMIS, or both. If the State Medicaid program operations outside the MMIS subsystems were not operating properly, then the State's MMIS would likely be unable to overcome those defects and, thus not be able to produce the results that Congress intended when it provided for enhanced FFP at 75 or 90 percent. Therefore, we must look at the overall situation when evaluating an MMIS in order to accurately determine its worthiness.

The authority to refund changes (i.e., at 75 or 90 percent FFP) in those are areas outside the MMIS subsystems is not covered by the statute on MMIS. We have recognized the concern that the SPR evaluates State performance in areas not explicitly within the MMIS GSD. We have worked extensively with State representatives to assure that the SPR requirements are equitable and administrable.

B. State Medicaid Manual Requirements

One commenter recommended that HCFA eliminate 42 CFR 433.112(b)(2), which requires State systems to meet performance standards and system requirements in the State Medicaid Manual, and let States have the flexibility to follow the performance standards in any manner that they determine to be effective and efficient. He further stated that if HCFA cannot accept the States' ability to meet MMIS performance standards, then the requirements should be properly promulgated in regulatory form consistent with the Administrative Procedure Act.

We do not agree with the comment to let States follow performance standards in any manner they determine to be effective and efficient. The performance standards address themselves to operation and program safeguards, effective management and use of system's capabilities, and the meeting of broad program goals in accordance with the intent of Congress as expressed in the statute (section 1903(r)(6) of the Act). The current performance standards do indeed recognize the joint concern of Congress (section 1903(r)(6) of the Act) and HCFA that State systems have the flexibility to address the unique needs of each of the particular States. In addition, we conducted a dry run to assure that the performance standards met the criterion of flexibility while assuring effective State system operations. Our ongoing standards development process with extensive consultations with State program and systems experts further acts to assure that any performance standards allow for State flexibility and are otherwise reasonable.

Throughout the history of the MMIS, we have recognized the concept of "demonstrable conceptual equivalence", which permits a State's system to perform certain functions in ways quite different from those set forth in the GSD. However, these are ways that achieve the same purpose and therefore are considered to meet the conditions of approval or reapproval. This concept enables the States to have a functionally equivalent system permitting sufficient flexibility to allow for the differing administrative needs of the various State programs. The performance standards do not require absolute adherence to the GSD.

We believe that these performance standards and the process for their development and implementation more than adequately meet Congress' and the States' concerns for the preservation of State flexibility. However, inasmuch as they are standards, their uniform application to all States appears to be the only effective and reasonable process by which the Congressional mandate to assure effective State operation of the system can be conducted. Thus, while States do have the flexibility to conduct their system operations in various ways to maximize their effectiveness and efficiency, the performance standards assess whether those chosen ways do indeed meet reasonable expectations for effectiveness and efficiency.

We do not agree with the commenter's belief that we should publish the performance standards in regulatory form. The performance standards have

been published as a notice for comment in the **Federal Register** as required by regulation. The States participate in the standards development process through various technical advisory groups and have actual notice of the standards before the period in which they are used. These procedures that we have followed are in accordance with the Administrative Procedure Act and established regulations. Also, under section 1903(r) of the Act, we are required to inform the States of conditions of reapproval at least three months before the beginning of the review period in which the procedures, standards and other conditions will be used. Although we might publish changes in performance standards several times during the year, they would not be effective until the next fiscal year's review and then only if they are published at least three months before the fiscal year begins.

The performance standards for reapproval (including their factors and elements) have been added as Chapter 4 to Part 11 of the SMM (the successor to Part 7 of the Medical Assistance Manual). We will publish changes in performance standards and other conditions for reapproval in the SMM after first publishing a Notice in the **Federal Register** advising the public of the changes and inviting comments.

Due to the technical nature of the MMIS performance standards, however, and our belief that MMIS is of interest only to a very limited audience, we do not intend to publish in the **Federal Register** the text of the proposed changes or the changes which are finally adopted. As we did when proposing the standards in the June 1981 notice, we intend to summarize changes to be made in the **Federal Register** notice and make the text available to the States and to any other interested parties who request it. HCFA's response to any comments received would be the subject of a subsequent **Federal Register** notice if there are any modifications in the changes originally proposed. Of course, the text of the changes would be available to the public.

Impact Analyses

Executive Order 12291

As a result of the public comments we received on the notice we published on June 30, 1981, we have made several changes to the material in the standards, elements and factors. All of these changes are technical and have very little impact on the program. All of them together do not have an economic impact that meets the threshold criteria of section 1(b) of the Executive Order 12291.

Regulatory Flexibility Act

The Secretary certifies under 5 U.S.C. 605(b), enacted by the Regulatory Flexibility Act (Pub. L. 96-354), that this notice will not result in a significant impact on a substantial number of small entities.

This notice contains several technical changes concerning State MMIS activity. As States are not considered "small entities" and these changes are not significant, an analysis is not required.

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program)

Dated April 25, 1983.

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

[FR Doc. 83-14442 Filed 5-27-83; 8:45 am]

BILLING CODE 4120-03-M

Office of Human Development Services

Privacy Act of 1974—Deletion of a System of Records Notice

AGENCY: Office of Human Development Services (HDS), HHS.

ACTION: Notification of deletion of system of records notice 09-80-0009, "ACYF Mailing List. HHS/HDS/ACYF."

SUMMARY: In accordance with the requirements of the Privacy Act, the Office of Human Development Services is publishing a notice of deletion of a system of records notice that had been maintained by the Administration for Children, Youth and Families (ACYF): 09-80-0009, "ACYF Mailing List. HHS/HDS/ACYF."

FOR FURTHER INFORMATION CONTACT: Willie Etheridge, HDS Privacy Act Coordinator, Hubert H. Humphrey Building, Room 338-F 200 Independence Avenue, S.W., Washington, D.C. 20201; (202) 245-2892.

SUPPLEMENTARY INFORMATION: Effective with this publication, we are deleting the notice for system of records 09-80-0009, "ACYF Mailing List, HHS/HDS ACYF" which was last published in the **Federal Register** on October 13, 1982 (47 FR 45403). This system contained records of the names and addresses of Head Start grantees. The system notice has been deleted because, on review, we determined that it should be subsumed into the HDS mailing list system of records notice for efficiency of administration and cost containment.

Thus, records and all pertinent information that were in the ACYF mailing list system have been transferred to and are now covered by: 09-80-0020, "HDS Publication Distribution Mailing List. HHS/HDS/OPA" for which a notice was last published in the **Federal Register** on October 13, 1982 (47 FR 45403-45404). (See notice below).

Dated: May 25, 1983.

Jaime L. Manzano,

Acting Assistant Secretary for Human Development Service.

09-80-0020

SYSTEM NAME:

HDS Publications Distribution Mailing List. HHS/HDS/OPA.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Room 356G, Hubert Humphrey Bldg., Washington, D.C. 20201.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

State and local governmental units, organizations, individuals and grantees who ask to receive HDS publications.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, title, address interest in HDS programs, addressee's field of activity, type of organization, scope of organization, whether provide information or services or both, and media affiliation, if applicable.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Titles IV-B, IV-E, and XX of the Social Security Act; Developmental Disabilities Assistance and Bill of Rights Act, Pub. L. 94-103, as amended by Pub. L. 95-602; Title VIII of Pub. L. 93-644, as amended, Native American Programs; Pub. L. 95-266, The Child Abuse Prevention and Treatment Act; Children's Bureau Act of 1912; Pub. L. 93-644, as amended, Headstart—Follow Through Act; Pub. L. 97-35, Omnibus Budget Reconciliation Act; 42 U.S.C. 5701, Runaway and Homeless Youth Act; and Older Americans Act of 1965, as amended.

PURPOSE(S):

To assist HDS programs in carrying out their responsibilities to disseminate program information.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. 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.

2. In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likley to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee. The Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to present an effective defense, provided such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer tape.

RETRIEVABILITY:

Addresses will be retrieved by name, interest in HDS programs, field of activity, type of organization or level of government, scope of organization, whether the addressee provides information or services or both, or type of media.

SAFEGUARDS:

Access by authorized personnel only.

RETENTION AND DISPOSAL:

List is annually circularized as required by the Joint Committee on Printing and those not responding are dropped from the list.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Publication and Graphic Services, Office of Public Affairs, HDS, 329D, Hubert Humphrey Bldg., Washington, D.C. 20201.

NOTIFICATION PROCEDURE:

Any inquires regarding this system of records should be in writing and should be addressed to the System Manager.

RECORD ACCESS PROCEDURES:

Same as notification procedure. Requesters should also reasonably specify the record contents being sought.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under notification procedure above, and reasonably identify the record and specify the information to be contested. State the corrective action sought and your reason(s) for requesting the correction, with supporting evidence to justify it.

RECORD SOURCE CATEGORIES:

Response to canvass form letters, grant applications, individuals, and governmental units.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 83-14441 Filed 5-27-83; 8:45 am]

BILLING CODE 4130-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. N-83-1245]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposals.

ADDRESS: Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to: Robert Neal, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Acting Reports Management Officer, Department of Housing and Urban Development, 451 7th Street SW., Washington, D.C. 20410, telephone (202) 755-5310. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the agency form number, if applicable; (4) how frequently information submissions will be required; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission; (7) whether the proposal is new or an extension or reinstatement of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Acting Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposals should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirements are described as follows:

Notice of Submission of Proposed Information Collection to OMB

Proposal: Statement/Application and Reports for CDBG Jobs Act.

Office: Community Planning and Development.

Form Nos.: SF-424, HUD-4121, HUD-4124, HUD-4125, and HUD-4950.

Frequency of Submission: Single-Time and Annually.

Affected Public: State or Local Governments.

Estimated Burden Hours: 94,720.

Status: New.

Contact: James Broughman, HUD, (202) 755-9267 (Entitlement); James Forsberg, HUD, (202) 755-6322 (States and Small Cities); Roy Gonnella, HUD, (202) 755-6092 (Indians); or Robert Neal, OMB, (202) 395-7316.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated May 18, 1983.

Proposal: Property Disposition Handbook—Reconditining Acquired Properties.

Office: Housing.

Form No.: None.

Frequency of Submission: On Occasion.

Affected Public: Individuals or Households, Businesses or Other For-Profit, and Small Businesses or Organizations.

Estimated Burden Hours: 157,800.

Status: New.

Contact: Freeman Grote, HUD, (202) 755-5740, or Robert Neal, OMB, (202) 395-7316.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Deparment of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: May 18, 1983.

Lea Hamilton,

Director,

Office of Information Policies and Systems.

[FR Doc. 83-14407 Filed 5-27-83; 8:45 am]

BILLING CODE 4210-01-M

[Docket No. D-83-69]

Supplementary Grants; Delegation of Authority

AGENCY: Department of Housing and Urban Development (HUD).

ACTION: Delegation of authority.

SUMMARY: This delegation of authority delegates the power and authority of the Secretary of Housing and Urban Development with respect to supplementary grants under section 412 of the New Communities Act of 1968 (Title IV of the Housing and Urban Development Act of 1968) and section 718 of the National Urban Policy and New Community Development Act of 1970 (Title VII of the Housing and Urban Development Act 1970) to the Assistant Secretary for Administration. This supersedes the pevious delegation of authority with respect to supplementary grants.

EFFECTIVE DATE: May 31, 1983.

FOR FURTHER INFORMATION CONTACT: Grant E. Mitchell, Assistant General Counsel, New Communities Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410; 202-755-6550. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Accordingly, the Secretary delegates as follows:

Section A. *Authority Delegated.* The Assistant Secretary for administration is authorized to exercise the power and authority of the Secretary of Housing and Urban Development with respect to supplementary grants under section 412 of the New Communities Act of 1968 (Title IV of the Housing and Urban Development Act of 1968) and section 718 of the National Urban Policy and New Community Development Act of 1970 (Title VII of the Housing and Urban Development Act of 1970).

Section B. *Authority to Redelegate.* The Assistant Secretary for Administration is authorized to redelegate to any of the employees of the Department the authority delegated in Section A.

Section C. *Supersedure.* This delegation supersedes the delegation of authority published March 19, 1971 at 36 FR 5304, to the extent such delegation concerns delegation of supplementary grant authority, otherwise the delegation remains unchanged.

(Sec. 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d))

Dated: May 23, 1983.

Samuel R. Pierce, Jr.,

Secretary of Housing and Urban Development.

[FR Doc. 83-14406 Filed 5-27-83; 8:45 am]

BILLING CODE 4210-01-M

[Docket No. D-83-697]

Section 414 Surplus Land Program; Delegation of Authority

AGENCY: Department of Housing and Urban Development (HUD).

ACTION: Delegation of authority.

SUMMARY: This delegation of authority transfers responsibility for management and disposition of surplus Federal real property under HUD's jurisdiction pursuant to section 414 of the Housing and Urban Development Act of 1969 from the General Manager of the New Community Development Corporation to the Assistant Secretary for Housing—Federal Housing Commissioner.

EFFECTIVE DATE: May 31, 1983.

FOR FURTHER INFORMATION CONTACT: Grant E. Mitchell, Assistant General Counsel, New Communities Division, Office of the General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410, (202) 755-6550. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: Since its inception in 1969, the Surplus Land Program pursuant to section 414 of the Housing and Urban Development Act of 1969 has been administered by the New Communities staff. Responsibility for the Program was delegated on February 7, 1970 from the Secretary to the Assistant Secretary and Deputy Assistant Secretary for Metropolitan Planning and Development (35 FR 2745); it was the redelegated on October 14, 1970 to the Director, Office of New Communities Development (35 FR 16102). The Department was reorganized in 1971 and the Secretary delegated the responsibility for the Surplus Land Program to the Assistant Secretary and Deputy Assistant Secretary for Community Planning and Management (36 FR 5004). In 1973, the Department formed the new position of Assistant Secretary for Community Planning and Development to asume former responsibilities (including Surplus Land Program) of the Assistant Secretary and Deputy Assistant Secretary for Community Planning and Management and Assistant Secretary for Community Development (38 FR 8011). When New Communities was made a separate administration in 1973, the delegation of authority for the Surplus Land Program was inadvertently left with its former parent organization, the Office of Community Planning and Development. In the 1978 reorganization of the New Community Development Corporation, a new Office of Surplus Land was authorized. In a delegation of authority published September 24, 1980 at 45 FR 63360, the Secretary delegated the responsibility for the Surplus Land Program to the General Manager of the New Community Development Corporation.

The New Community Development Corporation's Office of Surplus Land is being reorganized under the authority of the Assistant Secretary for Housing—Federal Housing Commissioner. This delegation of authority establishes where the responsibility for administration of the program now lies. Accordingly, the Secretary delegates as follows:

Section A. *Authority Delegated.* The Assistant Secretary for Housing—Federal Housing Commissioner is authorized to:

1. Exercise the power and authority of the Secretary of Housing and Urban Development with respect to surplus Federal real property under Section 414 of the Housing and Urban Development Act of 1969 (83 Stat. 379; 40 U.S.C. 484(b)), as amended.

2. Issue rules and regulations as necessary or desirable in order to carry out such power and authority.

Section B. *Authority Excepted.* The power to sue and be sued is excepted from the authority delegated under Section A.

Section C. *Authority to Redelegate.* The Assistant Secretary for Housing—Federal Housing Commissioner is authorized to redelegate to any of the employees of the Department the authority delegated in Section A, except the authority to issue rules and regulations.

Section D. *Supersedure.* This delegation supersedes the September 24, 1980 delegation of the authority specified in Section A to the General Manager for the New Community Development Corporation (45 FR 63360). All redelegations previously made by the General Manager are valid and remain in effect, including the redelegation of authority by the General Manager (47 FR 41868) with respect to Montauk Air Force Station, Family Housing Area, Montauk, New York to the Regional Administrator and Deputy Regional Administrator, Region II (New York) and the Area Manager and Deputy Area Manager, New York Area Office, which has not yet been implemented.

(Sec. 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d))

Dated: May 23, 1983.

Samuel R. Pierce, Jr.,

Secretary of Housing and Urban Development

[FR Doc. 83-14405 Filed 5-27-83; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Colorado 0102703]

Colorado; Partial Termination of Withdrawal Application and Opening of Lands; Corrections

May 23, 1983.

In FR Doc. 83-11603, on page 19788, in the issue of Monday, May 2, 1983, please make the following corrections:

1. T. 11 S., R. 80 W., Sec. 7, Lot 1, E½NE¼, SW¼NE¼, and N½SE¼ is corrected to read Lot 1, SW¼NE¼, and NW¼SE¼.

2. T. 9 S., R. 81 W., Sec. 10, N½N½, SW¼NE¼, S½NW¼, and SW¼ is corrected to read N½N½, SW¼NE¼, and S½NW¼.

Robert D. Dinsmore,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 83-14388 Filed 5-27-83; 8:45 am]

BILLING CODE 4310-84-M

[ES 32452, Survey Group 503]

Minnesota; Filing of Plat of Survey

1. On April 6, 1983, the plat representing the survey of two islands in Hanrahan Lake, T. 115 N., R. 21 W., Fifth Principal Meridian, Minnesota, was accepted. It will be officially filed in the Eastern States Office, Alexandria, Virginia, at 7:30 a.m. on July 15, 1983.

The lands listed below describe the islands omitted from the original survey.

Fifth Principal Meridian, Minnesota

T. 115 N., R. 21 W.,
Tracts 37 and 38.

2. The island Tracts 37 and 38 are composed of sandy loam. The islands range 12 feet above the mean high water line of Hanrahan Lake. The timber consists of upland hardwoods, including basswood, oak, and cottonwood with a maximum age of over 100 years old. The ground cover is of various species of shrubs, including willow, prickly pear, and ash along with native grasses and forbs.

3. The present water level of the lake compares very favorably with the original meander line; therefore, the elevation and the upland character of the islands and the depth and width of the channel between the upland and islands are considered evidence that the islands did exist in 1858, the year Minnesota was admitted into the Union. The original survey in 1854 did not note the presence of these islands.

4. Tracts 37 and 38 were found to be over 50 percent upland within the purview of the Swamp Lands Act of September 28, 1850 (9 Stat. 519). Therefore, they are held to be public land.

5. All inquires relating to these lands should be sent to the Deputy State Director for Lands and Minerals Operations, 350 South Pickett Street, Alexandria, Virginia 22304 on or before (45 days from date of publication).

Jeff O. Holdren,

Deputy State Director for Lands and Minerals Operations.

[FR Doc. 83-14454 Filed 5-27-83; 8:45 am]

BILLING CODE 4310-84-M

Salt Wells-Pilot Butte Grazing Draft Environmental Impact Statement (DEIS), Sweetwater and Uinta Counties, Rock Springs District, Wyoming; Hearing

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of availability of draft environmental impact statement and public hearing schedule.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969, Notice is hereby given that the Bureau of Land Management, U.S. Department of the Interior, has prepared a draft environmental impact statement for a livestock grazing management program in the Salt Wells-Pilot Butte area, Sweetwater and Uinta Counties, Wyoming, and has made copies available for public review and comment.

The Bureau of Land Management proposes to implement a grazing management program based on the land use planning for the area and in accordance with the Bureau's Rangeland Management Policy and Rangeland Improvement Policy. The proposed livestock grazing management program includes "improvement" management for eighteen allotments totalling 1,006,929 acres; "maintenance" management for five allotments totalling 2,166,010 acres; and "custodial" management for seven allotments totalling 9,343 acres. Proposed range improvements include water developments, vegetation treatment, and some new fences. Other major components of the program include wild horse management, provisions for wildlife habitat, and range monitoring.

The draft environmental impact statement analyzes the projected environmental consequences of implementing the proposed action or any of four alternatives, specifically titled: Continuation of the Existing Situation (No Action); Emphasize Livestock Production; Emphasize Watershed, Wildlife Habitat, and Soil Stability; and License No Livestock Use on Pubic Lands. These alternatives portray the range of options available for managing the livestock use in the area.

DATES: Written comments on the grazing management proposal and alternatives contained within the draft environmental impact statements will be accepted through the close of business (4:30 p.m., m.s.t.) July 31, 1983. Oral testimony will be received at a public hearing to be held at 7:00 p.m., Wednesday, July 13, 1983, in Room C-204, Western Wyoming College, 2500 College Drive, Rock Springs, Wyoming.

ADDRESSES: Written comments are to be addressed to: Jim Cagney, Grazing EIS Team Leader, Bureau of Land Management, Salt Wells Resource Area, U.S. Highway 191 North, P.O. Box 1869, Rock Springs, Wyoming 82901 (307) 382-5350.

Persons wishing to testify at the public hearing should contact Mr. Cagney at the above address prior to the hearing. One representative should be designated by each organization wishing to present testimony.

A limited number of the draft environmental impact statements are available and may be obtained at the above address. The draft environmental impact statement is available for inspection at the following locations:

Bureau of Land Management, Salt Wells and Big Sandy Resource Areas, U.S. Highway 191 North, Rock Springs, Wyoming; or

Bureau of Land Management, Wyoming State Office, Public Information Desk, 2515 Warren Avenue, Cheyenne, Wyoming.

SUPPLEMENTARY INFORMATION: Oral testimony of ten (10) minutes will be accepted from each witness at the hearing. The ten-minute limitation will be strictly enforced by the presiding officer. Written texts of prepared speeches may be filed at the hearing whether or not the speaker has been able to complete oral delivery in the allotted ten minutes.

Speakers will be heard in the order established on the witness register. After the last registered witness has

been heard, the presiding officer will consider the request of any other person present who wishes to testify. Any person present at the hearing may testify; however, only one witness will be allowed to present the viewpoints of an organization.

Persons wishing to testify may preregister by submitting a written request to the Salt Wells or Big Sandy Resource Area Office of the Bureau of Land Management at the above address prior to the close of business on July 13, 1983. Requests should identify the organization represented by the individual (if any); and should be signed by the prospective witness. Individuals who do not preregister may register at the hearing location prior to the hearing.

Comments on the grazing management proposal and on the environmental impact statement, whether written or oral, will receive equal consideration in preparation of a final environmental impact statement.

Donald H. Sweep,

Rock Springs District Manager.

[FR Doc. 83-14374 Filed 5-27-83; 8:45 am]

BILLING CODE 4310-84-M

[C-3357, C-3358]

Colorado; Classification Decision Termination

Correction

In FR Doc. 83-11159 beginning on page 19082 in the issue of Wednesday, April 27, 1983 make the following correction:

1. On page 19082, column three, under the heading **Tomichi Site**, line three "S½NE¼NW½" should appear between "NW¼NW¼" and "S½NW¼ NE¼NW¼."

2. On page 19082, column three under the heading **Tomichi Site**, line four, delete "S½NW¼NW¼NW½."

3. On page 19082, column three under the heading **Cathedral Site**, line six, "6 SW¼NW¼" should read "6 (SW¼NW¼)."

4. On page 19082, column three under the heading **Granodiorite Site**, line eight, "390 acres" should read "290 acres."

5. On page 19083, column one, paragraph designated as "3.", line nine, "authorized" should read "unauthorized."

BILLING CODE 1505-01-M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before May 20, 1983. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by June 15, 1983.

Carol D. Shull.

Chief of Registration, National Register.

CALIFORNIA

Orange County

Anaheim, *Kraemer, Samuel, Building (American Savings Bank/First National Bank)*, 76 S. Claudina St.

Santa Clara County

San Jose, *Hensley Historic District*, Roughly bounded by Julian, 1st, 7th, and Empire Sts.

COLORADO

Pueblo County

Pueblo, *Mechanics Building/Masonic Building*, 207–211 N. Main St.

CONNECTICUT

Hartford County

Hartford, *Clay Hill Historic District*, Roughly bounded by Main, Mather, Garden, and Walnut Sts.

DELAWARE

Kent County

Kenton vicinity, *Arnold, George, House (Kenton Hundred MRA)*, DE 42
Kenton vicinity, *Attix, Thomas, House (Kenton Hundred MRA)*, DE 140
Kenton vicinity, *Betz, J.F., House (Kenton Hundred MRA)*, DE 6
Kenton vicinity, *Blackiston, Benjamin, House (Deer Park) (Kenton Hundred MRA)*, Off DE 6
Kenton vicinity, *Burrows, W.D., (Hopewell) (Kenton Hundred MRA)*, DE 42
Kenton vicinity, *Davis, Thomas, House (Kenton Hundred MRA)*, DE 6
Kenton vicinity, *Denny, T.H., House (Mount Pinder) (Kenton Hundred MRA)*, DE 42
Kenton vicinity, *Downs, N.C., House (Kenton Hundred MRA)*, SR 1412
Kenton vicinity, *Hill, Robert, House (Kenton Hundred MRA)*, DE 6
Kenton vicinity, *Hoffecker-Lockwood House (Kenton Hundred MRA)*, DE 6
Kenton vicinity, *Hudson, Alfred L., House (Kenton Hundred MRA)*, DE 90
Kenton vicinity, *Lamb, Thomas, Farm (Brick House Farm) (Kenton Hundred MRA)*, DE 130
Kenton vicinity, *Lamb, Thomas, House (My Home) (Kenton Hundred MRA)*, DE 129 and DE 130
Kenton vicinity, *Lewis, Jefferson, House (Kenton Hundred MRA)*, DE 42
Kenton vicinity, *McDaniel, Delaplane, House (Kenton Hundred MRA)*, DE 92
Kenton vicinity, *Poinsett House (Kenton Hundred MRA)*, DE 6
Kenton vicinity, *Stevens, William, House (Kenton Hundred MRA)*, DE 6
Kenton vicinity, *Williams, James, House (Kenton Hundred MRA)*, DE 42
Kenton, *Clark-Pratt House (Kenton Hundred MRA)*, Main St.
Kenton, *Green Mansion House (Kenton Hundred MRA)*, Main St.
Kenton, *Kenton Historic District (Kenton Hundred MRA)*, Commerce St.
Kenton, *Kenton Post Office (Kenton Hundred MRA)*, Main St.
Kenton, *Wright-Carney House (Kenton Hundred MRA)*, Commerce St.

New Castle County

Wilmington vicinity, *Fell Historic District*, Faulkland Rd. and New Fell's Lane
Wilmington, *Delware Industrial School for Girls*, 2420–2428 N. Market St.
Wilmington, *Lore, Charles B., Elementary School*, Fourth St. and Woodlawn Ave.
Wilmington, *New Castle Leather Raw Stock Warehouse*, 14th and Poplar Sts.
Wilmington, *New Century Club*, 1014 Delaware Ave.

DISTRICT OF COLUMBIA

Takoma Park Historic District, Roughly bounded by DC/MD boundary, 7th, Piney Branch, Aspen, and Fern Sts.

GEORGIA

Sumter County

Americus, *Guerry-Mitchell House*, 723 McGarrah St.

INDIANA

Allen County

Fort Wayne, *Fairfield Manor*, 2301 Fairfield Ave.

Clark County

Charlestown, *Ferguson, Benjamin, House*, 673 High St.

Grant County

Marion, *Swayzee, Aaron, House*, 224 N. Washington St.

Jasper County

Rensselaer, *Jasper County Courthouse*, W. Washington St.

Marion County

Indianapolis, *Esplanade Apartments*, 3015 N. Pennsylvania St.
Indianapolis, *Forest Hills Historic District*, Bounded by the Monon RR tracks, Kessler Blvd., College and Northview Aves.
Indianapolis, *Herron-Morton Place Historic District*, Roughly bounded by Central Ave., 16th, Pennsylvania, and 22nd Sts.
Indianapolis, *Laurel and Prospect District (Fountain Square Commercial Areas TR)*, 1335 to 1419 E. Prospect St.
Indianapolis, *State and Prospect District (Fountain Square Commercial Areas TR)*, State Ave. and Prospect St.
Indianapolis, *Test Building*, 54 Monument Circle
Indianapolis, *Virginia Avenue District (Fountain Square Commercial Areas TR)*, Roughly Virginia Ave. from Grove Ave. to Prospect and Morris Sts.

Monroe County

Bloomington, *Princess Theatre*, 206 N. Walnut St.

Morgan County

Martinsville vicinity, *Cross School*, Voiles and Townsend Rds.

Noble County

Ligonier, *Ahavas Shalom Reform Temple*, 503 S. Main St.

Spencer County

Rockport, *Sharp, Mathias, House*, 319 S. 2nd. St.

St. Joseph County

Mishawaka, *Merrifield-Cass House*, 816 E. Lincolnway

Steuben County

Fremont vicinity, *Lords, William L., House*, Clear Lake Rd.

Tippecanoe County

Lafayette, *Contennial Neighborhood District*, Roughly bounded by Union, 3rd, 4th, Ferry, and 9th Sts.

Vigo County

Terre Haute, *Building at 23—27 S. Sixth Street (Downtown Terre Haute MRA)*, 23—27 S. 6th St.
Terre Haute, *Building at 510—516 Ohio Street (Downtown Terre Haute MRA)*, 510—516 Ohio St.
Terre Haute, *Building at 810 Wabash Avenue (Downtown Terre Haute MRA)*, 810 Wabash Ave.
Terre Haute, *Carr's Hall (Downtown Terre Haute MRA)*, 329—333 Walnut St.
Terre Haute, *Chamber of Commerce Building (Downtown Terre Haute MRA)*, 627 Cherry St.
Terre Haute, *Citizens' Trust Company Building (Downtown Terre Haute MRA)*, 19—21 S. 6th St.
Terre Haute, *First Congregational Church (Downtown Terre Haute MRA)*, 630 Ohio St.
Terre Haute, *First National Bank (Downtown Terre Haute MRA)*, 509 Wabash Ave.
Terre Haute, *Hippodrome Theater (Downtown Terre Haute MRA)*, 727 Ohio St.
Terre Haute, *House at 209—211 S. Ninth Street (Downtown Terre Haute MRA)*, 209—211 S. 9th St.
Terre Haute, *House at 823 Ohio Street (Downtown Terre Haute MRA)*, 823 Ohio St.
Terre Haute, *Phoenix Club (Downtown Terre Haute MRA)*, 201 S. 5th St.
Terre Haute, *Star Building (Downtown Terre Haute MRA)*, 601—603 Ohio St.
Terre Haute, *Terminal Arcade (Downtown Terre Haute MRA)*, 822 Wabash Ave.
Terre Haute, *Terre Haute Post Office and Federal Building (Downtown Terre Haute MRA)*, 7th and Cherry Sts.
Terre Haute, *Vigo County Courthouse (Downtown Terre Haute MRA)*, Courthouse Square.
Terre Haute, *Wabash Avenue—East Historic District (Downtown Terre Haute MRA)*, Wabash Ave., 7th and 8th Sts.
Terre Haute, *Wabash Avenue—West Historic District (Downtown Terre Haute MRA)*, Wabash Ave. and 6th St.

Warrick County

Newburgh, *Original Newburgh Historic District*, Roughly bounded by IN 662, Water, Monroe, Main and Middle Sts.

KENTUCKY

Fayette County

Centerville vicinity, *Buenna Hill (Innes Houses of Fayette County TR)*, Off Ferguson Rd.
Centerville vicinity, *Corinthia (Innes Houses of Fayette County TR)*, Off Lemons Mill Rd.
Centerville vicinity, *Innes House (Innes Houses of Fayette County TR)*, Off Lemons Mill Rd.

Kenton County

Covington, *Eleventh District School*, Parkway and Altamont St.

LOUISIANA

West Feliciana Parish

St. Francisville vicinity, *Rosale Plantation (Boundary increase)*, N of St. Francisville on US 61.

MARYLAND

Anne Arundel County

Gambrills, *Anne Arundel County Free School*, 1298 Lavall Dr.

MISSISSIPPI

Lincoln County

Brookhaven, *Brookhaven City Hall*, Whitworth Ave.

Wilkinson County

Woodville, *Salisbury Plantation*, Off Woodville Rd.

MONTANA

Glacier County (also in Flathead County)

West Glacier vicinity, *Going-to-the-Sun-Road*, Glacier Rt. 1

NEW YORK

New York County

New York, *Van Rensselar, Stephen House*, 149 Mulberry St.

Suffolk County

Southampton, *Chase, William Merritt, Homestead*, Canoe Pl. Rd.

OHIO

Fairfield County

Balitmore vicinity, *Pugh-Kittle House*, 2140 Bickel Church Rd.
West Rushville, *Ijams, Joseph, House*, Broad and Main Sts.

Hamilton County

Cincinnati, *Madison and Woodburn Historic District*, Woodburn Ave. and Madison Rd.

Portage County

Ravenna vicinity, *Beebe, Horace Y., House*, 6538 Cleveland Rd.

Trumbull County

Warren, *Warren Commercial Historic District*, Roughly bounded by Mahoning, Monroe, Franklin and Pine Sts.

Warren County

Lebanon Vicinity, *Stokes, Benjamin A., House*, 5587 OH 48

OREGON

Marion County

Sublimity, *Silver Falls State Park Concession Building Area*, 20024 Silver Falls Hwy.

TENNESSEE

Davidson County

Nashville, *Gladstone Apartments*, 3803 West End Ave.
Nashville, *Hatch Show Print Company Building*, 116–118 4th Ave.

Dyer County

Dyersburg, *Bank of Dyersburg*, 100 N. Main St.

Hamilton County

Chattanooga, *Southern Railway Freight Depot*, 1140 Newby St.

Madison County

Denmark, *Denmark Presbyterian Church*, Jackson-Denmark Rd.

Shelby County

Memphis, *Lowenstein, B., & Brothers Building*, 27 S. Main St.

TEXAS

Tarrant County

Fort Worth, *M.G. Ellis School (1914)*, 213 N.E. 14th St.

[FR Doc. 83-14468 Filed 5-27-83; 8:45 am]
BILLING CODE 4310-70-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Public Information Collection Requirements Submitted to OMB for Review

The International Development Cooperation Agency submitted the following public information collection requirement to OMB, for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the Submission may be obtained from the Agency for International Development Clearance Officer by calling (202) 632–3378. Comments regarding this information collection should be addressed to the Reports Management Officer, Ms. Melita E. Yearwood, IRM/MMP, Room 708, SA–12, Washington, D.C. 20523; and to the OMB reviewer listed at the end of the entry no later than June 10, 1983.

Date Submitted: May 23, 1983.

Submitting Bureau: Agency for International Development.
OMB No.: 0412-0003.
Form No.: AID 1550-3.
Type of Submission: Extension.
Title: Title II, Pub. L. 480 Commodities-Annual Estimate of Requirements—FY 19—.
Purpose: The AER is used by the Office of Food for Peace to obtain information critical for the planning and budgeting cycle of the Pub. L. 480 Title II Program. The AERs include planned recipient and ration levels, number of distributions, operating reserves that are needed and inventories on hand.
OMB Reviewer: Francine Picoult (202) 395-7231, Office of Management and Budget, Room 3201, New Executive Office Building, Washington, D.C. 20503.
Dated: May 23, 1983.

Richard F. Calhoun,

Chief, Mandated Management Programs.

[FR Doc. 83-14389 Filed 5-27-83; 8:45 am]

BILLING CODE 6116-01-M

INTERSTATE COMMERCE COMMISSION

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. 11343, 367 I.C.C. 113 (1982), 47 FR 53303 (November 24, 1982).

DATES: These exemptions shall be effective on June 30, 1983. Petitions for reconsideration must be filed by June 20, 1983. Petitions for stay must be filed by June 10, 1983.

FOR FURTHER INFORMATION CONTACT: Warren C. Wood, (202) 275-7977.

SUPPLEMENTARY INFORMATION: For further information, see the decision(s) served concurrently 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, DC 20423; or call (202) 289-4357 in the DC metropolitan area; or (800) 424-5403 Toll-free outside the DC area.

Agatha L. Mergenovich,

Secretary.

[No. MC-F-15114]

Adrian Carriers, Inc.—Purchase Exemption—Spector Red Ball, Inc. (Debtor-in-Possession)

ADDRESSES: Send pleadings to:
(1) Motor Section, Room 2139, Interstate Commerce Commission, Washington, D.C. 20423
and
(2) Petitioner's representative: James M. Hodge, Issacon, Clarke, Vernon & Hodge, 3730 Ingersoll, Des Moines, IA 50312.

Pleadings should refer to No. MC-F-15114.

Decided: May 20, 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 Adrian Carriers, Inc. (No. MC-146553) of that portion of the operating rights of Spector Red Ball, Inc. (No. MC-2229) set forth in the appendix below, which authorizes generally the transportation of general and specific commodities over regular, irregular and alternate routes in IL, WI, IA, CO, NE, IN, KS and MO.

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.

Appendix

Certificate No. MC-2229 as follows: Sub-No. 246F; Sub-No. 253 sheet 2 (in part); sheets 3-27 (entirety), and sheet 28 (in part); Sub-No. 254 sheets 3 and 4 (both in part); Sub-No. 258 sheet 4; Sub-No. 259 sheets 2 and 6 (both in part); Sub-No. 260 sheet 2 (in part); Sub-No. 261 sheets 2, 3, and 4 (entirety), sheets 9 and 14 (both in part); Sub-No. 264 sheet 3 (in part); Sub-No. 267 sheets 2 and 3 (both in part), sheet 4 (entirety), and sheet 5 (in part); and Sub-No. 269 sheets 3 and 4 (both in part).

[No. MC-F-15120]

All Freight Transportation, Inc.—Control Exemption—Overland Transportation, Inc.

ADDRESSES: Send pleadings to:
(1) Motor Section, Room 2139, Interstate Commerce Commission, Washington, D.C. 20423
and
(2) Petitioner's representative: Timothy R. Stivers, P.O. Box 1576, Boise, ID 83701

Pleadings should refer to No. MC-F-15120.

Decided: May 19, 1983.

Under 49 U.S.C. 11343(e), the Interstate Commerce Commission exempts from the requirement of prior review and approval in 49 U.S.C. 11343(a)(3) the acquisition by All Freight Transportation, Inc. (No. MC-152671), of control, through the purchase of outstanding common stock, of Overland Transportation, Inc., (No. MC-143570).

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.

[No. MC-F-15140]

Cates Trucking Inc.—Purchase Exemption—Sawyer Transport, Inc. (Nathan Yorke, Trustee-In-Bankruptcy)

ADDRESSES: Send pleadings to:
(1) Motor Section, Room 2139, Interstate Commerce Commission, Washington, D.C. 20423
and
(2) Petitioner's representative: Donald W. Smith, P.O. Box 40248, Indianapolis, IN 46240

Pleadings should refer to No. MC-F-15140.

Decided: May 20, 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), the purchase by Cates Trucking, Inc. (MC-138562), of a portion of Sawyer Transport Inc. (MC-123407 (Sub-No. 611)), authorizing the transportation of (1) containers, container ends, and container closures, and (2) materials equipment and supplies used in the manufacture and distribution of the commodities in (1) above (except commodities in Bulk), between points in the United States (except Alaska and Hawaii).

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.

[No. MC-F-15153]

Walter R. Key, William P. Fallon, Charles Fallon, Robert Sweeney, Richard White, and Douglas Peterson—Continuance in Control Exemption—Thermo Transport, Inc., Peterson Express, Inc., and F & F Transport, Inc.

ADDRESSES: Send pleadings to:
(1) Motor Section, Room 2139, Interstate Commerce Commission, Washington, D.C. 20423
and
(2) Petitioner's representative: Donald W. Smith, P.O. Box 40240, Indianapolis, IN 46240

Pleadings should refer to No. MC-F-15153.

Decided: May 23, 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, the continuance in control of F & F Transport, Inc. (MC–164522) by Walter R. Key, William P. Fallon, Charles Fallon, Robert Sweeney, Richard White, and Douglas Peterson, who jointly or separately control Thermo Transport Inc. (MC–145359) and Peterson Express Inc. (MC–162104).

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.

[No. MC–F–15163]

Russ Transport, Inc.—Purchase Exemption—Producers Transport Co.

ADDRESSES: Send pleadings to:

(1) Motor Section, Room 2139, Interstate Commerce Commission, Washington, D.C. 20423
and
(2) Petitioner's representative: Leonard A. Jaskiewicz, 1730 M Street NW., Suite 501, Washington, D.C. 20036

Pleadings should refer to No. MC–F–15163.

Decided: May 23, 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), the purchase by Russ Transport, Inc. (MC–116459), of the operating authorities of Producers Transport Co. set forth in Certificate No. MC–124835 and subnumbers thereunder, authorizing the transportation of cement, asphalt, and clay, concrete, glass, or stone products, from, to, and between various points in eight southeastern States, and commodities in bulk and chemicals and related products, radially between various points in Georgia and Tennessee and points named southern and eastern States. Both vendor and vendee are controlled by Liquid Transporters, Inc., which holds authority in No. MC–112617.

By the Commission, Division 2, 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.

[FR Doc. 83–14436 Filed 5–27–83; 8:45 am]
BILLING CODE 7035–01–M

Motor Carriers; Proposed Exemptions

AGENCY: Interstate Commerce Commission.

ACTION: Notices of Proposed Exemptions.

SUMMARY: The motor carriers shown below seek 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. 11343, 367 I.C.C. 113 (1982), 47 FR 53303 (November 24, 1982).*

DATE: Comments must be received within 30 days after the date of publication in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: 0Warren C. Wood (202) 275–7977.

SUPPLEMENTARY INFORMATION: Please refer to the petition for exemption, which may be obtained free of charge by contacting petitioner's representative. In the alternative, the petition for exemption may be inspected at the offices of the Interstate Commerce Commission during usual business hours.

Decided: May 24, 1983.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

Agatha L. Mergenovich,

Secretary.

Volume OP3–239

J. T. I. Transportation Co.—Purchase Exemption—Andrews Van Lines, Inc.

[No. MC–F–15234]

J. T. I. Transportation Co. (J.T.I.) (No. MC–159331 and sub-numbers thereunder) seeks an exemption from the requirement under section 11343 of prior regulatory approval for its purchase of a portion of the motor carrier operating rights of Andrews Van Lines, Inc., specifically those rights in No. MC–26825 (Sub-No. 68), authorizing the transportation of general commodities (with exceptions), radially between points in Nebraska, and points in the United States.

Send comments to:

(1) Motor Section, Room 2139, Interstate Commerce Commission, Washington, DC 20423
and
(2) Petitioner's Representative: Jack L. Shultz; P.O. Box 82028; Lincoln, NE 68501–2028

Comments should refer to No. MC–F–15234.

FCS Industries, Inc.—Control Exemption—Russ's Motor Service Inc.

[No. MC–F–15267]

FCS Industries Inc. seeks an exemption from the requirement under section 11343 of prior regulatory approval for its acquisition of control of Russ's Motor Service, Inc. FCS is a non-carrier which owns B & W Cartage Co. Inc. (No. MC–12094), a motor common carrier with authority to transport general commodities, with exceptions, between points in 34 States. Russ's Motor Service is authorized to conduct operations as a motor carrier of general commodities, and certain specified commodities, on a radial basis between Chicago, IL and points in 5 named States under its Certificate No. MC–145574 (Sub-Nos. 1F and 3).

Send comments to:

(1) Motor Section, Room 2139, Interstate Commerce Commission, Washington, D.C. 20423
and
(2) Petitioner's representative: Carol L. Steiner, 135 South LaSalle St., Chicago, IL 60603

Comments should refer to No. MC–F–15267.

Wetterau, Incorporated—Continuance in Control Exemption—Trans Continental Leasing, Ltd., and Foxtran, Inc.

[No. MC–F–15271]

Wetterau, Incorporated, a non-carrier, seeks an exemption from the requirement under 49 U.S.C. 11343 of prior approval and authorization for its continuance in control of Foxtran, Inc. (MC–151854). Wetterau also controls Trans Continental Leasing, Ltd. (MC–145925).

Send comments to:

(1) Motor Section, Room 2139, Interstate Commerce Commission, Washington, D.C. 20423
and
(2) Petitioner's representative: George Williams, Wetterau, Incorporated, 8920 Pershall Road, Hazelwood, MO 63042

Comments should refer to No. MC–F–15271.

Volume OP2–243

Westhoff, Inc.—Purchase Exemption—Grand Island Express, Inc.

[No. MC–F–15260]

Westhoff, Inc., holding authority in No. MC–157610, seeks an exemption from the requirement under section 11343 of prior regulatory approval for the purchase of a portion of the operating rights of Grand Island Express, Inc. (formerly, Grand Island Moving and Storage, Inc.) namely, MC–135283 (Sub-No. 27). The pertinent authority provides for the transportation of meats, meat products, meat by-products, and articles distributed by meat packinghouses (except hides and commodities in bulk), from the facilities of Swift & Company, at (a) Omaha, NE.

and (b) Des Moines, Glenwood, Marshalltown, and Sioux City, IA, and the facilities of Montfort of Colorado, Inc., at Grand Island, NE, to points in Alabama, Florida, Georgia, North Carolina, South Carolina, and Tennessee.

ADDRESSES: Send comments to:

(1) Motor Section, Room 2139, Interstate Commerce Commission, Washington, D.C. 20423
and
(2) Petitioner's representative: D. Douglas Titus, 340 Insurance Exchange Building, Sioux City, IA 51101

Comments should refer to No. MC–F–15260.

Volume OP2–244

Petitioners

[No. MC–F–15257]

Mid Terminal Leasing, Inc. (Mid Terminal), a regulated motor carrier (No. MC–159541), and, in turn, Marlys K. Mishak, who controls Mid Terminal, seek an exemption from the requirement under section 11343 of prior regulatory approval for the acquisition of control of a portion of the operating rights of J. H. Ware Trucking, Inc. (Ware), a regulated motor carrier (No. MC–139973), through purchase of paragraph 3 of Ware's Sub-No. 102X certificate and its underlying certificate Sub-No. 79.

Send comments to:

(1) Motor Section, Room 2139, Interstate Commerce Commission, Washington, D.C. 20423
and
(2) Petitioner's representative: Mr. Larry D. Knox, 600 Hubbell Building, Des Moines, IA 50309–3596

Comments should refer to No. MC–F–15257.

[FR Doc. 83–14437 Filed 5–27–83; 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 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.

By the Commission, Review Board Number 2, Members Carleton, Williams, and Ewing.

Agatha L. Mergenovich,
Secretary.

Please direct status inquiries to Team 3, (202) 275–5223.

Volume No. OP3–FC–225

MC–FC–81324. By decision of May 19, 1983, issued under 49 U.S.C 10926 and the transfer rules at 49, CFR 1181, Review Board Number 2 approved the transfer to CONTINENTAL FREIGHTLINES, INC., Columbus, IN, of Certificate No. MC–20824, issued 9/7/79, and (Sub 12), issued 6/28/57, (Sub 13), issued 5/3/63, (Sub 14), issued 2/29/60, (Sub 16), issued 10/27/80, (Sub 17), issued 1/11/61, (Sub 19), issued 3/5/62, (Sub 20), issued 7/30/62, (Sub 22), issued 2/21/63, (Sub 23), issued 11/10/66, (Sub 24), issued 10/18/67, (Sub 26), issued 9/9/68, (Sub 27), issued 4/25/69, (Sub 28), issued 7/8/70, (Sub 30), issued 6/11/73, (Sub 31), issued 12/22/78, (Sub 32), issued 11/17/76, (Sub 33), issued 6/9/77, (Sub 34), issued 2/8/77, (Sub 35), issued 6/1/79, (Sub 36), issued 7/12/79, (Sub 37), issued 6/1/79, (Sub 38), issued 6/1/79, (Sub 39), issued 7/10/79, (Sub 40), issued 1/26/81, (Sub 42), issued 10/27/80, (Sub 44), issued 12/18/80, (Sub 45), issued 3/16/81, (Sub 47), issued 12/5/80, (Sub 48), issued 3/13/81, (Sub 49), issued 4/3/81, (Sub 50), issued 3/5/82, and (Sub 51), issued 3/10/83 to COMMERCIAL MOTOR FREIGHT, INC., (GILBERT L. BATES, DEBTOR-IN-POSSESSION), Indianapolis, IN, authorizing the transportation of general commodities, with exceptions, over various routes, between points in IN, OH, KY, IL, MO, TN, and MI. Representative: Michael E. McCormick, 1301 Merchants Plaza, Indianapolis, IN 46204.

Volume No. OP3–MCFC–237

MC–FC–81309. By decision of May 19, 1983, issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1181, Review Board Number 2 approved the transfer to M.A.S. SERVICES, INC., of Certificate No. MC–1335 Sub 6, issued May 19, 1982, MC–1335 Sub 7X, issued May 19, 1982, and its underlying MC–1335, issued September 24, 1980, and MC–1335 Sub 1, issued May 13, 1981, authorizing the regular, alternate, and irregular route transportation of general commodities between points generally in New Jersey, New York and Pennsylvania, and (2) such commodities as are dealt in or used by food business houses, between points in Erie and Niagara Counties, NY, on the one hand, and, on the other, points in MD and PA. Applicant's representative: Robert D. Gunderman, Can-Am Bldg., 101 Niagara Street, Buffalo, NY 14202.

Note.—Pursuant to transferor's request, Certificate No. MC–1335 Sub 2, MC–1335 Sub 3, MC–1335 Sub 4, and MC–1335 Sub 5 will be cancelled concurrently with the issuance to the transferee of a new certificate as a result of this transaction.

[FR Doc. 83–14433 Filed 5–27–83; 8:45 am]
BILLING CODE 7035–01–M

Motor Carriers; Permanent Authority Decisions; Decision–Notice

Motor Common and Contract Carriers of Property (fitness-only); Motor Common Carriers of Passengers (fitness-only); Motor Contract Carriers of Passengers; Property Brokers (other than household goods). The following applications for motor common or contract carriage of property and for a broker of property (other than household goods) 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** on 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 or contract carriage of passengers filed on or after November 19, 1982, are governed by Subpart D of the Commission's Rules of Practice. See 49 CFR Part 1160, Subpart D, published in the **Federal Register** on November 24, 1982, at 49 FR 53271. For compliance procedures, see 49 CFR 1160.86. Persons wishing to oppose an application must follow the rules under 49 CFR Part 1160, Subpart E.

These applications may be protested *only* on the grounds that applicant is not fit, willing, and able to provide the transportation service or to comply with the appropriate statutes and Commission regulations.

Applicant's representative is required to mail a copy of an application, including all supporting evidence, within three days of request and upon payment to applicant's representative of $10.00

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, 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. This presumption shall not be deemed to exist where the application is opposed. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient opposition in the form of verified statements filed on or before 45 days from date of publication (or, if the application later becomes unopposed) appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Agatha L. Mergenovich,

Secretary.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce, over irregular routes unless noted otherwise. Applications for motor contract carrier authority are those where service in for a named shipper "under contract."

Please direct status inquiries to Team Three at (202) 275-5223.

Volume No. OP2-231

Decided: May 20, 1983.

By the Commission, Review Board No. 2, Members Carleton, Williams, and Ewing.

MC 119654 (Sub-99), filed April 28, 1983. Applicant: HI-WAY DISPATCH, INC. 1401 W. 26th St., Marion, IN 46952. Representative: Norman R. Garvin, 1301 Merchants Plaza, East Tower, Indianapolis, IN 46204, (317) 638-1301. Transporting *general commodities* (except classes A and B explosives and household goods), between points in the U.S. (except HI).

MC 166725, filed May 9, 1983. Applicant: F. D. LUCAS ENTERPRISES, INC., P. O. Box 367, Marengo, IN 47140. Representative: Doyle G. Owens, P.O. Box 7735, Beaumont, TX 77706, (409) 898-8086. 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 167755, filed May 10, 1983. Applicant: DIRECT OVERLAND EXPRESS, INC., Route 4, Box 326, A Airport Rd., Charlottesville, VA 22091. Representative: Barry Weintraub, Suite 403, 7700 Leesburg Pike, Falls Church, VA 22043, (703) 442-8330. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between Boston, MA, Providence, RI, Hartford, CT, New York, NY, Newark, NJ, Philadelphia, PA, Baltimore, MD, Richmond, Charlottesville, Norfolk, Hampton, Roanoke, and Lynchburg, VA, Raleigh, Durham, Chapel Hill, Greensboro, and Charlotte, NC, Greenville and Spartanburg, SC, Atlanta, GA, and Washington, DC, on the one hand, and , on the other, points in MA, CT, RI, NY, NJ, PA, DE, MD, VA, NC, SC, GA, and DC.

MC 167904, filed May 9, 1983. Applicant: HI-CO, LTD., P. O. Box 164, Menomonee Falls, WI 53051. Representative: Richard C. Alexander, 710 N. Plankinton Ave., Milwaukee, WI 53203, (414) 273-7410. Transporting *food and related products*, between points in WI, on the one hand, and , on the other, Minneapolis, MN, and points in CA, IL, IN, KY, MA, MI, MO, OH, and TN.

MC 167925, filed May 10, 1983. Applicant: DIAMOND T HOTSHOT SERVICE, INC., 4510 N.W. 39th St., Oklahoma City, OK 73122. Representative: Wilburn L. Williamson, Suite 107, 50 Classen Center, 5101 North Classen Blvd., Oklahoma City, OK 73118, (405) 848-7946. Transporting *Mercer commodities*, between points in AR, CO, KS, LA, MO, MT, NM, OK, TX, and WY.

For the following, please direct status calls to Team 1 at 202-275-7992.

Volume No. OP1-190

Dated: May 20, 1983.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier. (Member Parker not participating.)

MC 151061 (Sub-3), filed May 4, 1983. Applicant: ROBERTS HOLIDAY LINES, INC., 930 Pointsettia St., Santa Ana, CA 92701. Representative: Donald R. Hedrick, P.O. Box 4334, Santa Ana, CA 92702, (714)-667-8107. (A) Over regular routes, transporting *passengers*, (1) between Los Angeles, CA and Bakersfield, CA: from Los Angeles, CA over U.S. Hwy 101 to junction CA Hwy 170, then over CA Hwy 170 to junction interstate Hwy 5, then over Interstate Hwy 5 to junction CA Hwy 99 then over CA Hwy 99 to Bakersfield, CA, (2) between Bakersfield, CA and Fresno, CA, over CA Hwy 99, (3) between Fresno, CA and Modesto, CA, over CA Hwy 99, (4) between Modesto, CA and Stockton, CA, over CA Hwy 99, (5) between Stockton, CA and Sacramento, CA, over CA Hwy 99, (6) between Long Beach, CA and Montebello, CA, over CA Hwy 7, (7) between Montebello, CA and Los Angeles, CA: from Montebello, CA over Interstate Hwy 5 to junction U.S. Hwy 101, then over U.S. Hwy 101 to Los Angeles, CA, (8) between Low Angeles, CA and Los Angeles International Airport, CA: from Los Angeles, CA over Interstate Hwy 10 to junction Interstate Hwy 405, then over Interstate Hwy 405 to junction Century Blvd., then over Century Blvd. to Los Angeles International Airport, CA, (9) between Irvine, CA and Santa Ana, CA: from Irvine, CA over CA Hwy 73 to junction CA Hwy 55, then over CA Hwy 55 to junction Interstate Hwy 5, then over

Interstate Hwy 5 to Santa Ana, CA, (10) between Laguna Hills, CA and Santa Ana, CA, over Interstate Hwy 5, (11) between Santa Ana, CA and Riverside, CA: from Santa Ana, CA over Interstate Hwy 5 to junction CA Hwy 22, then over CA Hwy 22 to junction CA Hwy 55, then over CA Hwy 55 to junction CA Hwy 91, then over CA Hwy 91 to Riverdside, CA, (12) between Riverside, CA and San Bernardino, CA: from Riverside, CA over CA Hwy 91 to junction Interstate Hwy 15E, then over Interstate Hwy 15E to San Bernardino, CA, (13) between San Bernardino, CA and Barstow, CA: from San Bernardino, CA over Interstate Hwy 15E to junction Interstate Hwy 15, then over Interstate Hwy 15 to Barstow, CA, (14) between Barstow, CA and Las Vegas, NV, over Interstate Hwy 15, (15) between Sacremento, CA and Reno, NV, over Interstate Hwy 80, (16) between Santa Ana, CA and Montebello, CA, over Interstate Hwy 5, (17) between Riverside, CA and Palm Springs, CA: from Riverside, CA over CA Hwy 91 to junction CA Hwy 60, then over CA Hwy 60 to junction Interstate Hwy 10, then over Interstate Hwy 10 to junction CA Hwy 111, then over CA Hwy 111 to Palm Springs, CA, (18) between Palm Springs, CA and Indio, CA, over CA Hwy 111, (19) between Indio, CA and Laughlin, NV: from Indio, CA over Interstate Hwy 10 to junction U.S. Hwy 95, then over U.S. Hwy 95 to junction NV Hwy 77, then over NV Hwy 77 to Laughlin, NV, (20) between Santa Ana, CA and Long Beach, CA: from Santa Ana, CA over Interstate Hwy 5 to junction CA Hwy 22, then over CA Hwy 22 to junction Interstate Hwy 405, then over Interstate Hwy 405 to junction CA Hwy 7, then over CA Hwy 7 to Long Beach, CA, (21) between Los Angeles, CA and San Bernardino, CA: from Los Angeles, CA over Interstate Hwy 10 to junction Interstate Hwy 15E, then over Interstate Hwy 15E to San Bernardino, CA, (22) between Sacramento, CA and San Francisco, CA, over Interstate Hwy 80, (23) between Stockton, CA and San Francisco, CA: from Stockton, CA over Interstate Hwy 5 to junction Interstate Hwy 205, then over Interstate Hwy 205 to junction Interstate Hwy 580, then over Interstate Hwy 580 to junction Interstate Hwy 80, then over Interstate Hwy 80 to San Francisco, CA, (24) between Phoenix, AZ and Laughlin, NV: from Phoenix, AZ over U.S. Hwy 93 to junction Interstate Hwy 40, then over Interstate Hwy 40 to junction U.S. Hwy 93, then over U.S. Hwy 93 to junction AZ Hwy 68, then over AZ Hwy 68 to junction NV Hwy 77, then over NV Hwy 77 to Laughlin, NV, (25) between Laughlin, NV and Las Vegas, NV: from Laughlin, NV over NV Hwy 77 to junction U.S. Hwy 95, then over U.S. Hwy 95 to Las Vegas, NV; returning over the same routes and serving all intermediate points in (1) through (25) above; and (B) over irregular routes, transporting (1) *passengers*, in charter and special operations, between points in the U.S. (except HI), and (2) *shipments weighing 100 pounds or less* if transported in a motor vehicle in which no one package exceeds 100 pounds, between points in the U.S. (except HI).

Note.—Applicant seeks to provide regular-route service in interstate or foreign commerce and in intrastate commerce under 49 U.S.C. 10922(c)(2)(b) in (A)(1) through (A)(25) above over the same route. Applicant seeks to provide privately funded charter and special transportation in (B)(1) above.

MC 167931, filed May 9, 1983. Applicant: TERRY LEW SHAW, 30 Forest Acres, New Port Ritchey, FL 33553. Representative: Charles H. Wickman, 901 Burlington Ave., P.O. Box 128, Western Springs, IL 60558, (312) 246–9090. Transporting *food and other edible products and by-products intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners* by the owner of the motor vehicle in such vehicles, between points in the U.S. (except AK and HI).

MC 167970, filed May 12, 1983. Applicant: IVEY J. WILLIAMS, d.b.a. IVEY JO'S TRUCKING, 470 Henry St., Elizabeth, NJ 07201. Representative: Ivey J. Williams (same address as applicant), (201) 289–4356. Transporting *food and other edible products and by-products intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizer, and other soil conditioners*, between points in the U.S. (except AK and HI).

MC 168001, filed May 12, 1983. Applicant: ENTERPRISE SHIPPING CORPORATION, 49 Geary St., San Francisco, CA 94102. Representative: Todd H. van Bortel (same address as applicant), (415) 981–8542. As a *broker*, of *general commodities* (except household goods), between points in the U.S.

MC 168041, filed May 13, 1983. Applicant: FRANK S. SFARA, JR., d.b.a. SFARA SALES & SERVICE, P.O. Box 77, Hillsville, PA 16132. Representative: John A. Pillar, 1500 Bank Tower, 307 Fourth Ave., Pittsburgh, PA 15222, (412) 471–3300. Transporting *passengers*, in charter and special operations, between points in the U.S.

Note.—Applicant seeks to provide privately-funded charter and special transportation.

[FR Doc. 83–14439 Filed 5–27–83; 8:45 am]
BILLING CODE 7035–01–M

Motor Carriers; Permanent Authority Decisions, Decision-Notice

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 household 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 CFR 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 $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated 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 major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient opposition in the form of verified statements filed on or before 45 days from date of publication (or, if the application later becomes unopposed), appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Agatha L. Mergenovich,

Secretary.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract." 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 passengers are duly noted.

Please direct status inquiries to Team 3 at (202) 275-5223

Volume No. OP3-236

Decided: May 20, 1983.

By the Commission, Review Board No. 2, Members Carleton, Williams, and Ewing.

MC 163345, filed May 9, 1983. Applicant: COURTNEY ENTERPRISES, INC., 2907 Bailey Ave., Cincinnati, OH 45211. Representative: Douglas Courtney, 44A Ridge Dr., Fairfield, OH 45014 (513) 874-4671. Transporting *passengers*, in charter and special operations, between points in the U.S.

Note.—Applicant seeks to provide privately-funded charter and special transportation.

MC 167774, filed May 3, 1983. Applicant: ROBERT R. BROOKS, d.b.a. VERMONT EAGLE EXPRESS, RFD #1, West Burke, VT 05871. Representative: Robert R. Brooks (same address as applicant) (802) 467-3131. Transporting *shipments weighing 100 pounds or less* if transported in a vehicle in which no one package exceeds 100 pounds, between points in the U.S. (except AK and HI).

MC 167794, filed May 4, 1983. Applicant: DARK COUNTY AMBASSADORS, 7075 Springer Rd., McCalla, AL 35111. Representative: Edna E. Perry, 1426 N. 32nd St., Birmingham, AL 35234 (205) 322-3976. Transporting *passengers*, in charter and special operations, beginning and ending at points in AL, and extending to points in FL, GA, AR, TX, TN, MI, MS, NC, SC, LA, KY, and IL.

Note. Applicant seeks to provide privately-funded special and charter transportation.

MC 167864, filed May 9, 1983. Applicant: TRANSPORTATION LOGISTICS EXPERTS, INC., 1621 Elmore St., P.O. Box 14443, Cincinnati, OH 45214. Representative: James Duvall, 220 W. Bridge St., P.O. Box 97, Dublin, OH 43017 (614) 889-2531. As a *broker* of *general commodities* (except household goods), between points in the U.S. (except AK and HI).

MC 167874, filed May 9, 1983. Applicant: R. E. LISS, 831 Timberwood Lane, McKinney, TX 75069. Representative: Robert A. Forman, 6606 LBJ Freeway, Suite 5135, Dallas, TX 75240 (214) 934-0963. As a *broker* of *general commodities* (except household goods), between points in the U.S.

MC 167875, filed May 9, 1983. Applicant: JOHN D. GAMBLE III, 1131 Forest Green Dr., Corapolis, PA 15108. Representative: John D. Gamble III (same address as applicant) (412) 262-2380. As a *broker of general commodities* (except household goods), between points in the U.S.

MC 167885, filed May 9, 1983. Applicant: CONTINENTAL LOGISTICS, INC., 2 Colony Rd., Jersey City, NJ 07305. Representative: Charles J. Williams, P.O. Box 186, Scotch Plains, NJ 07076 (201) 322-5030. As a *broker of general commodities* (except household goods), between points in the U.S.

MC 167894, filed May 9, 1983. Applicant: JAMISON & SON BUS CO., RD 3, Box 227, Englishtown, NJ 07726. Representative: Harold L. Reckson, 33-28 Halsey Rd., Fair Lawn, NJ 07410 (201) 791-2270. Transporting *passengers*, in charter and special operations, between points in the U.S. (except AK and HI).

Note.—Applicant seeks to provide privately-funded charter and special transportation.

MC 167904, filed May 9, 1983. Applicant: HI-CO, LTD., P.O. Box 164, Menomonee Falls, WI 53051. Representative: Richard C. Alexander, 710 N. Plankinton Ave., Milwaukee, WI 53203 (414) 273-7410. As a *broker of general commodities* (except household goods), between points in the U.S. (except AK and HI).

MC 167915, filed May 9, 1983. Applicant: JAHR CORP., 110 Hopkins St., Buffalo, NY 14220. Representative: Richard F. Campbell, 1800 One M & T Plaza, Buffalo, NY 14203 (716) 856-4000. As a *broker of general commodities* (except household goods), between points in the U.S.

MC 167924, filed May 9, 1983. Applicant: JEROME VINCENT BROOKS, 208 Carnival Pl., El Paso, TX 79912. Representative: Jerome Vincent Brooks (same address as applicant) (915) 584-1931. As a *broker of general commodities* (except household goods), between points in the U.S. (except AK and HI).

MC 167934, filed May 9, 1983. Applicant: CLASSIC SHORTWAY LINES, INC., 7350 N.W. 77th St., Medley, FL 33166. Representative: Richard B. Austin, 320 Rochester Bldg., 8390 N.W. 53rd St., Miami, FL 33166 (305) 592-0036. Transporting *passengers*, in charter and special operations, between points in the U.S. (except AK and HI).

Note.—Applicant seeks to provide privately-funded charter and special transportation.

MC 168004, filed May 4, 1983. Applicant: WTR BROKERAGE, INC., Maryland Farms, Bldg. 3, Suite 300, Brentwood, TN 37027. Representative: Scotty Jones (Same address as applicant) (615) 373-1699. As a *broker* of *general commodities* (except household

goods), between points in the U.S. (except AK and HI).

For the following, please direct status calls to Team 1 at 202-275-7992.

Volume No. OP1-191

Decided: May 20, 1983.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier. (Member Parker not participating.)

FF-690, filed May 4, 1983. Applicant: A-WEND-O FORWARDING, INC., P.O. Box 73713, Fairbanks, AK 99707. Representative: Robert C. Holmes, 750 West Second Ave., Suite 200, Anchorage, AK 99501 (907) 276-6354. As a *freight forwarder* in connection with the transportation of *household goods, unaccompanied baggage* and *used automobiles*, between points in the U.S.

FF 371 (Sub-3), filed May 18, 1983. Applicant: C-JOY INTERNATIONAL, INC., 5142 Bolsa Ave., Huntington Beach, CA 92649. Representative: Alan F. Wohlstetter, 1700 K St., NW., Washington, D.C. 20006, (202) 833-8884. As a *freight forwarder*, in connection with the transportation of *used household goods, unaccompanied baggage, and used automobiles*, between points in AK, on the one hand, and, on the other, points in the U.S. (including AK and HI).

W 1370, filed April 25, 1983. Applicant: ACTION MARINE SERVICES, INC., P.O. Box 289, Marrero, LA 70072. Representative: R. A. Osborn, Jr., 310 Huey P. Long Ave., #7, Gretna, LA 70053 (504) 362-0691. As a *water carrier*, to provide transportation of *general commodities* (except classes A and B explosives and household goods), in non-self propelled vessels with the use of separate towing vessels in the performance of general towage, between points and ports along the Cumberland, Green, Kanawha, Licking and Tennessee Rivers, on the one hand, and, on the other, the Allegheny, Arkansas-Verdigris, Ouachita Mississippi, Missouri, Monongahela, Ohio, Alabama, Black Warrier, Mobile and Tombigbee Rivers, the Illinois Waterway, the Gulf Intracoastal Waterway from Brownsville, TX to Apalachicola, FL, the Atlantic Intercoastal Waterway from Apalachicola, FL, north to its furthest reaches, Lake Michigan, and their tributaries.

MC 109141 (Sub-26), filed May 9, 1983. Applicant: CARL J. AUSTAD & SON, INC., Box 389, Hettinger, ND 58639. Representative: Charles E. Johnson, Box 2056, Bismarck, ND 58502-2056, (701) 223-5300. Transporting (1) *cement, bentonite, leonardite and lignite char*, and (2) *petroleum and coal products*, between points in ND, SD, MN, IA, OR, WA, MT, ID, CO, NE and WY.

MC 119560 (Sub-26), filed May 16, 1983. Applicant: SOUTHERN BULK HAULERS, INC., P.O. Box 278, Harleyville, SC 29448. Representative: Jon F. Hollengreen, 1020 Pennsylvania Bldg., Pennsylvania Ave. & 13th St., NW., Washington, D.C. 20004, (202) 628-4600. Transporting *chemicals and related products*, between points in AL, DE, FL, GA, KY, MD, NC, NJ, OH, PA, SD, TN, VA, and WV.

MC 128570 (Sub-25), filed May 6, 1983. Applicant: BROOKS ARMORED CAR SERVICE, INC., P.O. Box 1223, Wilmington, DE 19899. Representative: James F. Flint, 406 World Center Bldg., 918 16th St., NW., Washington, DC 20006, (202) 833-1170. Transporting *general commodities* (except household goods and commodities in bulk), between points in the U.S. (except AK and HI). Condition: to the extent that this certificate authorizes the transportation of classes A and B explosives, it shall expires 5 years from its date of issuance.

MC 139330 (Sub-8), filed May 11, 1983. Applicant: F.V.T. TRUCKING, INC., 106 Howard Dr., Williamstown, NJ 08094. Representative: Lawrence E. Lindeman, 4660 Kenmore Ave., m Suite 1203, Alexandria, VA 22304, (703) 751-2441. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI).

MC 150530, filed May 16, 1983. Applicant: RICHARD HEATHERLY, d.b.a. TANK TRANSPORT, 2909 Hooper St., Newport, AR 72112. Representative: Warren A. Goff, 109 Madison Ave., Memphis, TN 38103, (901) 526-2900. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Owens Corning Fiberglass Company, of Memphis, TN.

MC 152891 (Sub-3), filed May 9, 1983. Applicant: WALES INDUSTRIES, INC., P.O. Box 1156, Lake Wales, FL 33859. Representative: John W. McWhirter, Jr., P.O. Box 3350, Tampa, FL 33601, (813) 224-0866. 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 153590 (Sub-4), filed May 11, 1983. Applicant: BELCOURT OIL COMPANY, INC., P.O. Box 750, Belcourt, ND 58316. Representative: C. Jack Pearce, 1000 Connecticut Ave., NW., Suite 1200, Washington, DC 20036, (202) 785-0048. Transporting *general commodities* (except classes A and B explosives and household goods), between points in the U.S. (except AK and HI), under continuing contract(s) with Turtle Mountain Truck Brokers, Inc., of Belcourt, ND.

MC 158881, filed May 13, 1983. Applicant: MAHTOMEDI TRUCKING, INC., 1450 Hallam Ave. No., Mahtomedi, MN 55115. Representative: Arthur Bystrom, (same address as applicant), (612) 426-2110. Transporting *building and construction materials and equipment*, between points in the U.S. (except AK and HI) under continuing contract(s) with Corning-Donohue, Inc., of St. Paul, MN.

MC 166100, filed May 12, 1983. Applicant: O. HARVEY GRIGGS, INC., P.O. Box 824, 1015 West Pine St., Mount Airy, NC 27030. Representative: William E. West, Jr., 11 West Fourth St., Winston Salem, NC 27101, (919) 725-1304. Transporting *commodities in bulk*, between points in the U.S. (except AK and HI), under continuing contract(s) with Anderson and Webb Trucking Company and Proctor Silex, Inc., both of Mount Airy, NC.

MC 167780, filed May 4, 1983. Applicant: HUGHES HIGHWAY EXPRESS, 3322 N.E. 35th Ave., Portland, OR 97210. Representative: Bill Hughes, (same address as applicant), (206) 695-5323. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in AZ, CA, CO, ID, MT, NV, NM, OR, UT, WA, and WY.

MC 167811, filed May 4, 1983. Applicant: STEVE WOZNIAK d.b.a. S & D TRUCKING, 20 Blanchard Ave., Binghamton, NY 13904. Representative: Donald C. Carmien, 1818 Michigan Ave., Apt. #5, Miami Beach, FL 33139, (305) 534-7168. Transporting *printed matter*, between points in the U.S., under continuing contract(s) with Simpson-Milligan Printing Co., Inc., of Binghamton, NY.

MC 168020, filed May 13, 1983. Applicant: KURT BROWN d.b.a. TAGER ENTERPRISES, 422 N. Creyts Rd., Lansing, MI 48917. Representative: William B. Elmer, P.O. Box 801, Traverse City, MI 49685-0801, (616) 941-5313. Transporting *such commodities* as are dealt in by manufacturers and distributors of coin operated vending machines, record players and mechanical and electrical entertainment devices, between those points in the U.S. in and east of ND, SD, NE, KS, OK and TX.

MC 168071, filed May 16, 1983. Applicant: AYER & GOSS INC., Hall Ave., P.O. Box 496, Henniker, NH 03242. Representative: Welton McKean, Juniper Ridge, P.O. Box 151, Henniker, NH 03242, (603) 428–3333. Transporting *petroleum products*, between points in ME, NH, VT, MA, and RI.

MC 168091, filed May 16, 1983. Applicant: ROBERT H. MILLER d.b.a. ROBERT H. MILLER TRANSPORTATION, Lake Wildwood, Varna, IL 61375. Representative: Robert H. Miller, (same address as applicant), (309) 463–2390. Transporting *food and related products*, between points in the U.S. (except AK and HI).

[FR Doc. 83-14440 Filed 5-27-83; 8:45 am]

BILLING CODE 7035-01-M

[Volume No. OP3-238]

Motor Carriers; Permanent Authority Decisions; Restriction Removals; Decision-Notice

Decided: May 23, 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 with 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. 2, Members Carleton, Williams, and Ewing.

Agatha L. Mergenovich,

Secretary.

Please direct status inquiries to Team 3, at (202) 275–5223.

MC 21244 (Sub-4X), filed May 2, 1983. Applicant: WESTERN EXPRESS, INC., 5635 Furnace Ave., Baltimore, MD 21227. Representative: Edward N. Button, 635 Oak Hill Ave., Hagerstown, MD 21740, (301) 739–4860. MC 21244 Certificate: Expand such articles as are purchased at auction sales, bankrupts' sales, or sales of merchants' surplus stock in trade to "general commodities (except classes A and B explosives, household goods, and commodities in bulk)".

[FR Doc. 83-14435 Filed 5-27-83; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 387]

Rail Carriers; Exemptions for Contract Tariffs

AGENCY: Interstate Commerce Commission.

ACTION: Notice of provisional exemptions.

SUMMARY: Provisional exemptions are granted under 49 U.S.C. 10505 from the notice requirements of 49 U.S.C. 10713(e), and the below-listed contract tariffs may become effective on one day's notice.[1] These exemptions may be revoked if protests are filed.

DATE: Protests are due within 15 days of publication in the **Federal Register.**

ADDRESS: An original and 6 copies should be mailed to: Office of the Secretary, Interstate Commerce Commission, Washington, D.C. 20423.

FOR FURTHER INFORMATION CONTACT: Douglas Galloway (202) 275–7278.

SUPPLEMENTARY INFORMATION: The 30-day notice requirement is not necessary in these instances to carry out the transportation policy of 49 U.S.C. 10101a or to protect shippers from abuse of market power; moreover, the transaction is of limited scope. Therefore, we find that the exemption requests meet the requirements of 49 U.S.C. 10505(a) and are granted subject to the following conditions:

These grants neither shall be construed to mean that the Commission has approved the contracts for purposes of 49 U.S.C. 10713(e) not that the Commission is deprived of jurisdiction to institute a proceeding on its own initiative or on complaint, to review these contracts and to determine their lawfulness.

Sub-No.	Name of railroad, contract No., and specifics	Review board [1]	Decided date
938	Soo Line Railroad Company Exemption for Contract Tariff ICC-SOO-C-0214 (Various Commodities)	2	05-24-83
939	Norfolk and Western Railway Company Exemption for Contract Tariff ICC-NW-C-7024 (Bituminous Coal)	3	05-24-83
940	Richard Ogilvie, Trustee for Property of Chicago, Milwaukee, St. Paul and Pacific RR Company Exemption for Contract Tariff ICC-MILW-C-0330, Supplement 4 (Iron and/or Steel Articles)	1	05-24-83

[1] Review Board No. 1, Members Parker, Chandler, and Fortier. Review Board No. 2, Members Carleton, Williams, and Ewing. Review Board No. 3, Members Krock, Joyce, and Dowell.

This action will not significantly affect the quality of the human environment or conservation of energy resources.

Authority: 49 U.S.C. 10505.

By the Commission.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83-14434 Filed 5-27-83; 8:45 am]

BILLING CODE 7035-01-M

Water Carriers

F.D. 30154. By decision of May 23, 1983, issued under 49 U.S.C. 10926 the Interstate Commerce Commission approved the transfer to GCI, Inc., of Certificates No. W–654 and W–654 (Sub-Nos. 1, 2, and 4) issued April 24, 1958, and No. W–654 (Sub-No. 8) issued June 27, 1978, to Warrier & Gulf Navagation Company authorizing the transportation of general commodities by self propelled vessels and by nonself-propelled vessels with the use of separate towing vessels between 55 named Pacific Coast ports, on the one hand, and, on the other, 8 named Gulf of Mexico ports and 33 named Atlantic Coast ports, through the Panama Canal, subject to the payment of the application filing fee set forth in 49 CFR 1002.2(d)(30).

Applicant's representatives are: Richard J. Munsch, Room 1569, 600 Grant Street, Pittsburgh, PA 15230; and Fritz R. Kahn, Suite 1100, 1660 L Street, NW., Washington, DC 20036

By the Commission, Chairman Taylor, Vice Chairman Sterrett, Commissioners Andre and Gradison.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83-14438 Filed 5-27-83; 8:45 am]

BILLING CODE 7035-01-M

[1] Note: Tariff Supplements advancing contracts' effective date shall refer to this decision for authority.

DEPARTMENT OF JUSTICE

Agency Forms Under Review

May 26, 1983.

OMB has been sent for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. The list has all the entries grouped into new forms, revisions, or extensions. Each entry contains the following information:

(1) The name and telephone number of the Agency Clearance Officer (from whom a copy of the form and supporting documents is available); (2) The office of the agency issuing this form; (3) The title of the form; (4) The agency form number, if applicable; (5) How often the form must be filled out; (6) Who will be required or asked to report; (7) An estimate of the number of responses; (8) An estimate of the total number of hours needed to fill out the form; (9) An indication of whether Section 3504(H) of Pub. L. 96-511 applies; (10) The name and telephone number of the person or office responsible for OMB review.

Copies of the proposed forms and supporting documents may be obtained from the Agency Clearance Officer whose name and telephone number appear under the agency name. Comments and questions about the items on this list should be directed to the reviewer listed at the end of each entry and to the Agency Clearance Officer. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the reviewer and the Agency Clearance Officer of your intent as early as possible.

Department of Justice

Agency Clearance Officer Larry E. Miesse—202-633-4312.

EXTENSION (No Change in Substance or Method of Collection)

- Office of Juvenile Justice and Delinquency Prevention

Department of Justice
Compliance Monitoring Report
State or local governments
Section 223(a)(15) of the Juvenile Justice Delinquency Act requires states which receive formula grant awards to develop a system of monitoring juvenile and correctional facilities to ensure that three legislative requirements are met and requires states to annually report the results of this monitoring. The results are used to determine State eligibility to continue participation in the JJDA Act: 52 respondents; 7,800 hours; not applicable under 3504(h).
David Reed—395-7231

Larry E. Miesse,

Department Clearance Officer, Systems Policy Staff, Office of Information Technology, Justice Management Division, Department of Justice.

[FR Doc. 83-14432 Filed 5-27-83; 8:45 am]
BILLING CODE 4410-01-M

Drug Enforcement Administration

[Docket No. 83-5]

Anthony J. Crisanti, D.D.S., Chicago, Illinois; Hearing

Notice is hereby given that on January 5, 1983, the Drug Enforcement Administration, Department of Justice, issue to Anthony J. Crisanti, D.D.S., an Order To Show Cause as to why the Drug Enforcement Administration should not revoke his DEA Certificate of Registration, AC7813860, and deny his application, executed on August 4, 1982, for registration as a practitioner under 21 U.S.C. 823(f).

Thirty days having elapsed since the said Order To Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on Tuesday, June 7, 1983, commencing at 9:30 a.m. in the Occupational Safety and Health Review Commission Hearing Room, Room 1530, 55 East Monroe Street, Chicago, Illinois.

Dated: May 23, 1983.

Francis M. Mullen, Jr.,

Acting Administrator, Drug Enforcement Administration.

[FR Doc. 83-14452 Filed 5-27-83; 8:45 am]
BILLING CODE 4410-09-M

[Docket No. 83-13]

Philip C. Gradolph, M.D., Evanston, Illinois; Hearing

Notice is hereby given that on April 6, 1983, the Drug Enforcement Administration, Department of Justice, issued to Philip C. Gradolph, M.D., an Order To Show Cause as to why the Drug Enforcement Administration should not revoke his DEA Certificate of Registration, AG1047011, and deny his application, executed on September 30, 1982, for registration as a practitioner under 21 U.S.C. 823(f).

Thirty days having elapsed since the said Order To Show Cause was received by Respondent and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held commencing at 9:30 a.m. on Thursday, June 9, 1983, in the Occupational Safety and Health Review Commission Hearing Room, Room 1530, 55 East Monroe Street, Chicago, Illinois.

Dated: May 23, 1983.

Francis M. Mullen, Jr.,

Acting Administrator, Drug Enforcement Administration.

[FR Doc. 83-14451 Filed 5-27-83; 8:45 am]
BILLING CODE 4410-09-M

Importation of Controlled Substances; Philadelphia Seed Co.; Application

Pursuant to Section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(h)), the Attorney General shall, prior to issuing a registration under this section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under Section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with § 1311.42 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on February 15, 1983, Philadelphia Seed Company, Division of Stanford Seed Company, Muddy Creek Road, Lancaster County, Denver, Pennsylvania 17517, made application to the Drug Enforcement Administration to be registered as an importer of Marihuana (7360), a basic class controlled substance in Schedule I.

As to the basic class of controlled substance listed above for which application for registration has been made, any other applicant therefor, and any existing bulk manufacturer registered therefor, may file written comments on or objections to the issuance of such registration and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as 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, NW., Washington, D.C. 20537, Attention: DEA Federal Register Representative (Room 1203), and must be filed no later than June 30, 1983.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42 (b), (c), (d), (e) and (f). As noted in a previous notice at 40 FR 43745-46

(September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator of the Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42 (a), (b), (c), (d), (e) and (f) are satisfied.

Dated: May 20, 1983.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

Dated: May 20, 1983.

[FR Doc. 83-14449 Filed 5-27-83; 8:45 am]

BILLING CODE 4410-09-M

Importation of Controlled Substances; Sigma Chemical Co.; Application

Pursuant to Section 1008 of the Controlled substances Import and Export act (21 U.S.C. 958(h)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II, and prior to issuing a regulation under Section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with § 1311.42 or Title 21, code of Federal Regulations (CFR), notice is hereby given that on February 1, 1983, sigma Chemical Company, 3500 Dekalb Street, St. Louis, Missouri 63118, made application to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Marihuana (7360)	I.
Tetrahydrocannabinols (7370)	I.
Mescaline (7381)	I.
Morphine-3-Gluronide (9329)	II.

As to the basic classes of controlled substances listed above for which application for registration has been made, any other applicant therefore, and any existing bulk manufacturer registered therefore, may file written comments on or objections to the issuance of such registration and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as 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 that June 30, 1983.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42 (b), (c), (d), (e) and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator of the Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42 (a), (b), (c), (d), (e) and (f) are satisfied.

Dated: May 20, 1983.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 83-14450 Filed 5-27-83; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 82-34]

Ray Roya, M.D., Chicago, Illinois; Hearing

Notice is hereby given that on September 28, 1982, the Drug Enforcement Administration, Department of Justice, issued to Ray Roya, M.D., an Order To Show Cause as to why the Drug Enforcement Administration should not deny his application, dated August 31, 1982, for registration as a practitioner under 21 U.S.C. 823(f).

Thirty days having elapsed since the said Order To Show Cause was received by Respondent and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held commencing at 9:30 a.m., on Wednesday, June 8, 1983, in the Occupational Safety and Health Review Commission Hearing Room, Room 1530, 55 East Monroe Street, Chicago, Illinois.

Dated: May 23, 1983.

Francis M. Mullen, Jr.,

Acting Administrator, Drug Enforcement Administration.

[FR Doc. 83-14453 Filed 5-27-83; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Employment and Training Administration

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period May 16, 1983—May 20, 1983.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, toand the the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-13,854; Sanyo Manufacturing Corp., Forrest City, AR

TA-W-13,663; Mardan Corp., DBA C.C. Conn Limited, Abilene, TX

TA-W-13,826; International Hat Co., Oran, MO

TA-W-13,936; General Electric Co., LST Foundry, Erie, PA

TA-W-13,835; Aarving Displays, Inc., Linden, NJ

TA-W-13,898; Conaway-Winter, Inc., Mountain View, MO

In the following cases the investigation revealed that criterion (3) has not been met. Increased imports did not contribute importantly to workers separations at the firm.

TA-W-14,163; Kay-Fries, Inc., Stony Point, NY

TA-W-14,370; Midway Manufacturing & Supply, Inc., Odessa, TX

TA-W-14,217; RCA Corp., Consumer Electronics Div., Monticello, IN
TA-W-14,404; Anaconda Minerals Co., Butte, MT
TA-W-13,743; Occidental Minerals Corp., Candelaria Partners Mine, Hawthorne, NV
TA-W-13,872; GTE Products Corp., Circuit Products Div., Muncy, PA
TA-W-14,226; The Kentland Elkhorn Coal Corp., Pike County, KY

In the following cases the investigation revealed that criterion (3) has not been met for the reasons specified.

TA-W-14,161; Great Western Sugar Co., Bayard, NE
Aggregate U.S. imports of beet sugar did not increase as required for certification.

TA-W-14,485; Harsco Corp., Heckett Div., Plant #42, Fontana, CA
Aggregate U.S. imports of scrap are negligible.

TA-W-13,939; RMI Co., Ashtabula, OH
Aggregate U.S. imports of titanium mill products did not increase as required for certification.

TA-W-14,174; RMI Co., Niles, OH
Aggregate U.S. imports of titanium mill products did not increase as required for certification.

TA-W-13,987; ALU Textile Combining Corp., Hoboken, NJ
The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

Affirmative Determinations

TA-W-14,171; Clark Equipment Co., Benton Harbor, MI
A certification was issued covering all worker engaged in the production of front-end loaders separated on or after October 1, 1982 and before February 1, 1983.

TA-W-13,972; Boart Hardmetals, Inc., Myerstown, PA
A certification was issued covering all workers of the firm separated on or after November 9, 1981.

TA-W-13,845; Washington Garment Co., Washington, PA
A certification was issued covering all workers separated on or after September 22, 1981 and before December 31, 1982.

TA-W-13,941; Wheaton Glass Co., Millville, NJ
A certification was issued covering all workers of the firm separated on or after December 1, 1981.

TA-W-13,782; Bata Shoe Co., Inc., Elkins Div., Elkins, WV
A certification was issued covering all workers of the firm separated on or after March 12, 1982.

TA-W-13,866; Bethlehem Steel Corp., Los Angeles Plant, Vernon, CA
A certification was issued covering all workers producing carbon and alloy steel bars and basic and semifinished steel separated on or after October 15, 1981.

TA-W-13,981; Stackpole Components Co., Lumberton, NJ
A certification was issued covering all workers of the firm separated on or after January 1, 1982.

TA-W-14,191; Jondel Industries, Inc., New York NY
A certification was issued covering all workers of the firm separated on or after November 1, 1982.

TA-W-14,164; Levi Strauss & Co., Beaufort, SC
A certification was issued covering all workers of the firm separated on or after December 1, 1981 and before March 15, 1983

TA-W-13,605; Joseph Love, Inc., College Point, NY
A certification was issued covering all workers separated on or after June 1, 1981 and before June 1, 1982.

TA-W-13,632; Marsh Instrument Co., A Div. of General Signal Corp., Skopie, IL
A certification was issued covering all workers of the firm producing vaccum and pressure gauges and thermometers who became separated on or after June 24, 1981.

TA-W-14,208; Monessen Works, Wheeling-Pittsburgh Steel Corp., Monessen, PA
A certification was issued covering all workers engaged in employment related to the production of basic and semifinished steel separated on or after January 4, 1982.

TA-W-13,851; International Harvester Co., Springfield, OH
A certification was issued covering all workers separated on or after September 26, 1981.

TA-W-14,179; E-Systems, Inc., Memcor Div., Huntington, IN
A certification was issued covering all workers of the firm separated on or after December 3, 1982.

TA-W-13,699; Ely and Walker, Inc., Kennett, MO
A certification was issued covering all workers separated on or after September 15, 1981 and before January 15, 1983.

TA-W-13,796; Ely and Walker, Inc., Heber Springs, AR
A certification was issued covering all workers separated on or after September 15, 1981 and before January 15, 1983.

TA-W-13,678; Hartford Special, Inc., Simsbury, CT
A certification was issued covering all workers separated on or after January 1, 1982.

TA-W-13,709; Gulf & Western Manufacturing Co., Monroe Steel Casting Div., Monroe, MI
A certification was issued covering all workers separated on or after July 28, 1981 and before July 1, 1982.

TA-W-14,196; Weather Wise, Inc., New York, NY
A certification was issued covering all workers of the firm separated on or after September 30, 1982.

TA-W-14,197; Mickey Blumfield, Inc., New York NY
A certification was issued covering all workers of the firmseparated on or after September 30, 1982.

TA-W-13,715; Cooper-Wiss, Newark, NJ
A certification was issued covering all workers engaged in employment related to scissors and shears separated on or after January 1, 1982.

TA-W-13,715A; Cooper Wiss, Statesboro, GA
A certification was issued covering all workers engaged in employment related to scissors and shears separated on or after January 1, 1982.

I hereby certify that the aforementioned determinations were issued during the period May 16, 1983—May 20, 1983. Copies of these determinations are available for inspection in Room 9120, U.S. Department of Labor, 601 D Street, N.W., Washington, D.C. 20213 during normal business hours or will be mailed to persons who write to the above address.

Dated: may 24, 1983.

Marvin M. Fooks,
Director, Office of Trade Adjustment Assistance.

[FR Doc. 83-14488 Filed 5-27-83; 8:45 am]
BILLING CODE 4510-30-M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations

will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than June 10, 1983.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than June 10, 1983.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, N.W., Washington, D.C. 20213.

Signed at Washington, D.C. this 23rd day of May 1983.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
Chicago Bridge & Iron Co. (C.B.I. Nuclear Co.) (workers)	Memphis, TN	5/16/83	5/10/83	TA-W-14,644	Nuclear reactors, nuclear reactor parts, heavy metal fabricated products, coal fractionators.
Diamond Tool & Horseshoe Co. (workers)	Duluth MN	5/16/83	5/10/83	TA-W-14,645	Hand tools.
Donn Products, Inc. (workers)	Lackawanna, NY	5/17/83	5/13/83	TA-W-14,646	Suspended ceilings grid, and pre-fabricated wall systems.
Dravo Corp., Dravo Marine Equipment Co. (IUMSWA	Pittsburgh, PA	5/17/83	5/13/83	TA-W-14,647	Towboats, barges, steel making equipment.
Endicott Forging & Mfg. Co., Inc (Int'l Brotherhood of Boilermakers).	Endicott, NY	5/17/83	5/13/83	TA-W-14,648	Closed die custom steel forgings.
Foote Mineral Co. (company)	New Johnsonville, TN	5/16/83	5/3/83	TA-W-14,649	Electrolytic managanese.
Harbor Manufacturing Co., Inc (USWA)	Genoa, OH	5/17/83	5/9/83	TA-W-14,650	Tank thread, end plate, end connector, center guide, drop forgings.
McNeil Akron, Inc. (USWA)	Akron, OH	5/16/83	4/20/83	TA-W-14,651	Fabricating shop—build machinery.
Microdot Fastening Systems, Central Screw-Frankfort Division (workers).	Frankfort, KY	5/17/83	5/12/83	TA-W-14,652	Threaded male fasteners.
Oerlikon Motch Corp. (IAM&AW)	Euclid, OH	5/16/83	4/29/83	TA-W-14,653	Vertical N.C. turning machines.
Oneida Materials Co. (workers)	Pueblo, CO	5/16/83	4/23/83	TA-W-14,654	Process coke dust and iron oxide wastes.
(The) S.P. Manufacuring Corp. (IAM&AW)	Solon, OH	5/16/83	4/26/83	TA-W-14,655	Machine tool accessories.

[FR Doc. 83-14486 Filed 5-27-83; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-13,487]

Lello Fashions, North Bergen, New Jersey; Revised Determination on Reconsideration

On April 28, 1983, the Department made an Affirmative Determination Regarding Application for Reconsideration for workers and former workers at Lello Fashions, North Bergen, New Jersey. This determination was published in the **Federal Register** on May 5, 1983 (48 FR 20525).

A company official of Lello Fashions claims that their major manufacturer in 1980 closed in 1981 and the Department certified those workers for trade adjustment assistance.

The Department's review of the initial investigation showed that the Department's Notice of Negative Determination was based on the fact that the "contributed importantly" test of Section 222 of the Trade Act of 1974 was not met.

On reconsideration, the Department found that Lello Fashions' major manufacturer in 1980 closed in 1981 with the Department certifying those workers for trade adjustment assistance, TA-W-12,491.

Production of ladies' coats at Lello Fashions is equal to sales. Sales decreased in 1981 compared to 1980 and in every quarter of 1981 compared to the same quarter in 1980. Average employment decreased in 1981 compared to 1980 and in the second, third and fourth quarters of 1981 compared to the same quarters in 1980.

U.S. imports of women's, misses', and children coats and jackets increased absolutely and relative to domestic production in 1981 compared to 1980 and absolutely in the first nine months of 1982 compared to the same period in 1981. The ratio of U.S. imports to domestic production in 1981 was 98.4 percent.

Conclusion

After careful review of the facts obtained on reconsideration, it is concluded that increased imports of articles like or directly competitive with ladies' coats produced at Lello Fashions, North Bergen, New Jersey contributed importantly to the decline in sales or production and to the total or partial separation of workers and former workers of Lello Fashions, North Bergen, New Jersey. In accordance with the provisions of the Trade Act of 1974, I make the following revised determination: "All workers of Lello Fashions, North Bergen, New Jersey who became totally or partially separated from employment on or after May 13, 1981 are eligible to apply for adjustment under Section 223 of the Trade Act of 1974."

Signed at Washington, D.C., this 20th day of May 1983.

Robert O. Deslongchamps,

Acting Deputy Administrator, Unemployment Insurance Service.

[FR Doc. 83-14485 Filed 5-27-83; 8:45 am]

BILLING CODE 4510-30-M

[TA-W13,978]

Mountain States Mineral Enterprises, Inc., Tucson, Arizona; Affirmative Determination Regarding Application for Reconsideration

By an application dated May 5, 1983, company officials requested administrative reconsideration of the Department of Labor's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance on behalf of workers and former workers of Mountain States Mineral Enterprises, Inc., Tucson, Arizona. The determination was published in the **Federal Register** on April 19, 1983 (48 FR 16779).

The application for reconsideration claims that the workers do, in fact, produce an article. About half of their sales resulted from the manufacture of fabricating machinery for beneficiating ore, i.e. heavy duty separators and sink/float vessels.

Conclusion

After careful review of the application, I conclude that the claims are of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is therefore, granted.

Signed at Washington, D.C., this 20th day of May 1983.

Harold A Bratt,

Deputy Director, Office of Program Management, Unemployment Insurance Service.

[FR Doc. 83-14484 Filed 5-27-83; 8:45 am]

BILLING CODE 4510-30-M

Occupational Safety and Health Administration

Washington State Standards; Approval

1. *Background.* Part 1953 of Title 29, Code of Federal Regulations prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Asistant Secretary) (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On January 26, 1973, notice was published in the **Federal Register** (38 FR 2421) of the approval of the Washington plan and the adoption of Subpart F to Part 1952 containing the decision.

The Washington Plan provides for the adoption of State standards which are at least as effective as comparable Federal standards promulgated under section 6 of the Act. Sections 1952.120–124 of Subpart F set forth the State's schedule for the adoption of Federal standards.

By letters dated November 19, 1980 and June 19, 1981 from James P. Sullivan, Assistant Director, to James W. Lake, Regional Administrator, and incorporated as part of the plan, the State submitted State-initiated amendments to WAC 296–24–045—Safety and Health Committee Plan, WAC 296–24–060—First Aid Training and Certification, and WAC 296–24–070—First Aid Room. These amendments, which are contained in WAC 296–24—General Safety and Health standards, expand the scope with the addition of standards which are more stringent than the comparable Federal standards, 29 CFR 1910.151 Medical Services and First Aid. These standards were promulgated by the State pursuant to 34.04 RCW and of the Open Public Meetings Act of 1971, Chapter 42.30 following public hearings and were held on September 18, 1980 and April 23, 1981. The standards became effective December 12, 1980 and July 17, 1981.

2. *Decision.* Having reviewed the State submission in comparison with Federal standards, it has been determined that the State standards continue to be at least as effective as the comparable Federal standards and accordingly should be approved. The differences in the State standards are: (a) The provisions for detailed requirements for safety and health committees, (b) requirements for specific persons who are required to have first aid instructions and certificates, and (c) requirements for first aid rooms.

3. *Location of supplement for inspection and copying:* A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, Room 6003, Federal Office Building, 909 First Avenue, Seattle, Washington 98174; Department of Labor and Industries, General Administration Building, Olympia, Washington 98501; and the Office of State Programs, Room N3613, 200 Constitution Avenue NW., Washington, D.C. 20210.

4. *Public participation.* Under 29 CFR 1953.2(c) the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Washington State Plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reasons:

1. The standards are as effective as the Federal standards which were promulgated in accordance with Federal law including meeting requirements for public participation.

2. The standards were adopted in accordance with the procedural requirement of State law and further participation would be unnecessary.

This decision is effective May 31, 1983.

(Sec. 18, Pub. L. 91–596, 84 Stat. 1608 (29 U.S.C. 667))

Signed at Seattle, Washington this 2d day of March 1982.

James W. Lake,

Regional Administrator.

[FR Doc. 83-14382 Filed 5-27-83; 8:45 am]

BILLING CODE 4510-26-M

MERIT SYSTEMS PROTECTION BOARD

Penalties for Violations of the Hatch Act by Federal Employees

AGENCY: Merit Systems Protection Board.

ACTION: Notice of hearing and the opportunity to participate in oral argument in the case of *Special Counsel* v. *Jim J. Dukes*, Docket No. HQ120600020.

SUMMARY: On June 23, 1983 at 10:00 a.m. in Room 801, 1120 Vermont Avenue, N.W., Washington, D.C., the Board will hear oral argument in the case of *Special Counsel* v. *Jim J. Dukes*, Docket No. HQ120600020. At issue in that case and in others pending before the Board is the question of whether 5 U.S.C. 7325 permits the Board to impose a penalty of less than 30 days suspension on a federal employee found to have violated that section's provisions concerned with taking an active part in a partisan political campaign in violation of 5 U.S.C. 7324.

In addition to the parties to the *Dukes* case, the Board invites participation by interested persons, agencies and labor organizations. Requests to participate in the argument must be made in writing and received by the General Counsel of the Board on or before June 15, 1983. They should be accompanied by a brief or other legal argument indicating the position the requestor is expected to take at the hearing and the legal reasons therefor. Interested parties who do not wish to participate in the oral argument may file amicus briefs by the same date. In order to eliminate duplicative argument, the Board may limit participation in the oral argument. All written matters received will, however, be considered by the Board.

The Board believes the following questions may be relevant to ultimate resolution of the underlying issue:

1. Does the Board have inherent or specific authority to determine the appropriate penalty for a violation by a Federal employee of the Hatch Act?

2. To what extent are the provisions of 5 U.S.C. 1505 relating to state and local government employees relevant to determining this question?

3. If the Board imposes the statutory minimum penalty, may it suspend or

remit all or a portion of it during good behavior by the employee?

4. Can the Board impose alternative sanctions which result in a monetary loss to the employee equal to the statutory minimum penalty: For example, a suspension totaling 30 days but running one day a pay period, or a forfeiture of accrued annual leave, or some combination of the above?

5. Whether the Special Counsel's prosecutorial discretion in these matters creates an appropriate mechanism for treating technical violations of the Hatch Act such that modification of the statutory minimum penalty is unnecessary? In this regard, is the Special Counsel authorized to charge an employee occupying a position in the competitive service with violation of 5 CFR 4.1 in lieu of a charge of violation of the Hatch Act?

6. May the employee and the agency, with agreement of the Special Counsel, settle a Hatch Act case with the result that 5 U.S.C. 7503 may be used to effect a suspension of less than 30 days?

DATE: Request to participate should be made on or before June 15, 1983.

ADDRESSES: The original and one copy of each amicus brief submitted in response to this notice shall be filed with the Office of the General Counsel of the Board and addressed as follows: Kenneth W. Goshorn, Office of General Counsel, Merit Systems Protection Board, 1120 Vermont Avenue, NW., Washington, D.C. 20419.

FOR FURTHER INFORMATION CONTACT: Kenneth W. Goshorn, Merit Systems Protection Board, (202) 653–7171, 1120 Vermont Avenue, NW., Washington, D.C. 20419.

SUPPLEMENTARY INFORMATION: The recommended decision of the Administrative Law Judge in the *Dukes* case provides as follows:

This proceeding arose as a result of a Complaint for disciplinary action against Respondent, Jim J. Dukes, filed on July 9, 1980 by the Office of Special Counsel. The Complaint charged Respondent with taking an active part in a political campaign in violation of 5 U.S.C. 7324(a), the Hatch Political Activities Act ("the Hatch Act"). Pursuant to a request of the parties, the Administrative Law Judge to whom this matter had been initially referred issued a decision recommending that the Board accept and approve a Joint Motion for Acceptance of Settlement Agreement. The Board declined to adopt the Recommended Decision and remanded the case for further proceedings. On September 28, 1982, a hearing was held before me in Brownsville, Texas.

Written briefs were timely filed by the parties and have been considered. However, Respondent's Motion to Strike that portion of Petitioner's Memorandum of Points and Authorities in Support of Proposed Findings of Fact and Conclusions of Law, found at page 2, paragraphs 2 and 3, is hereby granted inasmuch as the offending portion refers to the substance of a stipulation which was voided when the settlement agreement was rejected by the Board. Upon the record of the hearing considered as a whole, I make the following recommended findings and conclusions:

Findings of Fact

The Respondent, Jim J. Dukes, has been employed since 1975 as a Customs Patrol Officer with the United States Customs Service in Brownsville, Texas. In September, 1978, Respondent enrolled in an undergraduate course entitled "American Political Parties" at Pan American University where he was a candidate for a Master's Degree in Government. The course required students to become involved in a political campaign to the extent necessary to prepare a paper describing the mechanics of conducting a political campaign. Prior to that time, Respondent had never participated in a partisan political election. Aware that the Hatch Act restricted the types of political activity in which federal employees can engage, Respondent informed his instructor that his involvement with a campaign would be limited.

Before becoming involved in Senator John Tower's reelection campaign,[1] Respondent made several efforts to determine exactly what activities the Hatch Act proscribes. He researched the applicable federal regulations at a local college library. Using the phone number provided by his instructor, Respondent next contacted a Harvey Littrell, Brownsville campaign manager for the reelection of Senator Tower. Littrell, in turn, sought the advice of an attorney at Tower Campaign Headquarters in Austin, Texas. The attorney, whose name neither Littrell nor Respondent can recall, purportedly told both men that involvement in "behind-the-scenes" activities, including telephone polling, was permissible under the Act. Respondent also discussed the situation in general with his supervisor, Alton Gammon. However, Respondent did not seek official guidance from the Merit Systems Protection Board regarding prohibited and permissible activity under the Act.

Over a period of three or four weeks, Respondent contributed a total of 10–20 hours as a volunteer at Tower's Brownsville campaign office, limiting his involvement in accordance with his research and the advice he received from Tower Headquarters. In addition to observing, Respondent occasionally answered telephones when no one else was at the office, a situation which occurred because the demands of full time employment and graduate school made it impossible for him to volunteer time during regular campaign office hours. On one such occasion, Littrell had to leave the office when no other campaign workers were present; Respondent was given a key to the office and asked to lock it when he left. On another occasion, Respondent participated in a voter identification survey designed to determine voter preference in the election. This activity involved telephoning registered voters listed on a computer printout and delivering a "canned speech" which required Respondent to identify himself as a Tower volunteer and ask if the person was going to vote for the Senator. The purpose of the poll was limited to determining Tower's support among local voters and to aiding in the development of campaign strategy. No attempts were made in this poll to solicit support for Senator Tower nor were any campaign issues discussed.

Respondent made telephone calls on election eve to remind previously identified Tower supporters to vote. Respondent refused when asked to drive voters to the polls, believing such activity to be violative of the Hatch Act. After the election, Respondent aided Littrell in tabulating the telephone poll results to compare it to the actual voting.

In fulfillment of this course requirement, Respondent subsequently wrote a facetious account of his observations and campaign activities, knowing that his instructor, a personal friend, would appreciate a humorous rendition of how little impact Respondent's involvement and the small Brownsville office actually had on the campaign. Although Respondent considers himself a Republican, and admittedly desired the election of Senator Tower over his opponent, Respondent's sole reason for becoming involved in Tower's campaign was to fulfill a college course requirement and his involvement with that campaign was limited to activities which he in good

[1] Respondent's choices of which campaign to work for were limited to two: the reelection of Senator John Tower (R–TX), and the campaign of Tower's Democratic opponent, Bob Kruger. The course instructor provided students with telephone numbers of the local campaign managers for both candidates.

faith believed to be permissible under the Hatch Act.

Conclusions of Law

It is undisputed that inasmuch as Respondent is an employee of the U.S. Customs Service, he is subject to the Hatch Act prohibitions against federal employees taking an active part in partisan political management or campaigns. 5 U.S.C. 7324(a)(2). Special Counsel contends that Respondent's activities in connection with the Tower campaign constitute a violation of the statute as interpreted by 5 CFR 733.122(b) (5) and (7).[2] As a threshold matter, Respondent urges that the charge in the instant case be found to be unconstitutionally vague and thus violative of Respondent's right to procedural due process. (Respondent's Brief at 1–3.) Relying on dicta contained in *In re McDuffie*, 1 MSPB 7, 8 n.4 (1979),[3] Respondent avers that "Special Counsel has applied the [Hatch Act] in an unconstitutional manner by its failure in either the Complaint or hearing to tie the allegations against Respondent to one of the specific regulatory prohibitions" found in 5 CFR 733. (Respondent's Proposed Conclusions of Law at 6, paragraph 3.)

Respondent has raised an appealing argument, but I cannot conclude as a matter of law that his constitutional right to procedural due process has been violated. The concept of procedural due process implies that official action must meet minimum standards of fairness to the individual, which encompass the right to adequate notice and a meaningful opportunity to be heard before a decision is made. In the context of Hatch Act complaints, this notion is generally interpreted as adopting the philosophy of "Notice Pleading": A Complaint is sufficiently detailed if it provides the Respondent with enough information to enable him to understand the charges and raise a proper defense. *In re Wiles*, 1 P.A.R. 865, 866 (1963). Although the Complaint in this action does not specifically refer to the regulatory authority upon which Special Counsel relies, the charges make clear that disciplinary action is being sought because of "a variety of tasks" Respondent performed "in Senator Tower's Brownsville, Texas, campaign headquarters," (Complaint at paragraph 5), and that Special Counsel is relying on Respondent's account of his activities in connection with the partisan political campaign, as detailed in his term paper, to support the theory that such participation constitutes a violation of 5 U.S.C. 7324(a)(2). (Complaint at paragraphs 7–9). A cursory glance at the pertinent regulatory authority clearly suggests that the charge is tied to 5 CFR 733.122(b) (5) and (7) which interpret the substance of the prohibitions declared in section 7324(a)(2). Furthermore, the record as a whole amply shows that Respondent was sufficiently apprised of the charges against him to allow his able counsel to present a defense. Thus, the due process safeguards which caused concern in *McDuffie* have been met.

The sole question, then, is whether Respondent's participation in the voter preference poll, the telephoning to remind previously identified Tower supporters to vote, and the so-called "caretaker activities" in which Respondent engaged constitute "an active part in political management or in [a] political campaign" in violation of the Hatch Act as interpreted by 5 CFR 733.122(b) (5) and (7). Or, alternatively, whether, as Respondent claims, his activities "in connection with the re-election campaign of Senator Tower were so minimal as to fail to rise to the level of an 'active part' in a political campaign." (Respondent's Proposed Conclusions of Law at paragraph 4). Although I can hardly conclude that Respondent's activities rose to the managerial level, I am constrained to conclude that Respondent's activities nevertheless constitute a violation of the Hatch Act as interpreted by 5 CFR 733.122(b)(7).

The meaning of taking an "active part" in a political campaign may properly be the subject of a semantic debate, but the legal standard is clear: any activity directed toward the success of any partisan political party or its candidate is in contravention of the Hatch Act. *United Pub. Workers of Am.* v. *Mitchell*, 330 U.S. 75, 100 (1947); *In re Osheim*, 2 P.A.R. 734, 738 (1966), *aff'd sub nom. U.S. Civil Service Commission* v. *Osheim*, 299 F.Supp. 317 (E. D. Wis. 1969). In this regard, Respondent's participation in both the voter preference survey and his telephone calls to previously identified Tower supporters are clearly prohibited activities. Furthermore, based on legislative history and statutory construction, this latter activity must be viewed as giving rise to a direct violation of subsection (b)(7). In 1940 when the Hatch Act was extended to cover employees of state and local agencies, Senator Hatch inserted into the Congressional Record a card listing 18 rules which were described as embodying the Civil Service Commission's construction of Civil Service Rule 1, the original proscription of active participation by federal employees in political management or political campaigns. 86 Cong. Rec. 2943. In pertinent part, Rule 8 provided: "Employees may vote as they please, but they must not solicit votes; mark ballots for others; help to get out votes; * * *" It is within this context that subsection (b)(7) must be construed since the administrative restatement of Civil Service Rule 1 law was intended by Congress to serve as its definition of proscribed partisan activity. *See generally, CSC* v. *Letter Carriers*, 413 U.S. 548 (1973). To be sure, regulations promulgated under the Hatch Act should be narrowly construed because they restrict the right of individuals to participate in the political process. *See United States* v. *Rumely*, 345 U.S. 41, 47 (1973). Under a properly narrow construction of subsection (b)(7), telephone calls made for the purpose of reminding identified Tower supporters to vote is tantamount to solicitation of support. A voter may be identified as a supporter of one particular nominee, but that support is not assured until he actually casts his ballot. Thus, reminding him to do so is indistinguishable from solicitation. And the initial determination of a voter as a campaign supporter is merely the first step in the process. Nowhere in the legislative history of the Hatch Act does there appear to have been an attempt to differentiate between degrees of political involvement. *See generally, CSC* v. *Letter Carriers, supra*. If a line is to be drawn at all, it must be along the lines of the type of conduct undertaken. Had Respondent's involvement been limited to the role of passive observer—much like that of a reporter, for instance—, there would be little

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[2] The pertinent regulations appearing in 5 CFR 733.122 provide as follows:

§ 733.122 Political management and political campaigning: prohibitions.

(b) Activities prohibited by paragraph (a) of this section include but are not limited to—

(5) Taking an active part in managing the political campaign of a partisan candidate for public office or political party office;

(7) Soliciting votes in support of or in opposition to a partisan candidate for public office or political party office.

[3] In a footnote, the Board stated as following:

Reliance upon the general language of 5 U.S.C. 7324(a)(2) without reference to a particular regulation would be questionable and was not urged by the Government in this case. In fact, the Government relied particularly on 5 CFR 733.122(b)(6). Section 7324(a)(2) was challenged as being unconstitutionally vague and overbroad in *C.S.C.* v. *Letter Carriers*, 413 U.S. 548 (1973). It survived the challenge largely because of the specific regulations promulated in 5 CFR Part 733. *See id.* at 571.81. Thus, it is possible that failure to tie a charge to a specific regulatory provision would be an unconstitutional application of the statute, even though the statue is valid on its face. *Id.* at 8–9 n.4.

question as to whether or not the Act had been violated.

Respondent draws attention to case support for the proposition that campaign activities of a *de minimus* nature are not unlawful. (Respondent's Brief at 5, *citing Gray* v. *Macy*, 358 F.2d 742 (9th Cir. 1966)). Whatever might be the precedential value of that decision, I am convinced that it can not be applied as determinative of the instant action. Respondent's case requires independent consideration inasmuch as the *Gray* opinion contains only bald conclusions of law with no exposition of the factual detail relied upon in reaching those *Pfitzenmeyer*, 1 P.A.R. 628 (1952)[4] and *In re Olsen*, 1 P.A.R. 816 (1960) support the theory that imposition of a penalty is not required where violations are of a *de minimus* nature and for unwitting violations. (Respondent's Brief at 8–10). While such an approach in situations such as this one may be desirable, those cases are clearly distinguishable. In *Pfitzenmeyer*, the employee had requested permission from his supervisors to run as the Democratic candidate for the Office of Justice of the Peace. The case was closed inasmuch as the employee had received erroneous permission from his superiors. Although Respondent discussed with his supervisor to some extent his involvement with the Tower campaign, there is no evidence in the record that Respondent actually sought Gammon's official permission. In contrast with Respondent's activities, the employee in *Olsen* did not intend the results of his actions. He did not intend to allow use of his name, nor did he know it would be used, in a partisan advertisement.

The violation in this case took place under extremely mitigating circumstances and is certainly a technical one. However, despite the fact that Respondent's campaign activities were minimal, that he intended no wrongdoing, and that he affirmatively acted to avoid a violation of the Hatch Act, the fact that he undertook the activity in pursuit of an academic endeavor is of no consequence. While his professor may have presented him with somewhat of a Hobson's choice, the Hatch Act cannot be so loosely construed so as to permit indirectly that which he cannot do directly. It would appear that in cases like this one the only avenue to avoid the imposition of a penalty which is arguably excessive in relation to the violation is that of prosecutorial discretion. Accordingly, I am constrained to recommend that the minimum penalty of a 30-day suspension from work be imposed * * *.

Dated: May 24, 1983.

For the Board.

———,

Chairman.

[FR Doc. 83-14473 Filed 5-27-83; 8:45 am]

BILLING CODE 7400-01-M

[4] However, a reading of the District Court Decision in *Gray*, 239 F.S. pp. 658 (1965), and the cases cited therein, gives the impression that the Court of Appeals was distinguishing "active participation" from freedom of expression and was not attempting to fashion a *de minimus* rule.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 82-52]

Intent To Grant an Exclusive Patent License; John W. Lowrey III

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of intent to grant and exclusive patent license.

SUMMARY: NASA hereby gives notice of intent to grant to John W. Lowrey, III of Mansfield, Louisiana, a limited, exclusive royalty-bearing, revocable license to practice the invention described in U.S. Patent No. 3,412,729 for a "Method and Apparatus for Continuously Monitoring Blood Oxygenation, Blood Pressure, Pulse Rate, and the Pressure Pulse Curve Utilizing and Ear Oximeter as Transducer" which issued on November 26, 1968, to the Administrator of the National Aeronautics and Space Administration on behalf of the United States of America. The proposed exclusive license will be for a limited number of years and will contain appropriate terms and conditions to be negotiated in accordance with NASA Patent Licensing Regulations, 14 CFR Part 1245, Subpart 2. NASA will negotiate the final terms and conditions and grant the exclusive license unless, within 60 days of the date of this Notice, the Director of Patent Licensing receives written objections to the grant, together with supporting documentations. The Director of Patent Licensing will review all written responses to the Notice and then recommend to the Assistant General Counsel for Patent Matters whether to grant the exclusive license.

DATE: Comments to this notice must be received by August 1, 1983.

ADDRESS: National Aeronautics and Space Administration, Code GP-4, Washington, D.C. 20546.

FOR FURTHER INFORMATION CONTACT: Mr. John G. Mannix, Director of Patent Licensing, (202) 755–3954.

Dated: May 20, 1983.

S. Neil Hosenball,

General Counsel.

[FR Doc. 83-14410 Filed 5-27-83; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Humanities Panel Meetings

AGENCY: National Endowment for the Humanities, NFAH.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at 1100 Pennsylvania Avenue, NW., Old Post Office, Washington, D.C. 20506.

Date: June 22, 1983.
Time: 8:00 a.m. to 5:30 p.m.
Room: 430.
Program: This meeting will review applications submitted to the Research Resources: Publications Panel, Division of Research Programs, for projects beginning after October 1, 1983.

Date: June 24, 1983.
Time: 8:00 a.m. to 5:30 p.m.
Room: 430.
Program: This meeting will review applications submitted to the Research Resources: Publications Panel, Division of Research Programs, for projects beginning after October 1, 1983.

The proposed meetings are for the purpose of Panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended including discussion of information given in confidence to the agency by grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; and (3) information the disclosure of which would significantly frustrate implementation of proposed agency action; pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated January 15, 1978, I have determined that these meetings will be closed to the public pursuant to subsections (c) (4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information about these meetings can be obtained from Mr. Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, D.C. 20506, or call (202) 786–0322.

Stephen J. McCleary,

Advisory Committee Management Officer.

[FR Doc. 83-14489 Filed 5-27-83; 8:45 am]

BILLING CODE 7536-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee on Metal Components; Meeting

The ACRS Subcommittee on Metal Components will hold a meeting on June 14 and 15, 1983, at the American Museum of Science and Energy, 300 South Tulane Avenue, Oak Ridge, TN.

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 Subcommittees, their consultants, and Staff. Persons desiring to make oral statements should notify the Designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessay 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. One or more closed sessions may be necessary to discuss such information. (Sunshine Act Exemption 4). 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 14, 1983—8:30 a.m. until the conclusion of business

The Heavy Section Steel Technology (HSST) research site will be visited and the mid-year review of the HSST program will be discussed.

Wednesday, June 15, 1983—8:30 a.m. until the conclusion of business

The Subcommittee will review the status of the pressurized thermal shock (PTS) program.

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, its 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 opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant Designated Federal Employee, Mr. Elpidio Igne (telephone 202/634–1414) between 8:15 a.m. and 5:00 p.m., e.d.t.

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 protect proprietary information. The authority for such closure is Exemption (4) to the Sunshine Act, 5 U.S.C. 552b(c)(4).

Dated: May 25, 1983.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 83-14482 Filed 5-27-83; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–289]

Metropolitan Edison Co., et al., Issuance of Amendment to Facility Operating License and Proposed no Significant Hazards Consideration Determination and Opportunity for Hearing

In the matter of Metropolitan Edison Company, Jersey Central Power & Light Co., Pennsylvania Electric Co., and GPU Nuclear Corp.

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–50, issued to Metropolitan Edison Company, Jersey Central Power and Light Company, Pennsylvania Electric Company, and GPU Nuclear Corporation (the licensees), for operation of the Three Mile Island Nuclear Station, Unit No. 1 (the facility) located in Dauphin County, Pennsylvania.

The amendment requested would revise the Technical Specifications to recognize steam generator tube repair techniques, other than plugging, provided such techniques are approved by the Commission.

The licensees' application, dated May 9, 1983, further requested that the Commission approve, within the provisions of the proposed Technical Specification revision, the kinetic expansion steam generator tube repair technique used at the facility, thus permitting subsequent operation of the facility with the as-repaired steam generators.

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 incease in the probability or consequences of an accident previously evaluated; or (2) create the possibility 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, published in the **Federal Register** on April 6, 1983 (48 FR 14870). None of the examples, relating to whether significant hazards considerations are likely or unlikely, appear to be directly applicable to this amendment. The Commission, however, proposes to determine that the application does not involve a significant hazards consideration because compensatory measures will be employed to provide a level of safety in operation with the repaired steam generators commensurate with that anticipated of the facility had it not experienced the need to repair steam generators.

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 27, 1983, the licensees 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. 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 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 Commision 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 Shaw, Pittmen, Potts & Trowbridge, 1800 M Street, N.W., 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 presiding officer of 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 Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126.

Dated at Bethesda, Maryland, this 24th day of May 1983

For the Nuclear Regulatory Commission.

John F. Stolz,

Chief, Operating Reactors Branch #4, Division of Licensing.

[FR Doc. 83-14481 Filed 5-27-83; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket S-736]

Delta Steamship Lines, Inc.; Section 605(c) of the Merchant Act, 1936, as Amended

Notice is hereby given that, by application dated April 13, 1983, as amended, Delta Steamship Lines, Inc. (Delta) has requested all the necessary approvals and consents to acquire from American President Lines, Ltd. (APL) two C6 container vessels with a capacity of 1012 TEUs and possibly a third container vessel of approximately 1100 TEUs from APL or elsewhere. Delta proposes to remove from subsidized service three C3 vessesl, the *Del Valle, Del Viento* and *Del Monte,* and to substitute the two or three container vessels on a one-for-one basis for two or three of six C4 Lucia-class vessels presently operating on Delta's Line A service on Trade Route 2 (TR 2) under Delta's Operating-Differential Subsidy

Agreement (ODSA), Contract No. MA/MSB-425.

Pursuant to its ODSA, Delta is required to provide on its Line A service a minimum of 48 and a maximum of 62 sailings annually, with required service on TR 2 between U.S. Altantic ports and a port or ports in the former Panama Canal Zone and West Coast of South America. On this service, Delta has the privilege of calling at certain ports on TR 4 (North Coast of Colombia; the Atlantic Coast Republic of Panama; the Dominican Republic; Maracaibo, Puerto Cabello, and La Guaira, Venezuela; Jamaica; the Netherlands West Indies; and Cuba (excluding Guantanamo Bay), provided that no more than 25 annual sailings may call at the ports of Maracaibo, Puerto Cabello, and La Guaira, Venezuela, and the North Coast of Colombia).

Delta presently operates six C4 Lucia-class vessels on its Line A service. Three of these vessels provide approximately bi-weekly service as far south as Ecuador and the remaining three provide approximately bi-weekly service as far south as Chile. Delta's vessels operating on this service also call at Caribbean ports on TR 4.

Delta proposes to operate the three container vessels it acquires on a basic fortnightly schedule on TR 2 as far south as Chile, substituting them for three Lucia-class vessels which presently provide this service. If Delta should only acquire two container vessels, fortnightly service will be provided with these vessel and one Lucia-class vessel. While the actual scheduling for all vessels deployed may vary according to market conditions, total sailings will not exceed contract authority.

Total liner traffic on TR 2 in 1982 amounted to 1,092,000 long tons, with exports totaling 370,000 tons and imports totaling 722,000 tons. In 1982, U.S.-flag liner ships carried 135,000 tons or 36 percent of the export trade and 160,000 tons or 22 percent of the import trade. The following table shows the number of long tons of export and import cargo carried on TR 2 during the period 1975–1982, and the U.S.-flag share:

TRADE ROUTE 2

	Liner Exports (long tons)			Liner Imports (long tons)		
	Total	U.S. Flag	Percent U.S.	Total	U.S. Flag	Percent U.S.
1982	370,000	135,000	36	722,000	160,000	22
1981	480,000	175,000	36	739,000	156,000	21
1980	508,000	180,000	35	674,000	115,000	17
1979	427,000	140,000	33	660,000	137,000	21
1978	311,000	94,000	30	645,000	119,000	18
1977	292,000	106,000	36	592,000	139,000	23
1976	336,000	104,000	31	657,000	144,000	22
1975	359,000	122,000	34	519,000	145,000	28

The table shows that during the eight-year period 1975–1982 U.S.-flag participation in the outbound liner trade on TR 2 ranged from a low of 30 percent in 1978 to a high of 36 percent in each of three years including 1982. The table also shows that U.S.-flag participation in the inbound liner trade did not exceed 28 percent during the period and ranged from a low of 17 percent in 1980 to a high of 28 percent in 1975.

Total liner traffic on TR 4 in 1982 amounted to 2,034,000 long tons, with exports totaling 1,644,000 tons and imports totaling 390,000 tons. In 1982, U.S.-flag liner ships carried 308,000 tons or 19 percent of the export trade and 88,000 tons or 23 percent of the import trade. The following table shows the number of long tons of export and import cargo carried on TR 4 during the period 1975–1982, and the U.S.-flag share:

TRADE ROUTE 4

	Liner Exports (long tons)			Liner Imports (long tons)		
	Total	U.S.-Flag	Percent U.S.	Total	U.S.-Flag	Percent U.S.
1982	1,644,000	308,000	19	390,000	88,000	23
1981	1,783,000	308,000	17	418,000	99,000	24
1980	1,814,000	273,000	15	456,000	88,000	19
1979	1,775,000	323,000	18	500,000	124,000	25
1978	1,522,000	322,000	21	490,000	110,000	22
1977	1,320,000	363,000	28	330,000	74,000	22
1976	1,567,000	449,000	29	532,000	118,000	22
1975	1,356,000	383,000	28	512,000	94,000	18

The table shows that U.S.-flag participation in the outbound liner trade on TR 4 declined from 28 percent in 1975 to 19 percent in 1982. On the other hand, U.S.-flag participation in the inbound liner trade increased from 18 percent in 1975 to 23 percent in 1982.

For information purposes it is noted that Trade Routes 2 and 4 have become increasingly containerized in recent years, and that Delta's C4 Lucia-class ships operating on its Line A service on TR 2, including TR 4 ports, have been operating at full capacity with respect to containerized cargo.

In addition to its Line A service, Delta is also authorized to provide separate subsidized services on TR 4 (U.S. Atlantic/Caribbean) and Trade Routes 23–24–25 (U.S. Pacific/Caribbean, East and West Coast South America). Delta requests that the container vessels it proposes to acquire be included in its existing transfer and interchange (substitution) privileges among TRs 2, 4 and 23–24–25. Delta's Lucia-class vessels presently have full transfer and interchange (substitution) privileges among these services. The container vessels are larger than the C4 Lucia-class vessels in terms of deadweight tonnage. However, Lucia-class vessels offer approximately 1,001,000 cubic feet

of cargo space, 753,000 cu. ft. of under deck space and 249,000 cu. ft. in the 226 on-deck containers. The container vessels offer an equivalent of approximately 1,113,000 cu. ft. of cargo space in the 1012 TEU container capacity. The applicant considers that the container vessels and the Lucia-class vessels are comparable in capacity so that no notice under section 605(c) as a legal matter is required.

Any person, firm, or corporation having an interest in the application who desires to submit comments thereon is invited to file a written statement in triplicate, with the Secretary, Maritime Subsidy Board, Maritime Administration, Room 7300, Department of Transportation, 400 Seventh Street, S.W., Washington, D.C. 20509 by the close of business on June 10, 1983.

The Board specifically invites comments on the following issues: (1) Whether the service with two or three C6 vessels in an existing or additional service, and whether the relevant trade is liner, containerizable or some other trade, (2) whether granting Delta's request to operate two or three C6 container vessels on TRs 2 and 4 with subsidy will give undue advantage or be unduly prejudicial as between U.S.-citizens operating vessels on TRs 2 and 4, (3) whether U.S.-flag service on TRs 2 and 4 is and will be inadequate, and (4) whether it would be in the accomplishment of the purposes and policy of the Act for Delta to operate on TRs 2 and 4 as proposed.

Any party requesting a hearing under Section 605(c) of the Merchant Marine Act, 1936, as amended, is to indicate the basis for any such hearing by addressing the issues on which comments are specifically invited. Unless the parties provide such specifics the Board may determine there is an insufficient basis to order a hearing on Delta's application. Any specifics will be considered in determining whether a hearing is required. In any event, the Board will consider the submissions of all interested parties and will determine the disposition to be made of the matters hereby noticed.

(Catalog of Federal Domestic Assistance Program No. 11.504, Operating-Differential Subsidy (ODS))

Dated May 24, 1983.

By Order of the Maritime Subsidy Board.

Georgia P. Strmas,

Secretary.

[FR Doc. 83-14474 Filed 5-27-83; 8:45 am]

BILLING CODE 4910-81-M

Urban Mass Transportation Administration

Section 15 Reporting System Advisory Committee; Meeting

AGENCY: Urban Mass Transportation, DOT.

ACTION: Notice of Section 15 Reporting System Advisory Committee meeting.

SUMMARY: In this Notice, the Urban Mass Transportation Administration (UMTA) announces the first meeting of the Section 15 Reporting System Advisory Committee. The Committee will provide advice concerning the quality and usefulness of the Section 15 Reporting System.

DATE: June 16–17, 1983.

FOR FURTHER INFORMATION CONTACT: Ronald J. Fisher, Office of Information Services, Room 6419, 400 Seventh Street, SW., Washington, D.C. 20590, (202) 426-9157.

SUPPLEMENTARY INFORMATION:

Background

On August 27, 1981, UMTA issued a Notice in the **Federal Register** (46 FR 43352) announcing the establishment of the Section 15 Reporting System Advisory Committee. Section 15 of the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1611) requires the development of a national reporting system for public mass transportation financial and operating data. The Committee will act in an advisory capacity to UMTA. The Committee shall investigate the quality and usefulness of the Section 15 Reporting System with respect to its performance in providing meaningful information for the analysis of the transit industry.

All Committee meetings are open to the public. With the Chairman's approval, members of the public may speak at meetings in accordance with procedures established by the Committee. A written statement may be filed with the Committee at any time.

Location

Dates: Thursday, June 16, and Friday, June 17, 1983.

Time: 8:30 a.m.–4:00 p.m.

Place: Room 10214, Department of Transportation, 400 7th Street, SW., Washington, D.C. 20590.

Issued on May 24, 1983.

Arthur E. Teele, Jr.,

Administrator, Urban Mass Transportation Administration.

[FR Doc. 83-14472 Filed 5-27-83; 8:45 am]

BILLING CODE 4910-57-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

[Notice No. 467]

Winegrape Varietal Names Advisory Committee; Open Meeting

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Treasury.

ACTION: Notice of advisory committee meeting.

SUMMARY: An open meeting of the Winegrape Varietal Names Advisory Committee will be held at 9:00 am on June 16, 1983, in Room 3517, 525 Market Street, San Francisco, California.

SUPPLEMENTARY INFORMATION: At this meeting the Committee will continue its efforts toward compiling a complete listing of the names used for grapes now being commercially grown in the United States, and identifying those winegrape varietal names which may be incorrect, confusing, or deceptive. Reports will be received from subgroups on the questions of what the Committee should recommend concerning names now being used on wine labels which are not proper varietal names, and guidelines or procedures for the future addition of names to the varietal list which is now being developed.

The meeting will be open to the public. Any person who wishes to furnish written information or to address the Committee should submit the information or the request to appear to the Committee Manager at the address shown below. Requests to appear before the Committee should specify the purpose of the presentation, the subject matter to be covered, and the amount of time desired.

FOR FURTHER INFORMATION CONTACT: Melvin T. Bruce, Manager, Winegrape Varietal Names Advisory Committee, Room 6230, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW, Washington, DC 20226; (202-566-7568).

Signed: May 24, 1983.

W.T. Drake,

Acting Director.

[FR Doc. 83-14501 Filed 5-27-83; 8:45 am]

BILLING CODE 4810-31-M

Sunshine Act Meetings

Federal Register
Vol. 48, No. 105
Tuesday, May 31, 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).

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1

NATIONAL SCIENCE BOARD

DATE AND TIME:
June 16, 1983, 9 a.m.
June 17, 1983, 9 a.m.

PLACE: University of Chicago, Chicago, Illinois.

STATUS: Most of this meeting will be open to the public.

MATTERS TO BE CONSIDERED AT THE MEETING: *Thursday, June 16, 9 a.m.:*

1. Minutes—May 1983 Meeting;
2. Precollege Mathematics and Science Education;
3. Discussion on Creativity and Innovation in Science; and
4. The Engineering Mission of NSF Over the Next Decade.

Friday, June 17, 9 a.m.:

2 and 4. Completion of Discussions on Science Education and Engineering.

[S-770-83 Filed 5-26-83; 11:33 am]

BILLING CODE 7555-01-M

2

POSTAL RATE COMMISSION

AGENCY: Postal Rate Commission.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 48 22676, Thursday, May 19, 1983.

PREVIOUSLY ANNOUNCED DATE AND TIME OF MEETING: Thursday, May 26, 1983, at 2 p.m.

PLACE: Conference Room, Room 500, 2000 L Street NW., Washington, D.C. 20268.

STATUS: Closed (Pursuant to 5 U.S.C. 552b (c) (10).

CONTACT PERSON FOR MORE INFORMATION: Cyril J. Pittack, Acting Secretary (202) 254-3880.

CHANGES IN MEETING: Meeting rescheduled for Wednesday, June 1, 1983, at 12:30 p.m.

[S-771-83 Filed 5-28-83; 12:05 pm]

BILLING CODE 7715-01-M

federal register

Tuesday
May 31, 1983

Part II

Department of Housing and Urban Development

Solar Energy and Energy Conservation Bank

Financial Assistance Program; Interim Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Solar Energy and Energy Conservation Bank

24 CFR Part 1800

[Docket No. R-83-1053]

Financial Assistance Program

AGENCY: Solar Energy and Energy Conservation Bank, HUD.

ACTION: Interim rule.

SUMMARY: The Solar Energy and Energy Conservation Bank (the Bank), was established by the Energy Security Act of 1980. This interim rule sets forth the requirements for implementation of the Bank's program. Following the effective date of this rule, participating States will activate programs to provide financial assistance to individuals for eligible energy conservation measures on residential buildings of any size and passive solar energy measures on one- to four-family residential buildings.

Dates: Effective Date: May 31, 1982.

Comment Due Date: August 1, 1983.

ADDRESS: Interested persons are invited to submit comments regarding this rule to the Office of General Counsel, Rules Docket Clerk, Room 10278, Department of Housing and Urban Development, 451 Seventh 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: Dr. Richard Francis, Manager, Solar Energy and Energy Conservation Bank, Room 2244, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410. Telephone: 202–755–7166 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

Summary of Act: Subtitle A of Title V of the Energy Security Act, 12 U.S.C. 3601 *et seq.*, established the Bank within the Department of Housing and Urban Development (HUD). The purpose of the Bank is to encourage energy conservation and the use of solar energy, and thereby reduce the nation's dependence on foreign sources of energy supplies. The Bank is governed by a Board of Directors, consisting of the Secretaries of HUD (Chairperson), Energy, Treasury, Agriculture, and Commerce.

The statute (12 U.S.C. 3607) provides that, subject to other statutory provisions, the Bank may make payments to financial institutions for the purpose of providing financial assistance: (a) To owners of and tenants in existing one- to four-family and multifamily (more than four units) residential buildings for the purchase and installation of residential energy conserving improvements; (b) to owners who occupy and tenants in existing commercial and agricultural buildings for the purchase and installation of commercial energy conserving improvements; (c) to owners of one- to four-family and multifamily residential, commercial and agricultural existing buildings for the purchase and installation of solar energy systems; (d) to builders of newly constructed or substantially rehabilitated residential buildings for the purchase and installation of solar energy systems; and (e) to purchasers of new or substantially rehabilitated one- to four-family and multifamily, commercial and agricultural buildings containing solar energy systems. The financial assistance for residential or commercial energy conserving improvements (collectively referred to as "energy conservation measures" in this interim rule) or solar energy systems may be in the form of a reduction in the principal obligation of a loan or the qualifying portion of a loan, or a prepayment of the interest otherwise due on such loan or portion of such loan provided by one or more types of financial institutions. In the case of an owner of an existing one- to four-family residential building or a tenant in an existing one- to four-family or multifamily residential building, the assistance for energy conservation measures may also be in the form of grants.

The Bank's enabling statute provides for a wide range of possible forms and objectives of financial assistance to be delivered through one or more types of "financial institutions." This interim rule has been approved by the Board of Directors of the Bank in order to specify both the permissible uses of financial assistance and the system of delivering financial assistance.

Solicitation of Proposals

The Board determined that since State programs are within the parameters permitted by the statute and are based on the experience derived from on-going energy related activities influenced by regional and local needs and priorities, they provide the best method for an efficient and responsive delivery of the Bank's funds to financial institutions which assist persons to undertake energy conservation and solar energy measures. States were invited to submit proposals to the Bank for their participation in the program based on a Notice of Funding Availability which was published in the **Federal Register** on August 27, 1982. As used in the Notice, States included the District of Columbia, Puerto Rico, Guam, the Northern Mariana Islands, the Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands. An amendment to the Notice was published on October 15, 1982, which extended the period for State responses until November 15, 1982.

Through its selection of State proposals, the Bank planned to implement its program by interrelating its funding with on-going State energy programs, focusing on low-to-moderate income persons, for: 1) urgently needed energy conservation measures in residential buildings of any size completed prior to January 1, 1980; and 2) passive solar energy systems in newly constructed or substantially rehabilitated one- to four-family residential buildings.

In considering which energy conservation and solar energy measures would be eligible for financial assistance under the Bank's program, the Board has given preference to the more conventional, cost-effective, and reliable of those permitted by statute. Those selected as eligible include various energy conservation measures and passive solar energy systems. The rationale for these selections is derived from work accomplished by the U.S. Department of Energy in the Residential Conservation Service Program (the program described in 10 CFR Part 456 as amended by amendments published at 47 FR 27752 and 47 FR 53224). Information contained in a Table of Program Measures included in the RCS Program rules identifies the eligible measures based on cost-effectiveness in which a measure has a calculated simple payback of seven years or less. The Table indicates that active solar measures are much less cost-effective than general conservation and passive solar measures. In addition, the Bank found that active solar energy systems also are not as reliable and present some rather complicated maintenance requirements which are not experienced with passive systems. The results of the many projects of HUD's residential solar heating and cooling demonstration program support this conclusion. The Bank further observes that the monetary value of energy tax credits available for active solar system applications are comparable to the maximum subsidy that would be provided by the Bank. Hence, the Bank subsidy would offer no

significant advantage over this tax credit in most cases. The converse is true for energy conservation where the Bank subsidy can be much higher than the available tax credit for eligible recipients. Therefore, the Bank concludes that a basic objective of serving low and moderate income persons would be best met by concentrating on the more cost-effective and reliable energy conservation and solar energy measures in which there is a distinct advantage for the Bank's subsidy to the consumer over other forms of available Federal assistance.

Federal tax credits are unavailable for expenditures made with financial assistance under the program of the Bank. The Bank has supplemented this statutory provision with additional provisions in the interim rule designed to maximize the leveraging of non-Federal funds by funds provided by the Bank; for example, loans from tax-exempt funds may not be subsidized by the Bank (§ 1800.31) and Bank funds are not available in combination with various Federal housing or energy programs (§§ 1800.43 and 1800.63). While there is no absolute bar to combination of Bank funds with funds under Federal programs not named in the interim rule, the Bank has given preference to State proposals which do not depend on other Federal funds. For example, a State proposal under which Bank funds would subsidize loans made from Community Development Block Grant (CDBG) funds was considered less attractive than a State proposal under which the loan funds were derived from State, local, or private sources, other factors being equal.

In preparing this interim rule, the Bank took into consideration the information contained in the proposals received from the States submitted in response to the August 27, 1982 Notice of Funding Availability. In this way, the Bank intends that this rule be compatible with State programs selected for participation under the Bank's program so that participating States may implement activities as soon as possible after the effective date of this rule.

Proposals were received from 53 of 57 eligible States (as defined). Awards to 51 States aggregating $30,430,000 were publicly announced on January 18, 1983. The awards are contingent upon the effectiveness of the interim rule and the execution of cooperative agreements between the Bank and the grantee States.

The aggregate amount of awards made represents the Bank's full appropriation of $21.85 million for FY 1982, plus so much of the Bank's appropriation of $20 million for FY 1983 as was available for obligation by the Bank at the time of the award pursuant to the apportionment of appropriated funds made by the Office of Management and Budget. The Bank anticipates that the balance of its FY 1983 appropriation, to the extent that it remains available for obligation by the Bank, will be awarded to States based upon proposals already received and progress in utilizing such awards. (The Administration has proposed to Congress that the balance of the Bank's appropriation for Fiscal Year 1983 be transfered to the Low-Income Home Energy Assistance program administered by the Department of Health and Human Services. At the time of publication of this interim rule, Congress has not acted on this proposal.)

Development of Interim Rule

This interim rule has been based on the Appendix to the August 27, 1982 Notice of Funding Availability, which was entitled "Terms and Conditions for Financial Assistance for Planning and Pre-Implementation Purposes." Certain changes to the program as described in the Appendix were made in response to comments from interested States and from Members of Congress.

Changes proposed by States in response to the Notice of Funding Availability fell into three categories: (1) Additional types of buildings which should be eligible: (2) additional types of energy conservation and solar energy measures which should be made eligible; and (3) changes to program administration provisions. In the first category, multifamily residential, commercial, and agricultural buildings were identified, of which multifamily residential was most frequently proposed. The Bank agrees with those proposals to include multifamily residential buildings as eligible buildings since this building category can potentially reach many lower income individuals not receiving energy related assistance by other programs. The multifamily residential building category would include public housing authorities as identified in at least one proposal. Commercial and agricultural buildings are not as likely to benefit lower income individuals, a principal objective of the Bank, and have not been included as eligible for funding unless, as discussed below, the Bank issues a specific future notice of eligibility.

In the second category of changes proposed by responding States, a number of energy conservation and solar energy measures in addition to those specified in the Notice were suggested which have a reasonable potential for meeting the cost-effective criterion with high confidence for trouble-free operation. The proposed measures incorporated in this interim rule consist of replacement air conditioners, meter conversion and retrofit passive water heaters. Other measures proposed but not incorporated include active solar systems, biomass and photovoltaic systems, heat pumps, cultivators, planning and technical services, and retrofit passive space heating systems. Wood stoves were also proposed but not incorporated as the Bank continues to feel wood stoves are sufficiently cost-effective to require no financial assistance incentive.

In the third category of proposed changes, responding States requested some program administration changes which the Bank considers unnecessary or undesirable. These consist of provisions for builder assistance, direct transfer of Bank funds to local entities within a State, secondary market financing, and alternative income eligibility limits. A few requests for more than the 2 percent limit on administrative expenses were made. Inasmuch as most proposers did not request more than 2 percent of funds for administrative expenses, and many requested less than 2 percent, the Bank concludes that the 2 percent limit should be sufficient for the financial assistance programs proposed. Also, a few States indicated that loan origination fees of lenders would be paid or subsidized with Bank funds. Loan origination fees cannot be paid or subsidized with Bank funds. A few requests were made to permit the use of tax-exempt borrowings in providing loans to be subsidized by Bank funds. This change was not adopted in keeping with general Department of Treasury policy. Some proposers requested that Bank funds be provided to the States in advance of the grants or loans to the grantees or borrowers. The Bank has determined that such advance funding is unnecessary since it will use the Department of Treasury electronic funds transfer system, which is designed to provide funds to a State within 24 hours of request. Therefore, §1800.109 prohibits requests for advance funding.

Also in the third category, one State proposed that no energy audit be required in determining eligible energy measures, as a cost saving item. The Bank agrees that requiring energy audits adds costs but continues to believe that such costs are generally minimal and provide the needed assurance that the cost-effectiveness criterion of the rule can be met. Energy audits are generally available under provisions of the

Residential Conservation Service (under the rule cited above) at $15 maximum. Audits other than RCS audits are also acceptable if they meet the minimum requirements set forth in the definition of "energy audit" (§ 1800.3).

On November 30, 1982, a proposed interim rule was transmitted to the Chairman and Ranking Minority Members of the Senate Committee on Banking, Housing and Urban Affairs, and the House Committee on Banking, Finance and Urban Affairs. Section 7(o)(2) of the Department of HUD Act (42 U.S.C. 3535(o)(2)), which is applicable to the Bank pursuant to Section 506(e) of the Energy Security Act (12 U.S.C. 3604(e)), required such transmittal before publication of the interim rule in the **Federal Register.**

The Chairman and Ranking Minority Member of the House Committee on Banking, Finance and Urban Affairs recommended certain changes to the interim rule. Following consideration of the recommended changes by the Board of Directors of the Bank, this revised interim rule was transmitted to the Committees pursuant to Section 7(o)(2) on April 12, 1983, together with an explanation of the Board's response to the recommendations made.

Two of the recommended changes pertained to the requirement that an applicant obtain an energy audit prior to receipt of any financial assistance under the Bank program. The Congressmen recommended that energy audits not be required for individual apartment units or single-family homes unless they are low-cost audits, and that the cost of an audit be eligible for financial assistance. A particular concern was that many potential low- and moderate-income applicants live in areas where audits are not available under the Residential Conservation Service program of the Department of Energy (which limits audit costs to $15 per unit). As originally transmitted, the interim rule permitted use of non-RCS audits satisfying minimum requirements (definition of "energy audit" appears in § 1800.3). The revised interim rule now also includes any audit cost in excess of $15 per unit as an energy conservation measure eligible for assistance if the audit is followed by use of the Bank's programs for one or more other eligible energy conservation measures (§ 1800.65 (a)(10) and (b)(10)).

It was also recommended that metropolitan cities and urban counties eligible for entitlement grants under HUD's Community Development Block Grant program be eligible to submit proposals in response to any subsequent solicitations covering funds not already awarded. Following the Notice of Funding Availability, the interim rule limits eligibility to States (§ 1800.91).

A similar request that eligibility for application for Bank awards be extended to cities and other units of local government had been made by several Members of Congress following publication of the Bank's Notice of Funding Availability. However, the Board sought to take advantage of existing energy auditing and assistance programs at the State level and to be able to disburse available funds with minimal administrative expense by dealing with a limited number of States rather than the much larger universe of cities. The proposals received, and upon the basis of which awards were made, indicated an intention on the part of many States to tie in directly with city programs. A further consideration was the Board's desire to obtain as wide a geographic distribution of Bank funds as possible. On the basis of this objective, all acceptable proposals received were funded to some extent. At the same time, the Board determined that no single grant of less than $100,000 could be made and still be feasible, either from the viewpoint of Bank administration or from the viewpoint of a grantee. In fact, six applicant States were funded at the minimum amount, and 31 awards were made in amounts of $500,000 or less. The Board believes that this demonstrates that it would not have been efficient or feasible to have invited application from a vastly larger universe of applicants.

The Board also does not believe that it would be practicable to invite application from cities and counties for participation in the balance of approximately $11 million of the Bank's current appropriation if, as discussed above, such amount remains available to obligation by the Bank.

Notwithstanding that the Administration has requested no further appropriations for the Bank, comment is solicited on the question of whether applications for future Bank funding, if any, should be invited from applicants other than States and, if so, under what circumstances? Should other categories of applicants compete in the same funding rounds with States or in separate rounds? What eligibility or priority criteria should be applied in the case of such different categories of applicants?

The Congressmen also recommended revision of proposed interim rule provisions which would have reduced allowable subsidy amounts for energy conservation measures with a simple payback period of more than three years and prohibited any subsidy in cases where the simple payback period exceeds seven years. The Board concluded that the limitation of assistance to measures with simple payback periods of seven years or less is supported by Department of Energy determinations for its RCS program and should be retained in order to exclude measures having only marginal cost-effectiveness (§ 1800.65(c)). As to the graduation of maximum subsidy amounts within the range of up to seven years, the Bank also received a number of negative comments on this provision from States which were aware of the Bank's transmittal to the Committees made in November, indicating that such a subsidy structure could discourage investments which they had anticipated as being particularly appropriate to low- and moderate-income owners and renters in their areas. Accordingly, the revised interim rule permits the maximum allowable subsidies for investments having simple pay-back periods of up to seven years.

Two other recommendations were considered but not adopted by the Board. The Board determined not to alter the provision prohibiting use of Bank assistance in conjunction with tax-exempt financing (§ 1800.31). This limitation is considered an appropriate means of directing limited Bank assistance to activities not already receiving the benefit of other Federal assistance, and should not unduly hinder States' use of the funds awarded to them. The Board also determined that provisions should not be included specifically requiring that not less than 15 percent of energy conservation funds be used to assist families with incomes not greater than 80 percent of area median income. Such a requirement was included in the Bank's original legislation which contained separate authorization for energy conservation and solar energy assistance. However, such separate authorizations were replaced by a single reduced, unsegregated authorization by the Omnibus Budget Reconciliation Act of 1981. Nevertheless, the Bank believes that the program as designed will result in well over 15 percent of energy conservation funds being used to assist families with incomes at or below 80 percent of the area median income. The States have shown strong interest in serving this income group in their submissions to the Bank.

Additional Features of Interim Rule

Some areas of assistance included within the coverage of the Act will be funded only if the Bank gives specific future notice to that effect; these areas are listed in § 1800.37 of the interim rule

and include all commercial and agricultural buildings, all solar energy systems in multifamily residential buildings and passive solar energy space heating systems in existing buildings. The Bank has no current plans to fund these areas.

The Bank has determined the importance of scaling the amount of assistance to be made available based on expected energy savings. Maximum assistance, to the limits prescribed by statute, should be available only for the more cost-effective measures. This is intended to encourage efficient use of funds and to discourage marginal applications. In general, a limit on the availability of assistance is based on cost-effectiveness using a simple payback calculation using data obtained from the energy audit. For certain passive solar energy systems, the level of assistance is based on estimated energy savings rather than using a cost/payback system due to the difficulty in estimating costs of passive measures which are integrated into new construction.

Under the statute and the interim rule, an applicant's income level (in relation to the median area income) is relevant for determining the amount of assistance available and for determining eligibility for grants. Annual income and median area income will be calculated in a manner consistent with the Section 8 Housing Assistance Payment Programs of HUD. The current rule for income calculation under Section 8 is 24 CFR 889.104. Relevant forms and instructions are available from HUD field offices.

The Bank believes that States selected for funding will enhance their capacity and experience to administer streamlined, cost-effective energy conservation and/or solar energy financial assistance programs as part of their overall community revitalization strategies, and will be likely to assume responsibility for the continuation of those programs without regard to the availability of future Bank funding.

As indicated above, the amounts granted to States include $21.85 million appropriated in FY 1982, which is available through FY 1983. Pursuant to a recent court order (*Dabney et al.* v. *Reagan et al.*, 82 Civ. 2231 CSH, S.D.N.Y., Order dated June 29, 1982), these appropriated funds must be made available for disbursement to qualified applicants as quickly as discharge of the Bank's responsibilities under its authorizing legislation will permit. The Secretary of HUD has therefore determined that delaying the effectiveness of this rule until receipt and consideration of public comment is contrary to the public interest and that good cause exists for making the rule effective as soon as possible.

The Secretary also has determined that for the reasons stated above, good cause exists for exempting this interim rule from the 30-day delay in effectiveness provided by the Administrative Procedure Act (5 U.S.C. 553(d)). In addition, the Chairman and Ranking Minority Members of the Senate Committee on Banking, Housing and Urban Affairs, and the House Committee on Banking, Finance, and Urban Affairs have, upon the Secretary's request, granted waivers of the requirements of section 7(o)(3) of the Department of HUD Act (42 U.S.C. 3535(o)(3)) which provides for a delay in effectiveness of rules for a period of 30 calendar days of continuous session of Congress after publication, unless so waived. Accordingly, the interim rule is being published for immediate effect. However, public comments are invited and will be considered in the adoption of a final rule.

The granting of waivers, as described above, does not indicate approval of the regulations by Congress or the Committees or individual members granting them. Under Section 7(o)(5) of the Department of HUD Act, "Congressional inaction on any rule or regulation shall not be deemed an expression of approval of the rule or regulation involved." The foregoing provision refers to inaction on a joint resolution of disapproval or other legislation which is intended to modify or invalidate the rule or regulation or any portion thereof, and the principal that such inaction does not imply Congressional approval applies, a *fortiori*, to a waiver of the nature requested and granted in this instance.

Regulatory Flexibility Act

Pursuant to 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The Bank's financial assistance program can be expected to concern a variety of small entities, including local lenders, energy auditors, and manufacturers, retailers, and installers of energy conservation and passive solar systems and components. The Bank, however, finds that there are no anticompetitive discriminatory aspects of the program with regard to small entities nor are there any unusual procedures that would need to be complied with in this rule by small entities.

Environmental Impacts

A Finding of No Significant Impact with respect to the environment has been made in accordance with regulations of the Council on Environmental Quality in 40 CFR 1500, which implement Section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying during regular business hours in the Office of the Rules Docket Clerk, Room 10278, 451 Seventh Street, SW., Washington, D.C. 20410.

OMB Control Number

The reporting or recordkeeping provisions that are included in this regulation (§§ 1800.107, 1800.123 and 1800.127(a)) have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–111) and have been assigned OMB control number 2535–0050.

Regulatory Impact Analysis

This interim rule does not constitute a "major rule" as that term is defined in Section 1(b) of the Executive Order on Federal Regulation issued by the President on February 17, 1981. Analysis of the interim 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 for 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.

Semiannual Agenda of Regulations

This rule was listed at 47 FR 48431 as Item S–5–82 under Current and Projected Rulemakings/Priority in the Department's Semiannual Agenda of Regulations published on October 28, 1982, pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

(Catalog of Federal Domestic Assistance: The Catalog of Federal Domestic Assistance program number is 14.506)

List of Subjects in 24 CFR Part 1800

Grant program—energy conservation, Loan program, Solar energy, Energy conservation.

Accordingly, 24 CFR Chapter X is amended by adding new Part 1800 reading as follows:

PART 1800—FINANCIAL ASSISTANCE PROGRAM OF THE SOLAR ENERGY AND ENERGY CONSERVATION BANK

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1800.3 Definitions.
1800.5 Bank organization.

Subpart B—Financial Assistance—General

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1800.13 Types of assistance.
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1800.17 Prepayment of interest.
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1800.125 Audit.
1800.127 Prohibition against tax credits and financial assistance for same expenditure.
1800.129 No gross income.
1800.131 No increase in basis.
1800.133 Waiver of regulations.
1800.135 Applicability of general HUD regulations.
1800.137 Other Federal requirements.
Appendix I—Climatic Factor for Passive Solar Energy Space Heating Systems.
Appendix II—Procedure for Calculating Subsidy and Reduced Interest Rate on Prepayment of Interest Loan Assistance.
Appendix III—Prepayment of Interest Loan Subsidy Examples.

Authority: Secs. 506(e) and 520, Solar Energy and Energy Conservation Bank Act (12 U.S.C. 3604(e) and 3618).

Subpart A—Introduction

§ 1800.1 Scope of authority and purpose.

The Solar Energy and Energy Conservation Bank was established in the Department of Housing and Urban Development by the Solar Energy and Energy Conservation Bank Act, Subtitle A, Title V of Public Law 96–294, 94 Stat. 611, 12 U.S.C. 3601 *et seq.*, enacted on June 30, 1980. The purpose of the Act is to encourage the use of solar energy and energy conservation, and thereby reduce the dependence of the United States on foreign sources of energy supplies.

§ 1800.3 Definitions.

"Act" means the Solar Energy and Energy Conservation Bank Act, 12 U.S.C. 3601 *et seq.*

"Agricultural building" means any building used exclusively in connection with the production, harvesting, storage, or drying of agricultural commodities.

"Annual income" has the meaning used for the Section 8 Housing Assistance Payment Programs of HUD, and means the total annual income of a family from all sources for the 12-month period following the date of determination of income, computed in accordance with the section of this title which prescribes the method of computation.

"Applicant" means any person applying for financial assistance.

"Bank" means the Solar Energy and Energy Conservation Bank established under the Act.

"Board" means the Board of Directors of the Bank.

"Contractor" means the installer of a solar energy system or energy conservation measure (other than the recipient) and includes the builder of a newly constructed one- to four-family or multifamily residential building.

"Cost-effective" means that an energy conservation measure or solar energy system is expected to result in a dollar savings that exceeds its costs over the life of the measure or system, without consideration of the financial assistance under the programs of the Bank, except that as otherwise specified in § 1800.45 and § 1800.65 of this part "cost-effective" has the meaning stated in that section.

"Commercial building" means any building other than a one- to four-family residential or multifamily residential building which is used primarily to carry on a business (including any nonprofit business) and is not used primarily for the manufacture or production of raw material, products, or agricultural commodities.

"Covered product" means:

(a) If the manufacturer provides a complete solar energy system to the supplier for installation by the contractor, then the system.

(b) In all other cases, all components of a solar energy system which are designed for use in solar energy systems and which are not ordinary building materials generally used for construction purposes.

"Date of completion of installation" means:

(a) The date of completion of performance by the contractor under its contract with the recipient,

(b) If the recipient performs the installation, the date the recipient completes the installation work, or

(c) If a one- to four-family or multifamily residential, commercial or agricultural building with an installed solar energy system is newly constructed or substantially rehabilitated and is purchased by the recipient, the date the recipient accepts title to the building.

"Dwelling unit" means any building (including a manufactured home) or part of a building designed for year-round non-transient residential use by one family.

"Energy audit" means: (a) An energy audit of a building or dwelling unit performed for purposes of Title VI or Title VII of the National Energy Conservation Policy Act, 42 U.S.C. 8216 *et seq.* and 8283 *et seq.*, respectively, or

(b) In the case of a one- to four-family or multifamily residential building or a dwelling unit in any such building, an on-site inspection of the building or dwelling unit using procedures approved by a State or Federal government entity (or performed by an energy auditor who is determined to be qualified by a State or local governmental entity) which

includes a determination of and provides information on:

(1) The type, quantity, and rate of energy consumption of such building or dwelling unit;

(2) Energy conserving maintenance and operating procedures which can be employed to significantly reduce the energy consumption of such building or dwelling unit;

(3) In the case of a one- to four-family residential building, a multifamily residential building which does not contain a central heating or cooling system, or a dwelling unit in such building, the cost of purchasing and installing appropriate energy conservation measures, a solar energy system, or both, and the savings in energy costs which are likely to result from the installation of such measures or system; and

(4) In the case of a multifamily residential building which contains a central heating or cooling system, or a dwelling unit in such building, the need, if any, for the purchase and installation of appropriate energy conservation measures, a solar energy system, or both; or

(c) In the case of a commercial or agricultural building, an on-site inspection of the building using procedures approved by a State or Federal governmental entity (or performed by an energy auditor who is determined to be qualified by a State or local governmental entity) which includes a determination of and provides information on:

(1) The type, quantity, and rate of energy consumption of such building;

(2) Appropriate energy conserving maintenance and operating procedures which can be employed to significantly reduce the energy consumption of such building; and

(3) The need if any, for the purchase and installation of energy conservation measures, a solar energy system, or both, in such building.

"Energy conservation measure" means a measure listed in § 1800.65.

"Energy design analysis" means a technical analysis performed on the design of a building to assess the cost-effectiveness of the energy conserving features and use of solar energy on an annual basis performed by a licensed engineer or architect qualfied to conduct such an analysis.

"Family" has the meaning used for lower-income housing programs of HUD as set forth in § 812.2(d) of this title, as it may be amended from time to time, or any replacement definition. It includes but is not limited to an elderly family as defined in § 812.2(c) of this title, a single person as defined in § 812.2(f) of this title, the remaining member of a tenant family, and a displaced person as defined in § 812.2(a) of this title, but excludes certain aliens.

"Financial assistance" means the three forms of financial assistance described in § 1800.13 of this part.

"Financial institution" means: (a) Any lender with a current contract of insurance under Section 2 of Title I of the National Housing Act, 12 U.S.C. 1703,

(b) Any utility providing financing for the purchase and installation of energy conservation measures or solar energy systems in accordance with the requirements of Title II of the National Energy Conservation Policy Act, 42 U.S.C. 8211 *et seq.*,

(c) Any unit of local government which receives a grant under Title I of the Housing and Community Development Act of 1974, 42 U.S.C. 4301 *et seq.*, in accordance with a statement of objectives and projected use of funds which includes lending activities to be undertaken by the unit of local government,

(d) Any public body for which a local loan approval agreement is in effect under the Section 312 Rehabilitation Loan program, 42 U.S.C. 1452(b),

(e) Any lender currently approved to participate in HUD mortgage insurance programs under Title II of the National Housing Act, 12 U.S.C. 1709(b)(1),

(f)(1) Any institution with the following characteristics:

(i) Any member of the Federal Reserve System or financial institution whose accounts are insured by the Federal Savings and Loan Insurance Corporation, the Federal Deposit Insurance Corporation or the National Credit Union Administration, or any depository institution which is subject to the inspection and supervision of a governmental agency which is required by law to make periodic examinations of its books and accounts; or

(ii) Any institution which has as its principal activity the lending or investment of funds in mortgages, consumer installment notes or similar advances of credit, or the purchase of consumer installment contracts, and is not subject to the inspection and supervision of a governmental agency as provided above in paragraph (f)(1)(i) of this section; and meets the following requirements:

(A) It shall have and maintain net worth of not less than $100,000 in assets acceptable to the State in which it will provide financial assistance,

(B) It shall have and maintain a reliable warehouse line of credit or other loan funding program acceptable to the State in which it will provide financial assistance, in an amount of not less than $250,000 available for use in loan financing, and

(C) It shall within 75 days of the close of its fiscal year and at such other times as may be requested, file with the State an audit report based on an audit performed by a Certified Public Accountant, or by an Independent Public Accountant licensed by a regulatory authority of the State or other political subdivision of the United States on or prior to December 31, 1970, which shall include a financial statement in a form acceptable to the State, including a balance sheet, and statement of operations and retained earnings; or

(iii) Any Federal, State or municipal governmental agency, a Federal Reserve Bank, a Federal Home Loan Bank, and a National Mortgage Association which is empowered to participate in a consumer installment lending operation.

(2) Any institution described in paragraphs (f)(1) (i), (ii) or (iii) of this section must also meet the following requirements:

(i) It is a chartered institution, a permanent organization having succession, or a trust, which agrees to notify the State of all corporated changes, including, but not limited to mergers, terminations, name, location, control of ownership, and character of business.

(ii) It employs trained personnel competent in all aspects of consumer lending activities and the State determines that it has adequate staff and facilities, and

(iii) It shall file a yearly report of its status and operations with the State and shall submit a copy of its latest financial statement or any other information upon request of the State, and

(g) Any other organization specifically approved by the Bank as a financial institution.

"HUD" means the Department of Housing and Urban Development.

"Improvement costs" means the actual costs of an energy conservation measure or passive solar energy system and, if installed by a builder or contractor, the actual costs to the recipient of the labor involved in the installation, as certified in the installation certificate required by § 1800.33 of this part.

"Manufacturer" means: (a) For the purposes of warranties for solar energy systems, the producer of any covered product, and

(b) For the purpose of warranties for energy conservation measures, the producer of any energy conservation measure.

"Median area income" means median annual income for an area as determined by the Bank based on the data used by HUD for establishing the median area income for use in the programs authorized under Section 8 of the United States Housing Act of 1937, 42 U.S.C. 1437(f).

"Multifamily residential building" means any building used as a residence which contains five or more dwelling units and has at least one system for heating or cooling or both.

"One-to four-family residential building" means any building used as a residence which contains at least one and not more than four dwelling units and has at least one system for heating or cooling or both.

"Passive solar energy system" means, with respect to a building, any component, addition, alteration or improvement which is designed to utilize solar energy for space or water heating or to provide space cooling based primarily on convective, conductive, or radiant energy transfer (or some combination of these types) to reduce the energy requirements of the building. In addition, such a system for space heating shall either contain the "five recognition factors" or shall be approved in writing by the Bank. The "five recognition factors" are: (a) A solar collection area, (b) an absorber, (c) a storage mass, (d) a heat distribution method, and (e) a heat regulation device. A "solar collection area" is a large area of transparent or translucent material, such as glass, positioned so that the rays of the sun directly strike an absorber. The collector area must be facing within 30° of south. An "absorber" is a surface, such as a floor, that is exposed to the rays of the sun. The absorber changes solar radiation into heat, and then transfers the heat to a storage mass. A "storage mass" is material, such as masonry, that receives and holds heat from the absorber and later releases the heat to the inside of the home. The storage mass must be large enough to store and deliver enough solar heat for the size of the home. Also, the storage mass must be located so that the stored heat is distributed directly to the living areas of the home through a heat distribution method. A "heat distribution method" is a system that releases radiant or convective heating from the storage mass to the living areas of the home. A "heat regulation device" is a shading or venting mechanism, such as awnings, of insulated drapes, to control the amount of solar heat admitted through the solar collection areas, and nighttime insulation or its equivalent to control the amount of heat permitted to escape from the inside of the home.

"Person" means an individual or any corporation, partnership, joint venture or other non-governmental entity.

"RCS" means the Residential Conservation Service program of the Department of Energy set forth in 42 U.S.C. 8201 *et seq.* and 10 CFR Part 456.

"Recipient" means a person receiving financial assistance under the Act.

"Solar energy system" means a system listed in § 1800.45 of this part.

"Standard loan" means a loan having over its amortization period a fixed rate of interest and level monthly payments.

"State" means any State (which includes the District of Columbia, Puerto Rico, Guam, the Northern Mariana Islands, the Virgin Islands, American Samoa and the Trust Territory of the Pacific Islands) which has been selected to participate in the Bank program in the manner described in subpart E of this part.

"Substantially rehabilitated" or "substantially rehabilitating" means that, with respect to an existing one- to four-family or multifamily residential building, a solar energy system is being installed and other improvements (costing at least $1,000 per dwelling unit) are being made by a builder who is offering the building for sale.

"Supplier" means: (a) For the purposes of warranties for solar energy systems, the supplier (other than the manufacturer) of any covered product, and

(b) For the purposes of warranties for energy conservation measures, the supplier (other than the manufacturer) of any energy conservation measure.

The term includes but is not limited to the person who supplies a covered product or energy conservation measure to the contractor or, if the recipient performs the installation, the recipient.

§ 1800.5 Bank organization.

The organization of the Bank is described in the bylaws of the Bank, which are published as Part 1895 of this Chapter. Amendments to the bylaws are effective when adopted by the Board and will be published in the **Federal Register** for information purposes.

Subpart B—Financial Assistance—General

§ 1800.11 General.

This subpart sets forth the conditions and requirments that are applicable to financial assistance for both solar energy systems and energy conservation measures.

§ 1800.1 Types of assistance.

(a) *General.* The Bank is authorized to make payments to financial institutions for use as financial assistance in the form of reductions of the principal obligations of loans or qualifying portions of loans, prepayments of the interest which would otherwise be due with respect to loans or qualifying portions of loans, and grants.

(b) *Forms of financial assistance for loans.* —(1) Except as specified in paragraph (b)(2) of this section, financial assistance used in connection with loans may be in the form of either reduction of principal or prepayment of interest, at the discretion of the financial institution.

(2) Reduction of principal shall be the only form of financial assistance used in connection with loans other than standard loans.

§ 1800.15 Reduction of principal.

When financial assistance is in the form of reduction of principal, the amount of financial assistance shall be subtracted from the principal amount of the loan and the recipient shall repay the difference between these amounts on the basis of a loan repayment schedule using the same interest rate as for comparable unassisted loans.

§ 1800.17 Prepayment of interest.

(a) *Form.* Prepayment of interest on a loan shall take the form of reduction of the interest rate which would otherwise have been charged.

(b) *Calculation.*—(1) The amount of the interest rate reduction will be calculated by taking into account the compounded growth of the value of the assistance over the term of the loan where the projected annual percentage growth rate is less than the interest rate of the unassisted loan. The projected annual percentage growth rate will be determined by applying a discount rate (determined in accordance with paragraph (b)(2) of this section) to the interest rate prevailing for comparable loans on the day the assisted loan is made. The projected annual percentage growth rate will equal one minus the decimal discount rate, multiplied by the prevailing interest rate and then rounded up to the nearest 0.25 percentage increment available.

(2) The Bank will prescribe the discount rate to be used in calculating prepayment of interest. The Bank may make adjustments to the discount rate, from time to time, as it deems appropriate or necessary by increasing or decreasing the maximum allowable discount rate. All such adjustments will be announced by notice in the **Federal**

Register. The initial discount rate for program implementation, and until revised, is 60 percent. A State may vary the discount rate below the 60 percent prescribed (or any subsequent maximum allowable discount rate) as market demand/response to programs implemented in the State may warrant.

(3) Appendix II to this part explains the calculation procedure for assistance in the form of prepayment of interest. Appendix III to this part presents examples of calculations for assistance in the form of prepayment of interest. States may adopt alternative procedures provided the subsidy amount determined from any alternative procedure does not exceed the subsidy determined by Appendix II.

(4) In the case of a loan for which only a portion qualifies for financial assistance, e.g., a home improvement loan of $2,000 which includes $1,000 for eligible conservation measures, the subsidy may be applied to reduce the interest rate of the entire loan when calculated in accordance with procedures contained in Appendix II.

§ 1800.19 Grants.

When financial assistance is in the form of a grant, the applicant shall certify to the financial institution that financial resources are available to the applicant which, when added to the grant, will be sufficient to pay the full improvement cost of the energy conservation measures to be purchased and installed. After receipt of the installation certificate required by § 1800.33 of this part, the financial institution may pay the grant directly to the applicant, the contractor, or the supplier (if the applicant performs the installation), at the discretion of the financial institution, unless a State prescribes a particular grant delivery system.

§ 1800.21 Repayment of loans.

(a) *No prepayment penalty.* There shall be no penalty imposed on the borrower if the loan is repaid before the end of the term of repayment.

(b) *Term of repayment.* Unless financial institutions establish shorter terms (but no less than one year) at the request of the borrower, financial assistance may be provided in connection with loans for:

(1) The purchase and installation of energy conservation measures only if the term of repayment of the loan is not less than five and not more than fifteen years,

(2) The purchase and installation of solar energy systems in one-to four-family or multifamily residential buildings, or the purchase of one to four-family or multifamily residential buildings with such systems, only if the terms of repayment of the loan is not less than five and not more than 30 years, or

(3) The purchase and installation of solar energy systems in commercial or agricultural buildings, or the purchase of commercial or agricultural buildings with such systems, only if the term of repayment of the loan is not less than five and not more than 40 years.

(c) *Repayment to Bank.* Subject to the qualifications set forth herein, financial institutions must repay to the Bank the portion of any prepaid interest which is in excess of the actual interest due on the loan at the time a recipient fails to meet his or her obligations on the loan. In calculating whether such excess interest exists, a financial institution shall determine the amount of interest it would normally have received on the loan at the prevailing interest rate to the time of default and subtract it from the sum of the actual interest received on the loan plus the amount of financial assistance provided in connection with the loan. If this amount is more than $100.00 and default occurs sooner than three years after the loan is made, the amount calculated is to be repaid by the financial institution to the State, which shall either repay the amount to the Bank or use the amount for other purposes permitted by its cooperative agreement with the Bank (described in § 1800.93 of this part).

§ 1800.23 Combined loan applications.

Recipients may receive financial assistance with respect to a single loan for a combination of eligible solar energy systems and/or energy conservation measures. The amount of financial assistance provided will be the sum of the amounts of financial assistance which would be available if all solar energy systems were financed by one loan and all energy conservation measures were financed by a separate loan.

§ 1800.25 Limitations on retroactive assistance.

(a) *Purchase and installation in existing buildings.* Financial assistance shall not be provided in connection with expenditures for purchase and installation of solar energy systems or energy conservation measures in existing buildings if the expenditures were made prior to the date of the application for financial assistance.

(b) *Purchase from builders.* Financial assistance shall not be provided in connection with a loan for the purchase of a building if permanent financing has been closed prior to the date of the application for financial assistance or if the expenditures were made by the applicant prior to the date this part becomes effective.

(c) *New construction by recipient.* Financial assistance shall not be provided in connection with expenditures for the purchase and installation of solar energy systems in a building which is newly constructed by the recipient, if the recipient has closed permanent financing of the expenditures prior to the date of the application for financial assistance or if the expenditures were made prior to the date this part becomes effective.

§ 1800.27 Terms and conditions of loans similar to unassisted loans.

Except as otherwise required by this part, the terms and conditions of loans proposed to be assisted under this part must be comparable to similar unassisted loans at the prevailing market rates provided by the financial institution. Terms and conditions include the interest rate, maturity and any required fees, points or security provisions.

§1800.29 Debarred contractors, suppliers and financial institutions.

(a) *Contractor's certification.* Contractors being paid in whole or in part with financial assistance provided under this part shall certify that neither they nor their suppliers (if any) are on (1) The Consolidated List of debarred, suspended and ineligible contractors prepared by the General Services Administration pursuant to the temporary rule published at 47 FR 43692 and any successor rule, or (2) HUD's list of debarred, suspended and ineligible participants, available from HUD field offices (see Part 24 of this title).

(b) *Financial institutions.* No financial institution may participate in the Bank's programs if it is on HUD's List of debarred, suspended and ineligible participants available from HUD field offices (see Part 24 of this title).

(c) *Alternative State procedures.* Paragraphs (a) and (b) of this section shall not apply for any State which has procedures for barring participation by contractors and financial institutions which the Bank has accepted as an alternative to the provisions of paragraphs (a) and (b).

§ 1800.31 Limitation on proceeds of tax-exempt borrowings.

Financial assistance shall not be provided for a loan made from the proceeds of borrowings, if the interest on such borrowings is exempt from Federal taxation.

§ 1800.33 Installation certificate.

(a) *Loans.* An applicant for financial assistance in the form of interest or principal reduction on a loan must agree to certify that the proceeds of the loan have been used to purchase and install a solar energy system or energy conservation measures, or to purchase a newly constructed or substantially rehabilitated building with a solar energy system. Such certification shall be made immediately after such purchase and installation or purchase of a building.

(b) *Grants.* An applicant for financial assistance in the form of a grant must agree to certify that the grant has been used to purchase and install energy conservation measures. Such a certification shall be made immediately after such purchase and installation.

(c) *Certification provided to Bank.* A certification shall be made available to the Bank by the financial institution upon request of the Bank.

§ 1800.35 Energy audit or energy design analysis required.

An applicant for financial assistance must submit to the financial institution a copy of an energy audit performed for the building or dwelling unit for which financial assistance is requested (or an energy design analysis, in the case of a newly constructed or substantially rehabilitated building) before the financial assistance is provided.

§ 1800.37 Financial assistance not available until notice.

Notwithstanding anything to the contrary in subparts C and D of this part, no financial assistance shall be provided in connection with the following unless the Bank has published a notice in the **Federal Register** specifically stating that such financial assistance may be provided for such purposes:

(a) *Agricultural or commercial buildings.* Energy conservation measures or solar energy systems of any kind in agricultural or commercial buildings.

(b) *Multifamily residential buildings.* Solar energy systems of any kind in multifamily buildings.

(c) *Existing one- to four-family residential buildings.* Solar energy systems (except passive solar domestic hot water systems) in existing one- to four-family residential buildings.

Subpart C—Solar Energy Assistance

§ 1800.41 General.

This subpart sets forth the conditions and requirements that are applicable only to financial assistance for solar energy systems.

§ 1800.43 Eligible recipients.

(a) *Existing buildings.* An owner of an existing one- to four-family or multifamily residential, commercial or agricultural building who purchases and installs a solar energy system in such building with the proceeds of a loan shall be eligible to receive financial assistance in connection with such loan.

(b) *Newly constructed or substantially rehabilitated buildings.* A purchaser of a newly constructed or substantially rehabilitated one- to four-family or multifamily residential, commercial or agricultural building with a solar energy system shall be eligible to receive financial assistance in connection with a loan for the purchase of the building.

(c) *Joint applications.* A joint owner of a dwelling unit or of a building may apply for assistance individually, together with other joint owners in a single application, or with other joint owners by separate application. If separate applications are made by two or more joint owners with respect to the same building or dwelling unit, such applicants collectively may not receive assistance exceeding the maximum level of assistance established under § 1800.47 of this part.

(d) *Relationship to other Federal programs.* An owner or purchaser is not an eligible recipient if the owner or purchaser has an outstanding commitment, or has received preliminary or final approval of his or her application, for assistance under any of the following Federal assistance programs with respect to which a solar energy system is to be installed:

(1) HUD.

(i) Section 235 Homeownership Assistance, 12 U.S.C. 1715z.

(ii) Section 8 Lower Income Rental Assistance for New Construction and Moderate and Substantial Rehabilitation, 42 U.S.C. 1437f.

(iii) Indian Housing, 42 U.S.C. 1437 *et seq.* and Part 805 of this title.

(iv) Section 312 Rehabilitation Loans, 42 U.S.C. 1452b.

(2) Farmers Home Administration. Section 515 Direct Loans, 42 U.S.C. 1485.

(3) Department of Energy. Institutional Conservation (Schools and Hospitals) Program, 42 U.S.C. 6371 *et seq.*

§ 1800.45 Eligible solar energy systems.

(a) *Eligible systems.* Only passive solar energy systems shall be eligible solar energy systems.

(b) *Cost-effectiveness.* A passive solar energy system shall not be eligible for assistance unless it has been found to be cost-effective as a result of an energy design analysis (in the case of a newly-constructed or substantially rehabilitated building) or an on-site energy audit (in all other cases). "Cost-effective" has the meaning specified in § 1800.3 except that in the case of passive solar domestic hot water systems in existing buildings, "cost-effective" means that the measures have a simple pay-back period of seven years or less as determined by an energy audit without consideration of the financial assistance of the programs of the Bank.

§ 1800.47 Levels of assistance.

Financial assistance shall not exceed the least of any applicable amounts determined under paragraphs (a), (b), and (c) of this section.

(a) *Fixed amount.*—(1) The maximum amount of assistance for passive solar space heating systems or any combination of space heating with passive space cooling and passive water heating shall be as follows:

(i) $5,000 for a one-unit residential building;

(ii) $7,500 for a two-unit residential building;

(iii) $10,000 for a three- or four-unit residential building;

(iv) For multifamily residential buildings, $2,500 multiplied by the number of units; and

(v) $100,000 for commercial or agricultural buildings.

(2) The maximum amount of assistance for passive solar domestic hot water systems shall be $1,000 or 40 percent of the improvement cost, whichever is less.

(3) The maximum amount of assistance for passive solar space cooling systems shall be $1,000 or 40 percent of the improvement cost, whichever is less.

(4) In the case of solar energy systems (except for passive solar domestic hot water systems and passive solar space cooling systems) which do not benefit all dwelling units within a building, the maximum dollar amounts listed above shall be reduced by the percentage of dwelling units in the building which do not benefit from the solar energy system. In order to determine the number of dwelling units in a building, the following principles shall be applied: (i) All units sharing a common living space conditioning system shall be considered part of the same building; and (ii) except in the case of a manufactured home park, all dwelling units located on or above land included in the most recent recorded deed shall be considered part of the same building, whether or not any space conditioning systems are shared.

(b) *Energy saved.* For passive solar space heating systems in one- to four-

family residential buildings, the maximum amount of assistance set forth in paragraph (a) of this section may be reduced on a relative energy savings basis by a climatic, or locational, factor and a design performance factor. The climatic factor takes into consideration the positive effect of the passive system on heating degree days in the winter period as well as the negative effect on cooling (air conditioning) requirements in the summer period. The combination of those effects over a complete year of heating and cooling determines the total net energy savings of the system based on its geographic location. The climatic factor is obtained by using the chart which appears as Appendix I to this Part. The design performance factor is based on the relationship between the solar collection area of the passive system and the total gross heated living floor area. This performance factor is determined by establishing the ratio between the solar collection area in square feet (less a threshold effective collection size of 40 square feet per dwelling unit) and the gross heated living area floor space in square feet. A ratio of less than zero provides a zero performance factor; for a ratio between 0.0 and 0.1, the factor is 10 times the ratio; for a ratio between 0.1 and 0.3, the factor is 1.0; for a ratio between 0.3 and 0.4, the factor is 4 minus 10 times the ratio; for a ratio more than 0.4 the factor is again zero. The subsidy is determined by multiplying the maximum subsidy set forth in paragraph (a) of this section by both the climatic and performance factors.

(c) *Interest prepaid.* Where the assistance to be provided is in the form of prepayment of interest, the amount of assistance shall not exceed the amount of funds necessary to prepay all interest on any portion of the loan finanacing eligible solar energy costs.

§ 1800.49 Warranties.

(a) *General.* The recipient shall provide the financial institution with either a written certification from the contractor (or the supplier, if the recipient performs the installation) that the warranty requirements of this section have been satisfied or with other evidence acceptable to the financial institution that the warranty requirements of this section have been satisfied.

(b) *Manufacturer's warranty.* The manufacturer shall warrant in writing that the recipient, the contractor who installs the covered products and the supplier of the covered products shall be entitled to obtain from the manufacturer within a reasonable period of time and at no charge appropriate replacement parts or materials for those covered products found within three years from the date of completion of installation to be defective due to materials, manufacturer or design. A recipient who finds an alleged defect shall give written notice of the alleged defect to the contractor, supplier or manufacturer within thirty days of his or her discovery thereof. If a defect exists, the manufacturer shall provide replacement parts or materials without charge for the parts or materials and for their transportation to the site of installation of the solar energy system.

(c) *Supplier's warranty.* The supplier shall provide to the recipient a written warranty equivalent to that required under paragraph (b) of this section. The supplier may satisfy this requirement by an assignment of the manufacturer's warranty required by paragraph (b) to the person to whom the covered product is supplied.

(d) *Contractor's warranty.* The contractor for the installation of a solar energy system shall warrant in writing to the recipient that any defect in materials, manufacture, design or installation found within one year from the date of completion of installation shall be remedied without charge and within a reasonable period of time. A recipient who finds an alleged defect shall give written notice of the alleged defect to the contractor within 30 days of his or her discovery thereof.

(e) *Other law.* This section shall not be deemed to relieve a warrantor under this section from full compliance with Federal and State law applicable to warranties, except to the extent that such law is inconsistent with the requirements of this section.

(f) *No conflict with RCS requirements.* In any State with a list of approved contractors and suppliers under State plans required by the RCS, warranties in compliance with the requirements of Section 542 of the Energy Security Act (42 U.S.C. 8213) and applicable regulations shall be considered in compliance with this section as applied to the purchase and installation of solar energy systems.

§1800.51 Limitation on financial assistance by utilities.

No financial assistance shall be provided under this part by a utility for the purchase and installation of a solar energy system in a new building.

§ 1800.53 Limitation on assistance to residents of housing cooperatives.

Financial assistance may be provided to residents of housing cooperatives only if the cooperative corporation has given prior written consent to the resident for installation of a solar energy system.

§ 1800.55 Standards.

In the case of a newly constructed or substantially rehabilitated one- to four-family or multifamily residential building, or in the case of added heated space in an existing one- to four-family or multifamily residential building, the purchaser must provide certification that the building meets or exceeds the standards contained in Paragraph 607-3, Building Insulation, of the HUD Minimum Property Standards for One and Two Family Dwellings, 4900.1, or Multifamily Housing, 4910.1, as appropriate.

Subpart D—Energy Conservation Assistance

§ 1800.61 General.

This part sets forth the conditions and requirements that are applicable only to financial assistance for energy conservation measures.

§ 1800.63 Eligible recipients.

(a) *General.* Subject to the provisions of this section, an owner of, or a tenant in, a one- to four-family or multifamily residential, commercial or agricultural building who purchases and installs energy conservation measures in such building with the proceeds of a loan shall be eligible to receive financial assistance in connection with such loan. An owner of, or tenant in, a one- to four-family residential building and a tenant in a multifamily residential building who purchases and installs energy conservation measures in such building shall be eligible to receive financial assistance in the form of a grant. All buildings in which energy conservation measures are installed must have been completed before January 1, 1980.

(b) *Income limitations—grants.* In order to receive financial assistance in the form of a grant, a recipient must be an individual whose family has an annual income not in excess of 80 percent of the median area income.

(c) *Income limitations—loan subsidies.* In order to receive financial assistance in the form of reduction of principal or prepayment of interest:

(1) An owner of a one- to four-family residential building or a condominium dwelling unit, a tenant in a one- to four-family or multifamily residential building, or a shareholder of a housing cooperative corporation must be an individual whose family has an annual income not in excess of 150 percent of the median area income.

(2) A housing cooperative corporation or a residential condominium

association must be the owner of a cooperative or condominium which is occupied by families with an average annual income per family not in excess of 150 percent of the median area income.

(3) An owner of a multifamily residential, commercial or agricultural building, or a tenant in a commercial or agricultural building, shall not be subject to any income requirement.

(d) *Sales limitations.* An owner of, or tenant in, a commercial or agricultural building cannot have had gross annual sales of more than $1,000,000 during the fiscal year of such owner or tenant preceding the fiscal year in which an assisted loan is made.

(e) *Owner-occupant.* An owner of a commercial or agricultural building must occupy the building in order to receive financial assistance in connection with the building.

(f) *Joint applications.*—(1) A joint owner of a dwelling unit or a building may apply for assistance individually, together with other joint owners in a single application, or with joint owners by separate application. If separate applications are made by two or more joint owners with respect to the same building or dwelling unit, such applicants collectively may not receive assistance which would exceed the maximum amount of assistance for which an applicant with an annual income equal to the average annual incomes of all joint owners of the dwelling unit or building would be eligible.

(2) A tenant jointly renting a dwelling unit or a building with other tenants may apply for assistance individually, together with other tenants in a joint application, or with other tenants by separate application. If separate applications are made by two or more tenants jointly renting a dwelling unit or building, such applicants collectively may not receive assistance which would exceed the maximum amount of assistance for which an applicant with an annual income equal to the average annual incomes of all tenants jointly renting the dwelling or building would be eligible.

(g) *Application on behalf of others.* Assistance may be provided to an applicant, which is not an owner or tenant but which is acting on behalf of owners of one- to four-family residential buildings, for use by the applicant in purchasing and installing energy conservation measures in such buildings pursuant to a program approved by the Bank. Where such assistance is provided, the income limitations in § 1800.63 shall apply to the owners of the buildings to be improved, and the assistance limitations in § 1800.67 shall be applicable to the improvement cost for each building. Under any such program, the requirements of § 1800.33 (Energy audits), § 1800.69 (Warranties) and other such provisions of this part pertaining to the qualification of individual buildings for financial assistance may be complied with by the applicant at the time that dwellings are selected for improvements.

(h) *Individually-metered tenants.* A tenant in a multifamily residential building is eligible for financial assistance only if the tenant will pay costs for space heating and cooling which are measured by an individual utility meter after all the energy conservation measures are installed.

(i) *Relationship to other Federal programs.* An owner or tenant is not an eligible recipient if the owner or purchaser has an outstanding commitment, or has received preliminary or final approval of his application, for assistance under any of the following Federal assistance programs with respect to which an energy conservation measure is to be installed:

(1) HUD.

(i) Section 8 Lower Income Rental Assistance for Moderate and Substantial Rehabilitation, 42 U.S.C. 1437f.

(ii) Flexible Subsidy (Troubled Projects), 42 U.S.C. 1715z–1a and Part 219 of this title.

(iii) Section 312 Rehabilitation Loans, 42 U.S.C. 1452b.

(2) Farmers Home Administration. Section 515 Direct Loans, 42 U.S.C. 1485.

(3) Department of Energy.

(i) Weatherization Program, 42 U.S.C. 6863.

(ii) Institutional Conservation (Schools and Hospitals) Program, 42 U.S.C. 6371 *et seq.*

§ 1800.65 Eligible energy conservation measures.

(a) *One- to four-family residential buildings.* The following shall be eligible energy conservation measures for one- to four-family residential buildings, subject to paragraph (c) of this section:

(1) Caulking and weatherstripping,

(2) Furnace efficiency modifications including: (i) Replacement burners, furnaces, boilers, or any combination thereof, which increases the energy efficiency of the heating system,

(ii) Devices for modifying flue openings which will increase the energy efficiency of the heating system, and

(iii) Electrical or mechanical furnace ignition systems which replace standing gas pilot lights,

(3) Clock thermostats,

(4) Ceiling, attic, wall, floor, and duct insulation,

(5) Water heater insulation,

(6) Storm windows and doors, multiglazed windows and doors, heat-absorbing or heat-reflecting window and door materials,

(7) Devices associated with load management techniques,

(8) Replacement air conditioners, and

(9) Conversion from master utility meters to individual utility meters, when directly related to and undertaken with the installation of any of the items specified in paragraphs (a)(2)–(8) of this section, and

(10) Energy audits (in excess of the first $15 in cost for each unit covered by the audit), when followed by installation of any of the items specified in paragraphs (a)(1)–(8) of this section.

(b) *Other buildings.* The following shall be eligible energy conservation measures for multifamily residential buildings, commercial buildings and agricultural buildings, subject to paragraph (c) of this section:

(1) Caulking and weatherstripping,

(2) The insulation of the building structure and any systems within the building,

(3) Storm windows and doors, multiglazed windows and doors, heat-absorbing or heat-reflecting window and door systems, glazing, reductions in glass area, and other window and door system modifications,

(4) Automatic energy control systems,

(5) Equipment, associated with automatic energy control systems, which is required to operate variable steam, hydraulic, and ventilating systems,

(6) Furnace, or utility plant and distribution system, modifications including:

(i) Replacement burners, furnaces, boilers, or any combination thereof, which increases the energy efficiency of the heating system,

(ii) Devices for modifying flue openings which will increase the energy efficiency of the heating system, and

(iii) Electrical or mechanical furnace ignition systems which replace standing gas pilot lights,

(7) Replacement or modification of a lighting system which increases the energy efficiency of the lighting system without significantly increasing the overall illumination of the building (unless such increase in illumination is necessary to conform to any applicable State or local law),

(8) Energy recovery systems, and

(9) Conversion from master utility meters to individual utility meters, when directly related to and undertaken with the installation of any of the items

specified in paragraph (b)(2)–(8) of this section, and

(10) Energy audits (in excess of the first $15 in cost for each unit covered by the audit), when followed by installation of any of the items specified in paragraph (b)(1)–(8) of this section.

(c) An energy conservation measure shall not be eligible for assistance unless it has been found to be cost-effective as a result of an energy audit. For purposes of this section only, "cost-effective" means that the measures have a simple pay-back period of seven years or less as determined by an energy audit, without consideration of the financial assistance of the programs of the Bank.

§ 1800.67 Levels of assistance.

Financial assistance shall not exceed the least of any applicable amounts determined under paragraphs (a) and (b) of this section.

(a) *Fixed amount and percentage of costs.*—(1) The maximum amount of assistance shall be determined according to the following chart (income limits are applied to the annual income of the family of the owner or tenant):

Building type	Assistance as percentage of improvement cost	Maximum assistance			
		1 unit	2 unit	3 unit	4 unit
(1) 1 to 4 unit residential buildings:					
Income of owner or tenant:					
Less than 80 pct of area median	50 pct up to	$1,250	$2,000	$2,750	$3,500
80 to 100 pct of area median	35 pct up to	875	1,400	1,925	2,450
100 to 120 pct of area median	30 pct up to	750	1,200	1,650	2,100
120 to 150 pct of area median	20 pct up to	500	800	1,100	1,440
(2) Multifamily residential building	20 pct up to	(1)	(1)	(1)	(1)
(3) Agricultural or commercial building	20 pct up to	(2)	(2)	(2)	(2)

[1] $400 per dwelling unit.
[2] $5,000 per building.

(2) In the case of energy conservation measures which do not benefit all dwelling units within a building, any dwelling units in the building which do not benefit from the energy conservation measures shall be counted in determining the building type but shall not be counted in determining maximum assistance. In order to determine the number of dwelling units in a building, the following principles shall be applied: (i) All dwelling units sharing a common space conditioning system shall be considered part of the same residential building; and (ii) except in the case of a manufactured home park, all dwelling units located on or above land included in the most recent recorded deed shall be considered part of the same building, whether or not any space conditioning systems are shared.

(b) *Interest prepaid.* Where the assistance to be provided is in the form of prepayment of interest, the amount of assistance shall not exceed the amount of the funds necessary to prepay all interest on any portion of the loan financing eligible energy conservation measures.

§1800.69 Warranties.

(a) *General.* The recipient shall provide the financial institution with either a written certification from the contractor (or the supplier, if the recipient performs the installation) that the warranty requirements of this section have been satisfied or with other evidence acceptable to the financial institution that the warranty requirements of this section have been satisfied.

(b) *Manufacturer's warranty.* The manufacturer shall warrant in writing that the recipient, the contractor who installs an energy conservation measure and the supplier of the energy conservation measure shall be entitled to obtain from the manufacturer within a reasonable period of time and at no charge appropriate replacement parts or materials for those energy conservation measures found within one year from the date of completion of installation to be defective due to materials, manufacture or design. A recipient who finds an alleged defect shall give written notice of the alleged defect to the contractor, supplier or manufacturer within thirty days of his or her discovery thereof. If a defect exists, the manufacturer shall provide replacement parts or materials without charge for the parts or materials and for their transportation to the site of installation of the energy conservation measure.

(c) *Supplier's warranty.* The supplier shall provide to the recipient a written warranty equivalent to that required under paragraph (b) of this section. The supplier may satisfy this requirement by an assignment of the manufacturer's warranty required by paragraph (b) to the person to whom the energy conservation measure is supplied.

(d) *Contractor's warranty.* The contractor for the installation of an energy conservation measure shall warrant in writing to the recipient that any defect in materials, manufacture, design or installation found within one year from the date of completion of installation shall be remedied without charge and within a reasonable period of time. A recipient who finds an alleged defect shall give written notice of the alleged defect to the contractor within thirty days of his or her discovery thereof.

(e) *Other law.* This section shall not be deemed to relieve a warrantor under this section from full compliance with Federal and State law applicable to warranties, except to the extent that such law is inconsistent with the requirements of this section.

(f) *No conflict with RCS requirements.* In any State with a list of approved contractors and suppliers under State plans required by the RCS, warranties in compliance with the requirements of Section 542 of the Energy Security Act (42 U.S.C. 8213) and applicable regulations shall be considered compliance with this section as applied to the purchase and installation of energy conservation measures.

§ 1800.71 Limitation on assistance to tenants.

Financial assistance may be provided to tenants only if the owner of the tenant's building or dwelling unit has given written consent to the tenant for installation of the energy conservation measures.

§ 1800.73 Limitation on assistance to residents of housing cooperatives.

Financial assistance may be provided to a resident of housing cooperatives only if the cooperative corporation has given prior written consent to the resident for installation of energy conservation measures.

§ 1800.75 Minimum expenditures for energy conservation measures.

The total improvement cost for energy conservation measures purchased and installed with the assistance of a grant must exceed $250.

§ 1800.77 Contractors and suppliers.

All contractors and suppliers who install energy conservation measures or supply materials for them must appear on a list of approved contractors and suppliers provided under Section 213(a) of the National Energy Conservation Policy Act, 42 U.S.C. 8211, except that this requirement shall not apply in the case of loans in States without approved lists. This requirement shall not apply to a loan made to an owner of a multifamily residential building, or a housing cooperative corporation or a condominium association in the case of

a one- to four-family residential building.

§ 1800.79 Residential energy audit information.

Financial institutions must inform applicants for financial assistance for energy conservation measures in one- to four-family or multifamily residential buildings, no later than the time that the application is submitted, of the availability of energy audits.

Subpart E—Disbursement Procedures

§ 1800.91 General.

The financial assistance program of the Bank will be implemented through States that have been selected to participate in the program on the basis of proposals submitted in response to a solicitation of State proposals published in the **Federal Register**. Proposals will be selected on the basis of considerations stated in the solicitation.

§ 1800.93 Cooperative agreements.

Participating States will enter into cooperative agreements with the Bank which will form the legal framework for Bank/State relationships during program implementation. In addition to the matters covered in other sections of this subpart E, the cooperative agreements will cover such matters as the allocation and obligation of funds for the State, the responsibilities of the State for the administration of its approved programs, Federal requirements applicable to the administration of its approved programs, and procedures covering resolution of any disputes between the Bank and a State, suspension or termination of State's participation in programs of the Bank, and program closeout.

§ 1800.95 Allocation of funds.

Following selection of participating States, the Bank will allocate funds among the States based on the level and availability of appropriated funds and the specific programs proposed in the individual State proposals approved for funding by the Bank. Each State will be informed of its allocation and any conditions attached to the allocation. Such conditions will be designed to insure the expeditious obligation and expenditure of available funds. Each cooperative agreement shall require that the State obligate all funds allocated to it within one year (for Fiscal Year 1982 funds) or by the last date the funds are available under the terms of the applicable appropriation (for other Fiscal Years) to avoid recapture of funds by the Bank pursuant to §1800.97 of this part.

§ 1800.97 Recapture and reallocation of funds.

Upon program implementation, the Bank will monitor program progress in each State through periodic reporting as required by § 1800.107 of this part. Each cooperative agreement shall provide that funds allocated to a State may be recaptured by the Bank based on the results of program implementation activities in the State, market response to programs implemented in the State and other considerations to be set forth in the cooperative agreement. Recaptured funds will not be reallocated.

§ 1800.99 Authorized expenditures.

(a) *Permissible uses of funds.* Funds allocated by the Bank to States for implementing financial assistance programs shall be expended only for payments to financial institutions which have provided financial assistance in accordance with this part, or for administrative expenses or promotional expenses.

(b) *Administrative expenses.* A State may use funds received from the Bank to pay administrative expenses if such expenses have been authorized by the Bank and the payments do not exceed fifty percent of the total administrative expenses of the State or two percent of the total amounts of funds allocated to the State by the Bank, whichever is less. Administrative expenses shall not include the purchase of nonexpendable personal property (defined in Attachment N to OMB Circular A–102, "Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments").

(c) *Promotional expenses.* A State may use funds received from the Bank to pay promotional expenses if such expenses have been authorized by the Bank and the payments do not exceed one percent of the total amounts of funds allocated to the State.

(d) *Principles for determining allowable expenses.* Administrative and promotional expenses must be allowable under the principles and standards established in OMB Circular No. A–87, "Cost Principles for State and Local Governments".

§ 1800.101 Distribution of funds.

There is no predetermined distribution of funds for energy conservation measures or solar energy systems nor for the type of financial assistance to be made. The approval of funding levels and specific programs for States by the Bank shall constitute an initial distribution of funds for the energy conservation measures or solar energy systems and the type of financial assistance described in the approved State programs. A State may make a redistribution of approved funds for different eligible measures or types of financial assistance only with specific written approval of the Bank.

§ 1800.103 Selection of financial institutions.

A State will select the financial institutions which will provide financial assistance within the State. A State may serve as a financial institution itself as long as it qualifies under the definition set forth in § 1800.3 of this part.

§ 1800.105 Maximum levels of assistance.

A State may establish maximum levels of financial assistance which are lower then the maximum levels set forth in this part.

§ 1800.107 Reporting and recordkeeping requirements.

(a) *Semi-annual State reports.* Each State shall submit reports to the Bank within 30 days of the six month periods ending June 30 and December 31 beginning with the first such period in which notice of selection is made and continuing until program closeout. The reports shall cover, as a minimum, the following:

(1) A summary of the overall program for the reporting period and overall results to date, including financial reports required by Attachment H of OMB Circular A–102, ("Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments");

(2) Problems encountered and actions taken to resolve them;

(3) Acceptance/objections by industry, local governments, financial institutions, and the public;

(4) The numbers of applicants for and recipients of loans and grants by income category and type of building;

(5) Total costs of energy conservation and solar measures implemented and amounts of subsidies by type of measure;

(6) The estimated energy savings by income category of recipients, building type and type of measure;

(7) The cost-effectiveness of the program in terms of administrative costs, promotional costs, leveraging of funds, energy savings in terms of dollars per barrel of oil equivalent and other measures as may be appropriate; and

(8) Evaluation of the program in terms of achieving scheduled milestones and events and in meeting program goals and objectives.

(b) *Retention of records by States.* Each State shall retain all records pertaining to use of funds received from

the Bank, including all reports received from financial institutions, for a period of three years from the date of submission of the semi-annual State report for the period covered by such records, except that if any litigation, claim or audit is started before the expiration of the three-year period, all related records shall be retained for three years after final disposition of the litigation, claim or audit.

(Approved by the Office of Management and Budget under OMB control number 2535–0050)

§ 1800.109 Manner of payment.

Payments to States will be made by electronic funds transfer whenever possible, letter of credit, or other means, pursuant to the cooperative agreements and in compliance with the Intergovernmental Cooperation Act (42 U.S.C. 4201 *et seq.*) and Treasury Circular No. 1075 (31 CFR Part 205). States may request payments only for administrative and promotional expenses which have been incurred, or for payment to financial institutions in connection with financial assistance which has been provided. States will utilize appropriate procedures to minimize the time elapsing between the transfer of funds by the Treasury to the State and the disbursement of funds by the State to financial institutions.

Subpart F—Miscellaneous

§ 1800.121 Penalties and remedies.

(a) *General.* Any person (including an applicant or financial institution) who knowingly makes any false statement or misrepresents any material fact with respect to any financial assistance applied for or provided under this chapter, or fails to make any disclosure or statement required by this chapter, is subject to a fine of not more than $10,000, or imprisonment for not more than one year, or both, for each offense. Each false statement, material misrepresentation or failure to make a required disclosure or statement shall be a separate offense.

(b) *Penalties in this section not exclusive.* The penalties provided for in paragraph (a) of this section shall be in addition to any civil or criminal fines or penalties applicable under law, including Title 18 of the United States Code and any other applicable provisions of Federal, State or local law.

(c) *Other relief.* Nothing in this section shall limit any rights of the Bank to recover funds from financial institutions, recipients or any other persons or pursue any other remedies available under law.

§ 1800.123 Retention of records by financial institutions and recipients.

(a) *Financial institution.* Financial institutions (including States acting as financial institutions) shall retain all records related to applications for financial assistance for a period of three years from the date the financial assistance is provided (or the date of application, if never provided).

(b) *Recipients.* Recipients shall retain all records pertaining to the application, the assisted loan or grant, the solar energy system or energy conservation measures for which the loan or grant was sought, and warranties for a period of three years after the financial assistance is provided.

(Approved by the Office of Management and Budget under OMB control number 2535–0050)

§ 1800.125 Audit.

The Bank, the HUD Inspector General, the Comptroller General of the United States, or any duly authorized representative, shall have access to all records required to be retained by this part or by any agreement with the Bank for the purpose of audit or other examinations or copying.

§ 1800.127 Prohibition against tax credits and financial assistance for same expenditure.

(a) *Information provided to the Secretary of the Treasury.* As required by Section 506(f) of the Act, the Bank shall provide to the Secretary of Treasury such information as the Secretary of Treasury determines is necessary to insure that no person is allowed for the same expenditure both financial assistance under the Act and a credit against Federal income taxes under 26 U.S.C. 38 (investment credit) or 26 U.S.C. 44C (residential energy credit). Except as otherwise directed by the Secretary of the Treasury, the Bank intends to discharge this responsibility as well as the information return requirements of 26 U.S.C. 6050D by requiring either a State or financial institutions within a State to submit Internal Revenue Service Form 6497 ("Information Return of Nontaxable Energy Grants or Subsidized Energy Financing") or any replacement form duly approved by the Office of Management and Budget to the appropriate office of the Internal Revenue Service.

(b) *Information required from applicant.* As a condition of financial assistance, an applicant shall be required to provide to the financial institution:

(1) All information which the Secretary of Treasury determines is necessary under paragraph (a) of this section and which is possessed by the recipient, including the applicant's Social Security number or taxpayer identification number and other information required for Internal Revenue Service Form 6497 or any replacement form duly approved by the Office of Management and Budget,

(2) A certification that the applicant will not claim a Federal tax credit under 26 U.S.C. 38 or 44C for amounts expended for the assisted energy conservation measures or assisted solar energy system up to the amount used as the basis for determining the financial assistance, except as permitted by regulations or other legal interpretations of the Internal Revenue Service.

(Approved by the Office of Management and Budget under OMB control number 2535–0050)

§ 1800.129 No gross income.

The amount of any financial assistance provided under this chapter shall not be included in the gross income of any recipient for purposes of the Internal Revenue Code of 1954, 26 U.S.C. 1 *et seq.*

§ 1800.131 No increase in basis.

No recipient shall receive any increase in basis under the Internal Revenue Code of 1954, 26 U.S.C. 1 *et seq.*, which is attributable to the amount of any financial assistance provided under this chapter.

§ 1800.133 Waiver of regulations.

Upon determination of good cause, the President of the Bank may waive any provision of this part unless the provision is required by the Act. Each such waiver will be in writing and shall be supported by documentation of the pertinent facts and grounds for waiver. No person shall have a right to a hearing in connection with any waiver or refusal to waive by the President of the Bank.

§ 1800.135 Applicability of general HUD regulations.

(a) *Not subject to HUD regulations.* The Bank is not subject to the regulations of general applicability to HUD contained in this title and issued by the Secretary of HUD or a delegatee of the Secretary, except as expressly adopted by the Bank in this chapter or otherwise. Nothing in this section shall excuse the Bank from compliance with statutes or Executive Orders.

(b) *Regulations adopted.* The following provisions of this title, as they may be amended from time to time, are adopted by the bank and shall be binding as regulations of the Bank,

except as provisions of such regulations may be waived in accordance with § 1800.133 of this part: Part O (Standards of Conduct), Part 1 (Nondiscrimination), Part 2 (Hearing Practice and Procedures under Part 1), Part 7 (Equal Employment Opportunity), Part 10 (Rulemaking: Policy and Procedures), Part 15 (Production or Disclosure of Material or Information), Part 16 (Privacy Act), Part 17 (Administrative Claims), Part 20 (Board of Contract Appeals), Part 35, Subpart F (Lead-Based Paint) and Part 50 (Procedures for Protection and Enhancement of Environmental Quality). References to "the Secretary" in such provisions shall ordinarily be construed as including the Board. In conjunction with its adoption of Part 50 of this title, the Bank adopts a categorical exclusion from requirements for environmental clearances for approval by the Board of State programs and allocation of funds to the States, as well as for any actions taken by States or financial institutions in accordance with approved State programs.

(c) *Future HUD regulations.* The President of the Bank is authorized to subject the Bank to any regulations of general applicability to HUD which are added to this title in the future, by issuing a notice in the **Federal Register** to that effect.

§ 1800.137 Other Federal requirements.

(a) *General.* Financial assistance shall be provided by financial institutions in compliance with all applicable Federal statutes and regulations, as they may be amended from time to time including, but not limited to, those cited in this part and those generally applicable to "Federal financial assistance."

(b) *Non-discrimination.* Certain aspects of the Bank's programs are subject to Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 *et seq.*) and Executive Order 11063, and any regulations under these provisions.

(c) *Historic preservation.* No financial assistance shall be provided in connection with any energy conservation measure or solar energy system which would have an adverse effect on the historic aspect of any district, site, building, structure or object included in or eligible for inclusion in the National Register maintained by the Secretary of the Interior under 16 U.S.C. 470a, unless such financial assistance is in connection with an assistance program of a Federal agency other than the Bank and the assistance of the other agency is being provided in compliance with the procedures set forth in the regulations of the Advisory Council on Historic Preservation (36 CFR Part 800).

(d) *Floodplains and wetlands.* In order to carry out the Federal policies stated in Executive Orders 11988 ("Floodplain Management") and 11990 ("Protection of Wetlands"), no financial assistance shall be provided in connection with buildings located in 100-year floodplains or wetlands, unless such financial assistance is in connection with an assistance program of a Federal agency other than the Bank and the assistance of the other agency is being provided in compliance with the procedures set forth in Executive Order 11988 or 11990.

(e) *Flood insurance program.* No financial assistance shall be provided in connection with any building located in an area that has been identified by the Federal Emergency Management Agency as having special flood hazards unless the community in which the area is situated is participating in the National Flood Insurance Program and the regulations thereunder (44 CFR Parts 59–79) or less than a year has passed since FEMA notification regarding such hazards, and insurance on the structure is obtained in compliance with Section 102(a) of the Flood Disaster Protection Act of 1973 (Public L. 93–234, 42 U.S.C. 4001 *et seq.*).

(f) *Coastal barriers.* No financial assistance shall be provided in connection with any building located in an undeveloped coastal barrier (as defined in the Coastal Barriers Resources Act, Public L. 97–348).

(g) *Other laws.* Financial institutions shall ensure that all financial assistance is provided in accordance with the following statutes and regulations to the extent applicable:

(1) Truth-in-Lending Act (15 U.S.C. 1601 *et seq.* and 12 CFR Part 226 (Regulation Z)).

(2) Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2610 *et seq.* and Part 3500 of this title).

(3) Equal Credit Opportunity Act of 1976 (15 U.S.C. 1691 *et seq.* and 12 CFR Part 202).

Appendix I—Climatic Factor for Passive Solar Energy Space Heating Systems

HDD[1]	CH[2]			
	0–500	501–1,000	1,001–1,500	Over 1,500
Under 1,000	0	0	0	0
1,000–1,500	.2	0	0	0
1,501–2,000	.3	.2	.1	0
2,001–2,500	.4	.3	.2	.1
2,501–3,000	.5	.4	.3	.2
3,001–3,500	.6	.5	.4	.3
3,501–4,000	.7	.6	.5	.4
4,001–4,500	.8	.7	.6	.5
4,501–5,000	.9	.8	.7	.6
5,001–5,500	1.0	.9	.8	.7
5,501–6,000	1.0	1.0	.9	.8
Over 6,000	1.0	1.0	1.0	.9

[1] HDD = Average annual heating degree days.
[2] CH = Cooling hours above 80°F.

Appendix II—Procedure for Calculating Subsidy and Reduced Interest Rate on Prepayment of Interest Loan Assistance

I. Energy conservation measures and retrofit passive solar water heating systems.

A. Determine amount of maximum subsidy based on recipient (borrower) income eligibility and limitation based on cost-effectiveness of measures as per § 1800.47 and/or 1800.67 as appropriate.

B. Category 1 loan: A predetermined interest rate reduction below prevailing market rate is to be made (e.g., 10% versus 15% conventional rate).

1. Subtract finance charge of loan at the reduced interest rate from the finance charge at the conventional rate.

2. Find the growth factor per dollar using monthly compounding financial tables at the Bank authorized discount rate of 60% of conventional interest rate, as per § 1800.17(b), rounding up to the nearest 0.25 percentage increment, for the loan repayment term.

3. Divide the amount from step B.1 by the growth factor in step B.2 above.

4. If the maximum subsidy amount available is equal to or greater than the amount in step B.3 above, then the step B.3 amount is the amount of the subsidy to be permitted. If the maximum subsidy amount available is less than the step B.3 amount, this Class loan cannot be made as there is insufficient subsidy available to "buy-down" the loan to 10%. Use Category 2 loan procedures.

C. Category 2 loan: Determine interest rate reduction based on amount of sudsidy available as per I.A. above.

1. Find the growth factor per dollar using monthly compounding financial tables at the Bank authorized discount rate of 60% of conventional interest rate, as per § 1800.17(b), rounding up to the nearest 0.25 percentage increment, for the loan repayment term.

2. Multiply the growth factor from step C.1 by the amount of subsidy available.

3. Subtract the amount from step C.2 above from the finance charge of the loan at the conventional interest rate.

4. If the result from step C.3 above is zero or greater, this result is the net finance charge of the loan. If zero, the result is a zero interest loan. If greater than zero, use a standard financial table or formula to find the interest rate needed to yield the net finance charge of the loan rounding up to the nearest percentage increment of interest rate available. This establishes the reduced interest rate of the loan and the entire amount of subsidy available is used.

5. If the result from step C.3 above is less than zero, meaning the subsidy available exeeds the amount required to "buy-down" the interest rate to zero percent, use the Category 1 loan procedure to determine the subsidy amount for any specific interest rate reduction down to zero percent.

II. Solar energy measures.

Category 3 loan: Passive solar energy systems in new or substantially rehabilitated residential buildings being financed.

1. Determine subsidy amount as follows:

A. For space heating systems:

1. Find climatic factor from Appendix I for specific site location of building. If zero, subsidy is zero.

2. Find performance factor for specific building and passive system as per § 1800.47(b). If zero, subsidy is zero.

3. Multiply climatic and performance factors together and multiply this product by the maximum subsidy available (e.g., $5,000 for a single dwelling unit building).

B. For water heating sytsems the subsidy is per § 1800.47(a)(2). For both a space and a water heating system the subsidy amounts would be combined, subject to the appropriate maximum amount in § 1800.47(a)(1).

2. Find the growth factor per dollar using monthly compounding financial tables at the Bank authorized discount rate of 60% of conventional interest rate as per § 1800.17(b), rounding up to the nearest 0.25 percentage increment, for the loan repayment term.

3. Multiply subsidy available from step 1, above by the growth factor from step 2 above.

4. Subtract the amount from step 3 above from the finance charge of the loan at the conventional interest rate. This is the net finance charge for the loan.

5. Find the interest rate required to yield the net finance charge, using a standard financial table or formula, rounding up to the nearest percentage increment of interest rate available. This establishes the reduced interest rate of the loan.

III. Portion of loan qualifies for a subsidy.

Category 4 loan: A portion of a loan is eligible for subsidized financial assistance.

1. Consider the entire loan as having two parts where one part (part A) represents the amount of the loan for which subsidized financial assistance is available. Part B is the balance of the loan amount.

2. Determine the amount of subsidy and the finance charge reduction for part A of the loan using procedures for Category 1, 2, or 3 loans, as applicable.

3. Subtract the finance charge reduction in step 2 above from the finance charge of the entire loan at the conventional interest rate. This is the net finance charge of the entire loan.

4. Use a standard financial table or formula to find the interest rate needed to yield the net finance charge of the loan rounding up to the nearest percentage increment of interest rate available. This is the reduced interest rate for the entire loan.

Appendix III—Prepayment of Interest Loan Subsidy Examples

Example 1, Category 1

It is desired to offer loans for energy conservation measures at 10% where the conventional rate is 15%. The applicant is the owner-occupant of a single-family dwelling and is at the 80-100% of median income level. Energy audit results show the cost of measures to be installed is $2,000 and estimated energy cost savings per year is $500. The loan will be for 5 years.

1. From the interim rule income limitation, the maximum level of assistance is $875 or 35% of $2,000, whichever is less. In this case the limit is $700 (35% of $2,000).

2. As per step B.1 of the procedure for Category 1 loans, the difference in finance charges from 15% to 10% for $2,000 is $304.80 ($854.80—$550.00).

3. From step B.2, the discounted rate growth factor at 6.0% for 5 years is 1.3489.

4. Per step B.3, the amount of subsidy required to reduce the interest rate to 10% is $225.96 ($304.80 divided by 1.3439). Since this amount is within the allowable subsidy of $700, the $225.96 is the subsidy amount.

Example 1 Summary

	Conventional	Bank subsidized
Principal	$2,000.00	$2,000.00
Interest rate (percent)	15	10
Term (years)	5	5
Monthly payment	$47.60	$42.40
Total payments	$2,856.00	$2,544.00

Example 2, Category 2:

It is desired to offer a reduced interest rate loan for energy conservation measures using the full amount of the subsidy available. The applicant is the owner-occupant of a single family dwelling and is at 140% of median income level. Energy audit results show the estimated cost of measures to be installed is $1,500 and the estimated energy cost savings is $300 per year. The loan will be for 5 years where the conventional interest rate is 16%.

1. From the interim rule income limitation, the maximum level of assistance is $500 or 20% of $1,500, whichever is less. In this case, the limit is $300 (20% of $1,500).

2. As per step C.1 of the procedure for Category 2 loans, the discounted rate growth factor is 1.3828 (6.5 for 5 years). Applying this to the allowable subsidy yield $414.84 ($300 × 1.3826) as per step C.2.

3. Per step C.3, the net finance charge of the loan is $273.81 (normal finance charge of $688.65—$414.84).

4. Using financial tables per step C.4, the interest needed to yield the net finance charge of the loan is found to be 7.0%, after rounding up the nearest .25% increment. The loan is thus reduced to a 7.0% rate with a subsidy of $400.

Example 2 Summary

	Conventional	Bank subsidized
Principal	$1,500.00	$1,500.00
Interest rate (percent)	16	7.0
Terms (years)	5	5
Monthly payment	$36.48	$29.70
Total payments	$2,188.80	$1,782.00

Note.— For a comparison of a reduction of principal type loan to example 2, the principal would be $1,200 at 16% interest for 5 years, the monthly payment would be $29.18 and the total payment would be $1,750.80.

Example 3, Category 3

A new single-family dwelling has a $70,000 sale price located in Greensboro, North Carolina. The solar collection area of the passive solar space heating system is 354 square feet and the gross heated living floor area is 1700 square feet. The passive system meets the five recognition factors defined in the interim rule. The mortgage will be $56,000 for 30 years where the conventional interest rate is 14%.

1. The climatic factor for Greensboro, NC is 0.6 from Appendix I based on a value of 3805 heating degree days and 916 cooling hours (from *Handbook of Air Conditioning Heating and Ventilating*, Third Edition, 1979). The performance factor is 1.0 as per § 1800.47(b). As per step 1.A of the procedures for Category 3 loans, the subsidy amount is $3,000 (0.6 × $5,000 maximum subsidy available).

2. From step 2, the growth factor is 5.5894 (5.75% for 30 years).

3. The amount of interest prepaid, per step 3, is $16,768.20 ($3,000 × 5.5894).

4. The net finance charge of the loan, per step 4, is $166,099.80 ($16,768.20 subtracted from $182,868, the finance charge at 14%).

5. Per step 5, the interest rate needed to yield the net finance charge, after rounding up to the nearest 0.25 percent increment, is 13%.

Example 3 Summary

	Conventional	Bank subsidized
Principal	$56,000.00	$56,000.00
Interest rate (percent)	14	13
Term (years)	30	30
Monthly payment	$663.53	$619.48
Total payments	$238,870.80	$223,012.80

Note.—If the subsidy had been the maximum allowable of $5,000 (for a more northerly climate) the interest rate would be 12.25%, the monthly payment $586.83 and the total payments $211,258.80.

Also, for a comparison to a reduction of principal loan at $3,000 sudsidy ($53,000 at 14% for 30 years) the monthly payment would be the same as the prepayment of interest example above.

Example 4, Category 4

A home improvement loan for $3,500 is being made which includes $1,500 of eligible energy conservation measures. The conditions for the loan are otherwise as for example 2 of this appendix.

1. The amount of subsidy and the finance charge reduction for the eligible portion of the loan is $300 and $414.84 respectively as determined in example 2.

2. The finance charge of the entire loan at the conventional interest rate is $1606.85 and the net finance charge of the entire loan is $1192.01 ($1606.85–$414.84).

3. Using financial tables, the interest needed to yield the net finance charge of the entire loan is 12.25% after rounding up to the nearest 0.25% increment. The loan is thus reduced to a 12.25% rate with a subsidy of $300.

Example 4 Summary

	Conventional	Bank subsidized
Principal	$3,500	$3,500
Interest rate (percent)	16	12.25
Term (years)	5	5
Monthly payments	$85.11	$78.30
Total payments	$5,106.60	$4,698.00

Note.—The calculations made for finance charges on loans and the interest rates needed to yield specific finance charges are based on tables in Thornton's Financial Encyclopedia. Monthly payments are rounded up to the next $0.01. This rounding up accounts for some differences in the finance charges expressed in the calculations compared to the total payments (principal plus finance charge) shown in the summary following each example.

Dated: April 11, 1983.

Richard H. Francis,

Manager of the Bank.

[FR Doc. 83-14153 Filed 5-27-83; 8:45 am]

BILLING CODE 4210-01-M

federal register

Tuesday
May 31, 1983

Part III

Department of Labor

Employment Standards Administration

Standards for Determining Coal Miner's Total Disability or Death Due to Pneumoconiosis; Final Rule

DEPARTMENT OF LABOR

Employment Standards Administration

20 CFR Parts 718 and 725

Standards for Determining Coal Miner's Total Disability or Death Due to Pneumoconiosis; Claims for Benefits Under Part C of Title IV of the Federal Mine Safety and Health Act, As Amended

AGENCY: Employment Standards Administration, Labor.

ACTION: Final rule.

SUMMARY: On January 1, 1982, the Black Lung Benefits Revenue Act of 1981 and the Black Lung Benefits Amendments of 1981 became effective. This legislation made numerous substantive changes in the Black Lung Benefits Act, Title IV of the Federal Mine Safety and Health Act. These final rules implement those changes in the law which are administered by the Department of Labor and make certain technical corrections in the implementing regulations as previously promulgated in 1978 and 1980.

DATES: Effective date: May 31, 1983, except § 725.533(a)(3) and 725.536 which contain information collection requirements which are under review at OMB.

FOR FURTHER INFORMATION CONTACT: James L. DeMarce, Executive Assistant to the Director, Office of Workers' Compensation programs, Employment Standards Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room S–3524, Washington, D.C., 20210; Telephone (202) 523–7503.

SUPPLEMENTARY INFORMATION: The Black Lung Benefits Revenue Act of 1981 and the Black Lung Benefits Amendments of 1981, Pub. L. 97–119, 95 Stat. 1635, became effective on January 1, 1982. This legislation amended various sections of the Black Lung Benefits Act, Title IV of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 901 et seq., and the Internal Revenue Code, 26 U.S.C. 1 et seq. Those amendments establish new criteria for determining entitlement for benefits on claims filed on and after January 1, 1982, under the Black Lung Benefits Act and alter the procedures applicable to the payment of such benefits. Major changes include the removal of restrictions previously applicable to the Secretary of Labor's use of certain X-ray evidence and the placing of new limitations on the use of certain affidavits. Three presumptions previously available in support of claims have also been eliminated. (30 U.S.C. 921 (c)(2), (c)(4), and (c)(5)). Following the death of a miner whose claim was filed on or after January 1, 1982, and who was found to be entitled to benefits under the Act, the miner's dependent survivors will be required to file a claim and to establish that the miner's death was due to pneumoconiosis in order to be found entitled to survivors' benefits under the Act. An excess earnings offset was also made applicable to miner's claims. Changes were also made in the rates of interest to be paid to and by the Black Lung Disability Trust Fund and to claimants. The rate of the excise tax on coal was temporarily doubled and the liability for the payment of certain claims was transferred from individual coal mine operators and/or their insurance companies to the Fund. Certain other technical changes were also made by the amendments.

A notice of proposed rulemaking was published in the **Federal Register** of May 25, 1982 (47 FR 22674). The primary purpose of those proposed rules was to amend the Department of Labor's regulations which were previously published on August 18, 1978 (43 FR 36772), and February 29, 1980 (45 FR 13678), to conform to and implement the 1981 Amendments to the Act. A second purpose of the proposed rules was to make certain technical corrections in the regulations as previously promulgated by correcting typographical and clerical errors, correcting erroneous cross-references, and making more uniform the language of certain provisions dealing with the same or similar subject matter. The notice of proposed rulemaking indicated that other substantive changes to the existing regulations which may be appropriate would be considered by the Department separately at a later date.

Comments were received from 16 sources including coal mine operator associations, an individual coal mine operator, an electric utility association, an insurance council, individual insurance companies, an insurance service agent, a coal miners' union, black lung claimants' associations, individual attorneys who represent claimants seeking black lung benefits, and a medical group.

The following summarizes the substantive comments which were received, states the Department's response to those comments, and indicates the changes which have been made in the proposed rules as a result of those comments. This summary deals with the comments received and the Department's responses to them on a section-by-section basis, except where clarity is better served by discussing separate subsections individually. Where the same or closely related subject matter is contained in several sections or subsections of these rules, the discussion is either consolidated under the first applicable section or subsection, or related material is indicated by appropriate cross-references. Wherever the term nonconforming is used in this preamble, it refers to medical evidence which is not in substantial compliance with the quality standards established in Part 718.

Discussion of Comments Received

Section 718.1 Statutory provisions

(a) Two commenters expressed concern that paragraph (a) of § 718.1 could be read to require the surviving dependents of a miner to file a claim and establish that the miner's death was due to pneumoconiosis in order to receive survivors' benefits even though the deceased miner had been receiving benefits under the Act based on a claim filed prior to the passage of the 1981 amendments. In any case in which the miner has been found entitled to benefits as a result of a claim filed prior to January 1, 1982, such an interpretation would be contrary to section 422(1) of the Act and its implementing regulations, especially §§ 725.1, 725.201, 725.212, 725.218, and 725.222. Those sections make clear that where the miner has been found entitled to benefits as a result of a claim filed prior to January 1, 1982, surviving dependents are not required to establish that the miner's death was due to pneumoconiosis in order to qualify for benefits under the Act. For such dependent survivors, the Act requires the payment of survivors' benefits upon receipt of information which confirms the miner's death and provides such additional data as is required to compute the appropriate benefits to be paid to the eligible survivors. This requirement is usually satisfied by the filing of a standard form (CM 1089).

(b) Only where the miner has not been determined to be eligible for benefits as a result of a claim filed prior to January 1, 1982, will his or her surviving dependents be required to establish that the miner's death was due to pneumoconiosis in order to qualify for benefits, if such survivors' claims are filed on or after January 1, 1982. The requirement that the miner's death was due to pneumoconiosis is also not applicable to those survivors whose entitlement is established under section 411(c)(5) of the Act and its implementing

regulation at § 718.306 on survivors' claims filed prior to June 30, 1982.

(c) In these final rules, the second sentence of paragraph (a) of § 718.1 has been clarified to eliminate the possible misinterpretation referred to in the comments received. No other comments were received concerning this section and no further changes have been made in it.

Section 718.2 Applicability of this part

One comment contended that this section should be amended to conform to a recent ruling by the Benefits Review Board in *Muncy v. Wolf Creek Collieries Coal Co., Inc.*, 3 BLR 1–627 (1981). Since the Department neither agrees with the result reached in the Board's decision nor concedes that the Board has authority to so amend the Secretary's regulations, no such change has been made in this section. No other comments were received concerning this section and no changes have been made in it.

Section 718.102 Chest roentgenograms (X-rays)

(a) Although the notice of proposed rulemaking included no changes to this section, one comment was received which proposed a change to paragraph (e) of this section. The comment proposed to exclude all nonconforming X-rays from consideration in cases involving deceased miners where the claim was filed on or after January 1, 1982. Such a change would not be consistent with the intent of Section 202(a) of the 1981 amendments. The intent of that amendment was to permit the full and complete evaluation of X-ray evidence rather than to restrict artificially the consideration of such relevant and probative evidence. The requested change would be particularly harsh and detrimental to informed claims adjudication because it could result in the exclusion of the only available evidence on the issue.

(b) This final rule does, however, contain a revision and clarification of the latter part of the first sentence of paragraph (e). This change was made to conform this paragraph to a similar change made in § 718.106(b). That change was made in response to a comment received concerning the proposed revision of that section. The basis for the paralled changes in both sections is discussed under § 718.106 and is also referred to under § 718.202.

Section 718.106 Autopsy; biopsy

(a) One comment noted that the phrase "special consideration" used in the second sentence of proposed paragraph (b) can be read to imply that preferential treatment is to be given to nonconforming biopsy or autopsy reports where the miner died prior to March 31, 1980. The comment correctly notes that the intended purpose of the regulation was only to render such nonconforming reports which were prepared prior to the adoption of the Part 718 regulations admissible as evidence. See 45 FR 13684 (February 29, 1980), § 718.106 Autopsy; biopsy, Discussion and changes, (b). The final rule has been revised to state its intended purpose more clearly. A similar revision was also made in §718.102(e) concerning the admissibility of nonconforming X-rays of deceased miners.

(b) One comment requested that the Department either publish standards for conducting autopsies at this time or establish a specific timetable for the publication of such standards. Section 202(e) of the 1981 amendments directed the Department, in consultation with the Secretary of Health and Human Services, to undertake a study of current medical methods for the diagnosis of pneumoconiosis. The results of the study, together with appropriate recommendations, are to be transmitted to the Congress. It would be premature to promulgate any standards for the conduct of autopsies until the results of that study and the related recommendations become available.

(c) No other comments were received concerning this section and no other changes were made in it.

Section 718.202 Determining the existence of pneumoconiosis

(a) Three comments were received concerning proposed paragraph (a)(1)(i). The first supported a revision of the proposed rule which would require the Department to: (1) Review all X-rays submitted in claims filed on or after January 1, 1982, to determine whether they provide adequate evidence of the existence of pneumoconiosis as provided in § 718.102 and Appendix A, (2) require additional X-rays in the case of living miners whose claims are filed on or after January 1, 1982, when the original X-ray submitted was not in compliance with those criteria, and (3) reject all inadequate or nonconforming X-rays submitted in survivors' claims filed on or after January 1, 1982. The Department does not believe that the incorporation of additional cross-references to § 718.102 and Appendix A are necessary in this paragraph since § 718.102(e) already provides that, "[n]o chest X-ray shall constitute evidence of the presence or absence of pneumoconiosis unless it is in substantial compliance with the requirements of this section and Appendix A. * * *." Similarly, §§ 725.406, 725.407, and 725.408 already provide the deputy commissioner with sufficient authority to require a living miner to submit to an additional X-ray when such evidence is necessary to the proper development and evaluation of the miner's claim. The Department does not agree that nonconforming X-rays must be excluded from consideration in survivors' claims when they may constitute the only such evidence available with regard to the deceased miner. Therefore, § 718.102(e) has been revised to clarify that such nonconforming X-rays shall be admissible as evidence with regard to survivors' claims and shall be accorded such weight and probative value as is appropriate under the circumstances of the individual case.

(b) The second comment received concerning proposed paragraph (a)(1)(i) opposes any change from the previous version and states that such a change is unnecessary. It further objects to any use of "B" readers which may be made by the Department under the proposed rule. Section 202(a) of the 1981 amendments expressly amended section 413(b) of the Act and eliminated certain previously applicable limitations upon the review of X-rays evidence for all claims filed on or after January 1, 1982. The proposed rule reflects this change in the Act. Nor can the Department agree that it should not, under appropriate circumstances, make use of "B" readers for the evaluation and interpretation of X-ray evidence.

(c) The third comment received concerning paragraph (a)(1)(i) recommends that all X-rays, regardless of the date of filing of the claim, should be reviewed by "B" readers. For claims filed prior to January 1, 1982, section 413(b) of the Act requires that, "the Secretary shall accept a board certified or board eligible radiologist's interpretation of a chest roentgenogram" where certain specified criteria are met. No such limitations are imposed with regard to claims filed on or after January 1, 1982. The Department agrees that "B" readers are highly qualified in the interpretation and evaluation of X-rays and will, within the limits imposed by the Act, continue to make use of that expertise. However, no change in the proposed rule is required to achieve that objective.

(d) Several comments were received concerning the second sentence of proposed paragraph (c) on the use of affidavit evidence in the establishment of the existence of pneumoconiosis in cases involving deceased miners. Those

comments focus upon two issues: (1) The purposes for which such affidavits shall be sufficient, and (2) the persons whose affidavits shall be sufficient.

(e) Concerning the first issue, one comment contends that lay affidavits may be used to establish the fact of total disability or death in a case involving a deceased miner but not to establish the cause of such disability or death. A second comment takes the position that, although lay affidavits could establish the existence of a condition which was presumed to be pneumoconiosis under the interim criteria (§ 727.203(a)(5)) and under the now repealed section 411(c)(2) and 411(c)(4) presumptions in a case involving a deceased miner, lay affidavits are no longer sufficient to establish the existence of pneumoconiosis under the Act, as now amended. Both comments contend that the existence of pneumoconiosis can only be established by expert medical evidence.

(f) The comments summarized in paragraph (e) above rely upon cases involving living miners in support of their contentions. The Department agrees that in cases involving living miners expert medical evidence is required. However, the Department can not concur with these interpretations as applied to certain cases involving deceased miners. Section 413(b) of the Act, as now amended, states in pertinent part: "Where there is no medical or other relevant evidence in the case of a deceased miner, such affidavits [of persons with knowledge of the miner's physical condition], from persons not eligible for benfits in such case with respect to claims filed on or after the effective date of the Black Lung Benefits Amendments of 1981, shall be considered to be sufficient to establish that the miner was totally disabled due to pneumoconiosis or that his or her death was due to pneumoconiosis." By its express terms, this provision dealing with the sufficiency of lay affidavit evidence is limited to those increasingly rare instances "where no medical or other relevant evidence" is available concerning the deceased miner. The proposed interpretations would require the presentation of medical evidence of the existence of pneumoconiosis before according any weight to lay affidavits concerning the deceased miner. Thus, they would defeat the purpose of the statutory provision which is intended to address precisely those few situations where no such medical evidence is available. Therefore, no change was made in the proposed rule as a result of the consideration of these comments.

(g) One comment notes that the instances in which widows were awarded survivors' benefits based solely on their own affidavits have been very rare in the past. It also states that the widow of a deceased miner may also be the one person most knowledgeable about the miner's physical condition. The comment requests, based on those two factors, that no new restrictions be placed on the use of such widows' affidavits in the future. The Department notes that the effect of the new amendment to section 413(b) of the Act is not to exclude the affidavits of widows and other family members from consideration but merely to render them insufficient to establish entitlement to benefits without the assistance of affidavits from third persons who are not themselves eligible to receive such benefits. The weighing of the knowledgeability of the affiant against the dangers associated with self serving affidavits and the definition of the weight to be accorded such affidavits is a function which the Congress exercised in the enactment of this amendment. The Department is no more free to ignor the determinations made by the Congress in the 1981 amendments which altered this rule than it was free to ignore the previous rule concerning the sufficiency of such widows' affidavits which was established by the 1977 amendments to the Act. Therefore, no change was made in the proposed rule in response to this comment.

(h) Two comments noted that the limitation language used in the second sentence of proposed paragraph (c) which defines the class of persons whose affidavits "shall be considered to be sufficient to establish that the miner was totally disabled due to pneumoconiosis or that his or her death was due to pneumoconiosis" was overbroad. The proposed language would have excluded affidavits from "any person or persons having any financial interest in the result of the adjudication of the claim." These comments point out that the proposed language was sufficiently board that it could arguably be interpreted to exclude the affidavits of any persons to whom the deceased miner or members of his or her family owed or owe money. In smaller coal mining communities, such a broad reading might be sufficient to exclude the affidavits of virtually all "persons with knowledge of the miner's physical condition." The Department agrees that such an interpretation would be inconsistant with the intended purpose of the amended language. The intended purpose of this amendment was stated in the Administration's description of the change. It was summarized as to "accept affidavits in such cases from third parties *who could not receive benefits.*" 127 *Cong. Rec.*, H9793 (daily ed. December 16, 1981) (emphasis added). One comment indicates that the exclusion should be limited to "immediate beneficiaries," including the claimant and any dependents. The Department agrees that such a limitation is appropriate and paragraph (c) has been revised to limit the exclusion to the claimant and his or her dependents who would be eligible for augmentation of the claimant's benefits.

(i) No other comments were received concerning this section and no other changes were made in it.

Section 718.204 Total disability defined. Criteria for determining total disability

(a) Review of the explanatory materials which accompanied the original promulgation of this regulation (45 FR 13688–13690 (February 29, 1980)) makes clear that the purpose of paragraph (c)(5) was to implement provisions of section 413(b) of the Act as amended in 1978. Although changes were made from the proposed version of that paragraph, see 43 FR 17725 (April 25, 1978), prior to its final promulgation, the language adopted in the final version and again contained in the proposed revision which was published on May 25, 1982, failed to reflect the full scope of the portion of section 413(b) of the Act which it sought to implement. That portion of section 413(b) speaks to all cases involving a "deceased miner" "where there is no medical or other relevant evidence." Thus, it applies not only to survivors' claims, but also to claims filed by miners which are not finally adjudicated until after the miner's death. To make this paragraph consistent with the quoted portion of section 413(b) and consistent with § 718.202(c), paragraph (c)(5) has been modified by inserting the words "a case involving a deceased miner" in place of the words "the case of a claim filed by a survivor of a miner" which were contained in the previous version of the regulation and also in the proposed revision which was published on May 25, 1982.

(b) Two comments were received which recommended that the word "shall" contained in the first sentence of the proposed paragraph (c)(5) should be changed to "may" to reflect legislative intent. The third sentence of Section 413(b) of the Act, as enacted in 1978 and as amended in 1981, contains the

express words "shall be considered to be sufficient"; therefore, it would be inappropriate to make the change recommended. However, the Department agrees that the Congressional intent was not that all such affidavits automatically be deemed sufficient for the indicated purpose. Clearly, the intent of the provision is that the affidavits (or equivalent sworn testimony) must be found to be both sufficiently credible and sufficiently detailed to permit the drawing of the conclusion that the miner was totally disabled or died due to pneumoconiosis as those terms are defined in the Act and its implementing regulations before they can be deemed to be sufficient. Those qualification are equally applicable to all forms of evidence and need not be made express in this context.

(c) One comment received suggested that paragraph (c) should be further revised or a new subsection be promulgated to make clear that the miner's total disability must be due to pneumoconiosis. Paragraphs (a) and (b) of this section already state that pneumoconiosis "as defined in § 718.201" must be the cause of the miner's total disability. No useful purpose would be served by reiterating the requirement again in paragraph (c) of this section. The same comment also suggests that paragraph (c) should further state that the pneumoconiosis must have arisen from employment in the nation's coal mines. That requirement is made express in § 718.203 and no useful purpose would be served in repeating it in other sections of the regulations which discuss other criteria for establishing eligibility for benefits. Finally, the same comment also suggests that language should be added to make clear that, except as provided in § 718.305 proof of a totally disabling respiratory or pulmonary impairment shall not by itself be sufficient to establish that the miner's impairment is due to pneumoconiosis. The Department agrees that such an addition would be helpful and paragraph (c) has been revised to incorporate that suggestion.

(d) One comment suggests that the use of lay affidavits should be totally banned for all claims filed which are subject to the 1981 amendments. The 1981 amendments to section 413(b) of the Act restricted, but did not abolish, the use of such affidavits. As noted in paragraph (g) of the discussion of comments received concerning § 718.202 above, the Department is not free to alter the rule which the Congress established concerning the use of such affidavits. Therefore, no change was made in the proposed rule in response to this comment.

(e) One comment suggests that the proposed rule should emphasize that the miner's total disability due to pneumoconiosis is not relevant to survivors' claims filed after January 1, 1982, except for those claims subject to § 718.306 which were filed prior to June 30, 1982. The Department agrees that this distinction is important and paragraph (c)(5) has been revised accordingly.

(f) One comment suggests that the second sentence of proposed paragraph (c)(5) should be broadened to include all survivors' claims filed on or after January 1, 1982. Such a change would serve no useful purpose. As noted in the preceding paragraph, the only survivors' claims filed on or after January 1, 1982, in which the fact of the miner's disability due to pneumoconiosis prior to death is relevant are those survivors' claims filed prior to June 30, 1982, which are subject to § 718.306. Therefore, no change has been made in the proposed regulation in response to this comment.

(g) Two comments argue that restrictions placed on the use of lay affidavits contained in the second sentence of proposed paragraph (c)(5) are overbroad and inconsistent with Congressional intent. The Department agrees. For the reasons stated above in paragraph (h) of the discussion of the comments received concerning § 718.202, that sentence has been revised to render it consistent with revised § 718.202(c).

(h) One comment raises objections to the second sentence of proposed paragraph (c)(5) similar to those summarized in paragraph (g) of the discussion of the comments received concerning § 718.202. For the reasons stated in response to that comment, no change can be made in response to this comment.

(i) No other comments were received concerning this section and no other changes were made in it.

Section 718.205 Death due to pneumoconiosis

(a) The notice of proposed rulemaking, 47 FR 22074 (May 25, 1982), particularly solicited comments concerning this section and the related legislative history. Thirteen of the comments received responded to that request. Most of them provided extended discussions of the proposed language in light of the legislative history. The Department appreciates the assistance which it has received from these comments.

(b) Generally, the comments received stress certain recurring themes: (1) Problems with the previous version of § 718.205, (2) whether any detailed regulations are necessary to implement the new requirements for survivors' claims, (3) the weight to be accorded various portions of the legislative history, (4) the specific language included in proposed paragraphs (c), (d) and (e), (5) proposals for restructuring the sequence of paragraphs within § 718.205, (6) the use of examples contained in the proposed paragraphs, (7) concerns that proposed paragraph (d) has created a new presumption of survivor entitlement and (8) concerns about the concept of aggravation as applied to survivors' claims. The comments received from employer and insurer groups tend to argue that the proposed criteria are too liberal to effectuate the intent of the 1981 amendments, whereas comments from the claimant community argue that the proposal is unnecessarily restrictive. However, there are significant variations within the comments received from each group.

(c) A finding that a deceased miner's was due to pneumoconiosis, whether based on direct proof or obtained by the aid of presumptions, has served as an alternative basis for the establishment of eligible dependent survivors' entitlement to benefits ever since the original passage of the Black Lung Benefits Act in 1969. The original version of the Act contained two presumptions, sections 411(c)(2) and 411(c)(3), which assisted survivors in obtaining such findings. The 1972 amendments added a third presumption, section 411(c)(4), which also assisted in making such a finding. The 1977 amendments liberalized other evidentiary rules which also facilitated reaching that result. Based upon the belief that relevant medical evidence is not more readily available in cases involving deceased miners, the 1981 amendments tightened those evidentiary rules and repealed the section 411(c)(2) and 411(c)(4) presumptions. However, none of the four versions of the Act has ever contained an express definition of the term "death due to pneumoconiosis." As a practical matter, prior to the passage of the 1981 amendments, the overwhelming majority of survivor entitlements were not based upon a finding of death due to pneumoconiosis but rather were based upon findings that the miner was totally disabled by pneumoconiosis prior to or at the time of death. The 1981 amendments which eliminated the unrelated death benefit for survivors' claims filed on or after

January 1, 1982 (except for a temporary extension of the section 411(c)(5) presumption which is implemented by § 718.306) thus gave an importance to the concept of death due to pneumoconiosis which it has never had in the prior history of the Act.

(d) The legislative history is clear that there was no intent to affect the rights of any persons where the miners' or the survivors' claims had been filed prior to January 1, 1982. Therefore, it must be concluded that the Congress intended to the previous version of these regulations to remain applicable to such claims.

(e) Among the many clear indications in the legislative history that section 203(a)'s elimination of unrelated death benefits was to be prospective only are the following. Robert B. Collyer, Deputy Under Secretary of Labor for Employment Standards, U.S. Department of Labor, testified in support of the proposed change before the Senate Labor Subcommittee on December 14, 1981. He stated, "Like other changes in the proposal, this change is prospective only." Committee Print, p. 17. Similarly, the administration's explanation of the bill was inserted into the *Congressional Record* at the request of Chairman Perkins immediately prior to the passage of the bill. It stated, "This section [203(a)] would, with respect to claims filed on or after the effective date of these amendments, limit survivors' entitlement to those cases where death resulted from black lung disease and not some unrelated event." 127 CONG. REC. H9793 (daily ed. December 16, 1981). A similar statement by Chairman Hatch appears at Id. at S15494. Congressman Erlenborn criticized the bill precisely because its operation was to be prospective only. He stressed "that none of those amendments will apply to pending claims, and there are tens of thousands of pending claims." He also pointed out that "this bill is prospective only. Every amendment to the black lung program as it affects eligibility applies only to those claims which are filed in the future." He concluded, "If this bill becomes law, there will be two 'classes' of claimants—those who filed before and those who filed afterwards." Id. at H9794, H9795 and H9796. See also the identical statements of Chairmen Hatch and Perkins, "We have been very concerned about the authority in current law to pay survivor's benefits in those situations [where the miner's death is unrelated to pneumoconiosis]. [The pending bill] reflects that concern by eliminating prospectively the authority to initiate benefit payments when that happens." Id. at S15494 and H9792.

(f) Two comments indicated that the proposed revisions to this section did not distinguish clearly enough between the criteria applicable to the two classes of claims, those filed before and those filed on or after January 1, 1982. The Department agrees. The final version of the regulation has been revised accordingly. Previously paragraphs (b) and (c) have been combined into a new paragraph (b). Former paragraph (c) has been redesignated as paragraph (b)(5). The new combined paragraph (b) has been revised to state that it is applicable only to claims filed before January 1, 1982. New paragraphs (c) and (d) define the eligibility criteria and procedures applicable to claims based on death due to pneumoconiosis filed on or after January 1, 1982. This restructuring and clarification of the regulation also eliminates the possibility which was pointed out by three comments that the proposed version of the regulation could have been read to produce the unintended result of establishing additional grounds for entitlement for claims filed prior to January 1, 1982.

(g) Several of the comments received suggest that the Department should take this opportunity to revise the previous regulatory definition of death due to pneumoconiosis. These comments tend to focus on the concept of aggravation as contained in former paragraph (c), now redesignated as paragraph (b)(5). They rely, in major part, upon decisions of the Benefits Review Board, especially *Ovies v. Director*, 3 BLR 1–610 (1981), rev'd on other grounds mem., 681 F. 2d 815 (4th Cir. 1982). The Department does not agree with the result reached by the Board in *Ovies*. Pending the result of further litigation on this issue, any change would be inappropriate. Moreover, in view of the clearly expressed legislative intent discussed in paragraphs (d) and (e) above that all changes were to be prospective only, the Department concludes that it would be improper to retroactively alter or amend the regulatory criteria applicable to claims filed prior to January 1, 1982. Therefore, no change has been made to those criteria in response to these suggestions.

(h) However, it is likewise clear that the prior regulatory definitions can no longer be applied to survivors' claims filed on or after January 1, 1982. This conclusion is mandated by two specific considerations. First, the regulations in existence at the time of the passage of the 1981 amendments incorporated elements of the now repealed presumptions. Second, statements were made in both houses of Congress during the floor debates immediately prior to the passage of the amendments which included interpretations to be given to the meaning of death due to pneumoconiosis under those amendments which were significantly divergent from the regulatory definitions then in effect.

(i) Several of the comments received suggest that no new regulatory definition is needed for the concept of "death due to pneumoconiosis" as applied to survivors' claims filed on and after January 1, 1982. The Department does not agree. The words do not speak clearly and unambiguously for themselves. The causal nexus of "due to" has been given a broad variety of meanings in the law ranging from sole and proximate cause at one end of the spectrum to contributing cause at the other. Therefore, some guidance is required as to the intended meaning of the words in this specific context. Without such a new interpretive statement, the prior definition, which was based in part on presumptions which are no longer applicable, may tend to continue to influence future claims adjudications. Clearly, that would not be consistent with the legislative intent. Nor would it be consistent with that intent to await the gradual emergence of a new definition as the result of a case-by-case adjudication process. The Department believes that crucial portions of the legislative history speak clearly as to the intended meaning to be given to the words "death due to pneumoconiosis" as applied to claims which are filed after December 31, 1981. Therefore, it is obligated to promulgate new regulations which are consistent with that intent.

(j) One comment suggests that the Hatch-Perkins statement was accorded undue weight in the preparation of the proposed version of this section. Although the Department agrees that the legislative history must be viewed as a whole in seeking to ascertain the intent of the legislation, it is nonetheless true that some portions of that history are entitled to greater weight than are others. As a general rule, statements by proponents of a legislative change are to be accorded greater weight than are statements by its opponents when seeking to define the intended purpose of the change. Similarly, detailed and comprehensive statements explaining the intended purpose of specific changes are to be given greater weight than are generalized statements referring to the intended purpose of the legislation as a whole. The familiarity of the speaker with the subject matter is also a relevant factor in determining the weight to be accorded individual expressions of

legislative intent. Finally, it is appropriate to accord special deference to the statements of individual members, especially to the ranking members and chairman, of committees which have institutional responsibility for the development of the legislation and oversight over its implementation. Preliminary consideration of these factors led to the decision to base the proposed version of this section primarily upon the Hatch-Perkins statement. After careful review of the numerous comments received concerning this statement and its relationship to the remainder of the legislative history relating to this provision of the 1981 amendments, the Department remains convinced of the correctness of that decision. This conclusion is reinforced by the express purpose of the statement which was to address "a question [which] has been raised regarding the proper interpretation of the provisions in the bill [which prospectively eliminated survivors' benefits in those cases where the miners' deaths were not due to pneumoconiosis]." Finally, it must be noted that the statement concludes with the chairman's "expectation that the Department of Labor would administer the new law in accordance with this explanation of the survivorship provisions." 127 CONG. REC. at S15494 and H9792 (daily ed.).

(k) Several of the comments received suggest that the definition of death due to pneumoconiosis applicable to claims filed on and after January 1, 1982, should include as an alternative basis for entitlement the words, "where competent medical evidence established that the miner's death was due to pneumoconiosis" or their equivalent. The regulation applicable to survivors' claims filed prior to January 1, 1982, already contains that provision at paragraph (b)(1). The Department agrees that it is equally applicable to survivors' claims filed subject to the new amendments and has, therefore, incorporated it into the criteria applicable to claims filed on and after January 1, 1982, at new paragraph (c)(1).

(l) Several comments received stress the importance of accurately incorporating the substance of the Hatch-Perkins explanation of the intended meaning of the new "death due to pneumoconiosis" requirement into the regulations. The Department agrees that the proposed version of the regulation did not achieve that result in a fully satisfactory manner. Paragraphs (c)(2) and (c)(4) as now promulgated are derived from the Hatch-Perkins statement. One significant change from the proposed version is the elimination of the words "significantly related to or aggravated by" as forms of causation which were included in the proposed version. This deletion is based upon a consideration of the comments discussed above in paragraph (g) and also upon the fact that those terms are not used in the Hatch-Perkins statement concerning the types of causal nexus which they intended to be compensable on survivors' claims filed after December 31, 1981.

(m) The Hatch-Perkins statement contains several key sentences explaining the intended future meaning of "death due to pneumoconiosis." They include, "I want to emphasize, however, that it is not the purpose of [the changes] to deny survivor's benefits when complications of pneumoconiosis have caused a miner's death or where pneumoconiosis was a substantially contributing factor to that death. For example pneumoconiosis may have been a substantially contributing cause of death where the principal cause of death was pneumonia." Two paragraphs later the statement continues, "Once the Labor Department has received medical evidence establishing that pneumoconiosis was the cause of death or a substantially contributing factor to the death, the survivor will receive benefits, unless the weight of the evidence developed by the Labor Department's Deputy Commissioner or by a responsible operator establishes that the death was unrelated to pneumoconiosis." Id. the quoted sentences refer to three possible relationships between the miner's death and pneumoconiosis, each of which is intended to be compensable. First is the situation in which "medical evidence establish[es] that pneumoconiosis was the cause of death." This basis for entitlement is discussed in paragraph (k) above and is now incorporated in paragraph (c)(1). The second situation is one in which "pneumoconiosis was a substantially contributing factor to [or cause of] that death." The third situation is where "complications of pneumoconiosis have caused a miner's death." These two additional bases for entitlement are now incorporated into paragraph (c)(2).

(n) Several comments objected to the inclusion in the proposed version of this regulation of the example quoted in paragraph (m) above. It is contended that the example is "general", "hypothetical", "of no value", "confusing", and capable of being seriously misinterpreted. The Department agrees that the example—viewed in isolation—can be misconstrued. However, the example which was used as an illustration of a potentially compensable claim, i.e., that "pneumoconiosis may have been a substantially contributing cause of death in a case where the principal cause of death was pneumonia," must be understood in the context of the Hatch-Perkins statement as a whole. In addition to the portions of the statement quoted in paragraph (m) above, the statement also includes the following statement of limitation, "Of course, survivors would not be eligible for benefits in those situations where death was caused by a traumatic injury or an unrelated medical condition." Taken as whole, the statement makes clear that no benefits are payable where the cause of the miner's death was unrelated to pneumoconiosis. However, the statement makes equally clear that pneumoconiosis need not the "principal", sole, primary or proximate cause of the miner's death in order for the survivor's claim to be compensable. Considered in this light, the example was intended to illustrate those basic concepts in the following manner: the survivor's claim is compensable if the evidence demonstrates that pneumoconiosis was a substantially contributing cause of death even though the principal cause of death was pneumonia. In order to avoid possible misinterpretations, such as death due to pneumonia is compensable if pneumoconiosis was found to be present at the time of death or even that pneumonia may be indicative of the presence of pneumoconiosis, the use of the pneumonia example has been deleted from the regulation as now promulgated. However, the basic concept which it illustrates has been incorporated into paragraph (c)(4).

(o) Several comments discussed the statement of limitation contained in the Hatch-Perkins statement which is quoted in paragraph (n) above. One comment suggested that it should be placed in a separate subsection. Paragraph (c)(4) as now promulgated responds to that suggestion. Another comment requested that the Department explain in this preamble that a party opposing benefits is not required to "absolutely rule out every conceivable relationship between death and pneumoconiosis in order to establish non-entitlement." The Department agrees, as explained more fully in the discussion of new paragraph (d) below, that the burden is upon the survivor to establish both initially and ultimately that the miner's death was due to pneumoconiosis, as defined in paragraph (c), before benefits are

payable. Unless the survivor has access to the irrebuttable presumption implemented by § 718.304, there is no presumption of compensability applicable to these cases. Two comments question the appropriateness of including "death * * * caused by a traumatic injury" as an example of when benefits are not payable. One of them criticizes it as "vague" and "unnecessary". The Department does not agree with this characterization of the example. Rather, it is believed that this example will be helpful in claims adjudication and its use is retained in paragraph (c)(4) as now promulgated. The other comment points out that there may be rare instances in which pneumoconiosis is a substantially contributing cause of death even though the immediate cause of death was a traumatic injury, such as a disabled miner collapsing from a lack of oxygen and falling and breaking his neck. The comment requests that such cases be recognized in the regulations. The Department agrees that, upon a proper evidentiary showing by the survivor, such a claim would be compensable. Paragraph (c)(4) has been revised to provide for such situations. Finally, one comment opposes the whole concept of making survivors' benefits dependent upon proof that the miner's death was due to pneumoconiosis. The Congress having clearly decided to adopt such a requirement, the Department is not free to eliminate it in the implementing regulations. Therefore, no change in the regulation has been made in response to this comment.

(p) Three comments were received which were supportive of paragraph (c) as originally proposed. One comment was received which opposed it in part. Although the reorganization of the final version of this regulation referred to in paragraph (f) above has rendered proposed paragraph (c) unnecessary, the issues addressed in these comments remain relevant. The proposed paragraph (c) was intended to serve two purposes: (1) To stress that the presumptions referred to in paragraph (b)(4) are inapplicable to survivors' claims filed on and after January 1, 1982, and (2) to make clear that the criteria contained in paragraph (b)(2) are also inapplicable to such claims. All four comments concur on the inapplicability of the repealed presumptions. However, one comment argues for the continued applicability of paragraph (b)(2). The language of paragraph (b)(2) is a modified version of the third sentence of 20 CFR 410.462(b). That regulation was originally promulgated by the Social Security Administration to implement the presumption contained at section 411(c)(2) of the Act. It was labelled, "Presumption relating to respirable disease." It was subsequently utilized by the Department of Labor for the same purpose. See § 718.303(a)(1). The Department cannot agree that this language has a basis in the Act independent of the presumption which it was used to implement. That presumption was made inapplicable to all claims filed on and after January 1, 1982, by the 1981 amendments. Therefore, no comparable language is included in the criteria applicable to such claims as now promulgated.

(q) One comment suggests that the definition of death due to pneumoconiosis in these regulations should be patterned after the criteria applicable under the Pennsylvania Workmen's Compensation Act. Although the legislative history is clear that one of the purposes of the amendments eliminating survivors' benefits where the miner's death was not due to pneumoconiosis was to make the federal statute consistent with traditional workers' compensation principles, there is no indication in that history that Congress had any specific state workers' compensation act in mind which was to provide a model for the new criteria. Throughout the legislative history, the various terms such as "due to", "caused by", "resulted from", "a causal connection" and "related to" are used interchangeably. Only the Hatch-Perkins statement provides a more detailed explanation of the intended meaning of the new requirement. That statement provides definitions significantly different from the judicial interpretations which have been applied to the relevant provisions of the Pennsylvania Act. Therefore, no change has been made as a result of this comment.

(r) One comment points out that proposed paragraph (e), now promulgated in revised form as paragraph (d), did not reflect the portion of the Hatch-Perkins statement which indicates that survivors' claims filed on and after January 1, 1982, were to be accorded "the highest priority in developing the evidence necessary to a prompt and fair decision." Id. The Department agrees that this is a serious omission. A new introductory sentence has been added to the subsection stating that such claims "shall be adjudicated on an expedited basis."

(s) Several comments criticized proposed paragraph (e) because it "suggested" that a rebuttable presumption is applicable to survivors' claims upon a *prima facie* showing of entitlement. These comments recommended either that the paragraph be eliminated entirely or that it be substantially revised and explained to avoid such a possible construction. As noted in the discussion in paragraph (o) above, there is no general presumption of compensability applicable to survivors' claims filed on or after January 1, 1982. To avoid any possible implication or inference that such a presumption was intended, this subsection has been substantially revised to make clear that the normal rules of proof are applicable to such claims. Specifically, the initial burden of proof is upon the claimant. If the claimant succeeds in establishing a *prima facie* case of entitlement, the burden then shifts to the party potentially responsible for payment of the claim to develop rebuttal evidence. The ultimate disposition of the claim is to be determined by the weight of the evidence. To further clarify that the normal rules concerning evidentiary development and burden of proof are applicable to these claims, the regulatory provisions defining them have also been cross-referenced in the revised version of this paragraph which is now promulgated as paragraph (d).

(t) One comment objects to the termination of benefits following the death of a miner who was found entitled to such benefits under the Act and their reinstitution only after the survivor has been found to be eligible for such benefits because the miner's death was due to pneumoconiosis. The comment suggests the establishment of "provisional interim benefits" to be paid during the period of the adjudication of survivors' claims filed after December 31, 1981. However, there is no provision in the Act for the institution of such an additional form of interim benefits. Indeed, the 1981 amendments significantly restricted the past practice of paying interim benefits prior to the final adjudication of a claim. In no event have interim benefits ever been paid under the Act on a claim involving a potentially responsible operator prior to the deputy commissioner's initial determination of eligibility (or its equivalent in the case of certain previously denied claims reviewed by the Social Security Administration under the 1977 amendments). See §§ 725.1(i) and 725.420. Therefore, no change can be made in the regulation in response to this comment. However, as noted in paragraph (r) above, a new sentence has been added to paragraph (d) as now promulgated which will require such survivors' claims to be adjudicated on an expedited basis in

order "to minimize the hardships to potentially entitled survivors due to the disruption of benefits upon the miner's death * * *".

(u) No other comments were received concerning this section and no other changes were made in it.

Section 718.303 Death from a respirable disease

One comment was received concerning proposed new paragraph (c). It suggests the addition of the phrase "regardless of any prior filings." Such a change, however, would be inconsistent with the merger provisions of § 725.309 which implement the incorporated provisions of section 22 of the Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C. 922, as construed by the courts. See *Intercounty Construction Corp. v. Walter*, 422 U.S. 1 (1974), and *Banks v. Chicago Grain Trimmers Ass'n*, 390 U.S. 459 (1965). Under those cases, a newly filed claim is to be treated as a request for an adjudication of a prior claim if such prior claim is still pending and unadjudicated or as a request for modification of the ruling on a prior claim, unless the one year period for seeking such modification of the previous ruling has expired. Therefore no change has been made in the proposed new paragraph (c).

Section 718.305 Presumption of pneumoconiosis

(a) One comment proposed that the words "regardless of any prior fillings" be added to proposed new paragraph (e). For the reasons stated in the discussion of the same proposal concerning § 718.303 above, the suggested change was not adopted.

(b) One comment states that although the proposed new paragraph (e) "arguably" accomplishes the intended result of implementing the inapplicability of the fifteen year presumption to all claims filed on or after January 1, 1982, corresponding changes should also be made in all other sections of Part 718 which previously implemented this presumption. The Department concurs in part with this recommendation and corresponding changes have been made in §§ 718.204(c) and 718.205. However, the Department does not concur that changes are appropriate for this purpose in §§ 718.104, 718.107(a)(4), 718.204(b) and 718.307(b), as suggested. Given the broad definition of pneumoconiosis mandated by section 402(b) of the Act, the types of medical and other evidence referred to in those sections may be relevant to the adjudication of claims filed after December 31, 1981, as well as those which were filed on or prior to that date.

(c) One comment advocates the retention of this presumption for claims filed on or after January 1, 1982. The 1981 amendments, however, leave no room for interpretation. Section 202(b)(1) is explicit that this presumption "shall not apply" to such claims. Therefore, this recommendation must be rejected.

(d) No other comments were received concerning this section and no changes were made in it.

Section 718.306 Presumption of entitlement applicable to certain death claims

(a) One comment suggests that paragraph (a) should be revised to require that a claimant present evidence of all the deceased miner's employment, in order to permit a full and complete evaluation of the claim. Although the Department agrees that such evidence may be relevant to the determination of claims under this presumption, it is equally or even more relevant to all other classes of claims as well. Where such evidence is necessary "to make a determination of the claim," the claim may be dismissed pursuant to § 725.409(a) for abandonment where the claimant fails to submit it. Therefore, no change is needed in this section to achieve that purpose.

(b) One comment recommends that this presumption should remain applicable to claims filed after June 1982. The 1981 amendments, however, leave no room for interpretation on this issue. Section 202(b)(2) is explicit that the presumption "shall not apply" to claims filed 180 days or more after the effective date of the amendments. Therefore, this recommendation must be rejected.

(c) No other comments were received concerning this section and no changes were made in it.

Section 725.1 Statutory provisions

(a) One comment pointed out that a typographical error was contained in the proposed version of paragraph (a). Specifically, the word "mines" contained in the ninth line should be "miner". The error has been corrected in the final version as now promulgated. A second typographical error has also been corrected in this paragraph by substituting the words "if the miner" for the word "who" in the last sentence of the paragraph.

(b) One comment objects to the characterization of the Secretary's authority with regard to the re-reading of x-rays in proposed paragraph (h)(1). It proposes that such authority should be limited to "ensuring the quality of the x-ray and detecting fraud." Such a limitation would virtually nullify the amendment which removed the previous restrictions upon the use of re-readings of x-rays in claims adjudication. See the discusion of the comments received in response to proposed § 718.102, especially the purpose of the amendment as defined in paragraph (a), and proposed § 718.202, paragraphs (b) and (c) above. Therefore, no change has been made in response to this comment.

(c) One comment suggested that paragraph (h)(4) be revised to conform to similar changes proposed for paragraphs § 718.202(c) and 718.204(c)(5). For the reasons stated in paragraph (h) discussing the comments received and changes made in § 718.202, a similar change has been made in paragraph (h)(4).

(d) Three comments were received concerning proposed paragraph (h)(5). One comment supports the paragraph as proposed. However, another comment points out that proposed paragraph (h)(5) "incorrectly implies that the filing of a miner's claim after December 31, 1981 is a necessary prerequisite for subsequent survivor entitlement under the 1981 Act." No such implication was intended nor would such an interpretation be correct. A third comment also indicates the need for clarification and consistency in the statement of the relationship between miners' and survivors' claims under the 1981 amendments. For the reasons stated in the discussion of the comments received concerning § 718.1, paragraph (h)(5) has been revised to conform to the changes made in paragraph (a) of that section.

(e) No other comments were received concerning this section and no other changes were made in it.

Section 725.4 Applicability of other parts in this title

One comment recommended that this section be amended to incorporate the changes proposed by the same commenter to be made in § 718.2. For the reasons stated in response to that comment above, no change has been made in this section. No other comments were received concerning this section and no changes have been made in it.

Section 725.101 Definitions and use of terms

No comments were received concerning the proposed changes in this section and no further changes have been made in it.

Section 725.102 Disclosure of program information

No comments were received concerning the proposed changes in this section and no further changes have been made in it.

Section 725.201 Who is entitled to benefits; contents of this subject

One comment was received concerning the proposed changes in this section. It repeats the recommendation contained in paragraph (b) of the comments discussed under § 718.306. For the reason stated there, it must be rejected. No other comments were received concerning this section and no changes have been made in it.

Section 725.205 Determination of dependency; spouse

One comment was received concerning this section. However, the substance of the comment is directed to § 725.207 and it is discussed under that section. No other comments were received concerning this section and no changes have been made in it.

Section 725.207 Determination of dependency; divorced spouse

(a) One comment objects to the criterion that a court order requiring the miner to support the spouse is included as one of three alternate ways by which a divorced spouse may be found to be dependent upon the miner. It proposes as an alternative that a divorced spouse should be entitled to a share in the miner's benefits if the couple lived together for at least ten years, whether or not the miner is in fact contributing to the divorced spouse's support or is under any legal obligation to do so. However, section 402(a)(2) of the Act expressly provides for the three alternative definitions of dependency incorporated in this regulation and for no other means for meeting this requirement. Adoption of this additional grounds for establishing dependency for a divorced spouse would require an amendment to the Act. Therefore, this suggestion must be rejected.

(b) Another comment suggests that "in the case of a divorced spouse, a [miner's] contribution [to the divorced spouse's support] which is less than 50% of the alleged dependent's income or the full amount of the benefit or augmentation involved should not be considered 'substantial'." The first part of this comment appears to seek to fuse the alternative dependency criteria provided in section 402(a)(2) of the Act. They provide in essence that the divorced spouse either be actually receiving at least one-half of his or her support from the miner or that the miner be under a legal obligation to make a substantial contribution to such support. If the 50% rule were extended to all situations, the statutory distinctions would be rendered meaningless. Therefore, the first part of this suggestion must be rejected. What constitutes a "substantial contribution" to the support of a divorced spouse can only be determined on a case-by-case basis. No general rule which would operate in an equitable manner under all circumstances can be promulgated to define this concept. Nor does the Department believe that it would be appropriate to promulgate a definition of this term which would be at variance with the regulations of the Social Security Administration defining the same term. See 20 CFR 410.351 and 410.395. Therefore, no change has been made in response to this comment.

(c) No other comments were received concerning this section and no changes have been made in it.

Section 725.208 Determination of relationship; child

(a) One comment suggests that the establishment of a parent-child relationship by the means provided in paragraph (f)(1), i.e., by voluntary acknowledgement or judicial determination should be equally effective regardless of whether the relationship is or was established before or after the parent has been determined to be eligible for benefits under the Act. Changes in this section were included in the Notice of Proposed Rulemaking for the sole purpose of correcting certain technical errors which were contained in the version of the section which was previously promulgated. There is nothing in the 1981 amendments to the Act which would support the suggested change. Moreover, adoption of the suggested change would require the Department of Labor to promulgate regulations at variance with those of the Social Security Administration defining the same concept under the same Act. See 20 CFR 410.330(f). Therefore, no change has been made in response to this comment.

(b) One comment suggests that paragraph(f)(2) should be revised to require that the parent must have been "substantially" contributing to the support of the natural child in order for the relationship to be recognized for the purpose of augmentation of benefits. The reasons for rejecting the suggested change discussed in paragraph (a) above are equally applicable to this proposed change.

(c) No other comments were received concerning this section and no changes have been made in it.

Section 725.212 Condition of entitlement; surviving divorced spouse

One comment was received which objects to the requirement stated in revised paragraph (a)(3)(ii) that a surviving spouse of a deceased miner who was found entitled to benefits on a claim filed on or after January 1, 1982, must file a separate claim and prove that the miner's death was due to pneumoconiosis in order to be entitled to survivor's benefits. As noted in response to a related comment in paragraph (o) of the discussion of comments received concerning § 718.205, the Congress having clearly decided to adopt such a requirement, the Department is not free to eliminate it in the implementing regulations. Therefore, no change has been made in response to this comment. No other comments were received concerning this section and no changes have been made in it.

Section 725.213 Duration of entitlement; surviving spouse or surviving divorced spouse

One comment was received which objects to any change being made from the version of this section which was promulgated in 1978. This section was included in the Notice of Proposed Rulemaking for the sole purpose of correcting an erroneous cross-reference which was inadvertently included in the section as previously promulgated. No substantive change is made by this technical correction. Therefore, the proposed version is consistent with this comment. No other comments were received concerning this section and no changes have been made in it.

Section 725.214 Determination of relationship; surviving spouse

One comment was received which recommends that this section should be revised to provide for the situation where two or more spouses "had a legal marriage or what they thought was a legal marriage to the same miner." It is suggested that this section should establish priorities among such claimants or provide for the sharing of benefits among them. This section was included in the Notice of Proposed Rulemaking for the sole purpose of correcting an erroneous cross-reference in the section as previously promulgated. No substantive change is made by this technical correction. This section already provides that benefits are payable to a spouse from a valid marriage in preference to a spouse from

a purported marriage. In the case of purported marriages, no benefits are payable unless the purported spouse and the miner were living in the same household at the time of the miner's death. Thus, the Department believes that the regulation provides sufficient guidance to adjudicate the claims of multiple purported spouses. It is also generally consistent with the Social Security Administration's regulation addressing the same issue. See 20 CFR 410.310. Therefore, no change has been made in response to this comment. No other comments were received concerning this section and no changes were made in it.

Section 725.217 Determination of dependency; surviving divorced spouse

One comment was received which objects to the requirement that the surviving divorced spouse must have been actually receiving support from the deceased miner or entitled to receive such support pursuant to a court order or written agreement in order to be found to have been a dependent of the deceased miner. For the reasons stated in response to a similar comment in paragraph (a) of the discussion of comments received concerning § 725.208, no change to the regulation can be made in response to this comment. No other comments were received concerning this section and no changes have been made in it.

Section 725.218 Condition of entitlement; child

One comment was received which objects to the requirement stated in revised paragraph (a)(2) that a surviving dependent child of a deceased miner who was found entitled to benefits on a claim filed on or after January 1, 1982, must file a separate claim and prove that the miner's death was due to pneumoconiosis in order to be entitled to survivors' benefits. As noted in response to a related comment in paragraph (o) of the discussion of comments received concerning § 718.205, the Congress having clearly decided to adopt such a requirement, the Department is not free to eliminate it in the implementing regulations. Therefore, no change has been made in response to this comment. No other comments were received concerning this section and no changes have been made in it.

Section 725.219 Duration of entitlement; child

(a) Three comments were received which noted that a typographical error was included in the proposed revision of paragraph (b)(3)(ii). The erroneous cross-reference to § 725.209(d) has been replaced with the correct cross-reference to § 725.209(b).

(b) Two of the comments received further stated that the cross-reference to the definition of student in § 725.209(b) should also be revised to conform to recent changes in the Social Security Act. However, section 402(g) of the Black Lung Benefits Act, 30 U.S.C. 902(g), states that "The term 'student' means a 'full-time student' as defined in section 202(d)(7) of the Social Security Act *or* a 'student' as defined in Section 8101(17) of Title 5, United States Code." (Emphasis added.) Although the definition of student in the Social Security Act, 42 U.S.C. 402(d)(7), was amended by the Omnibus Budget Reconciliation Act of 1981, no comparable amendments wre made to the alternative definition contained in the Federal Employees' Compensation Act (FECA), 5 U.S.C. 8101(17). The definition of student contained in § 725.209(b) is directly derived from the cited provisions of the FECA. Therefore, no change in that section is appropriate in response to these comments.

Section 725.220 Determination of relationship; child

One comment was received which suggests the same change to this section which was treated in paragraph (b) of the discussion of comments received concerning § 725.208. For the reasons stated there, no change has been made in response to this comment. No other comments were received concerning this section and no changes have been made in it.

Section 725.222 Conditions of entitlement; parent, brother, or sister

One comment was received which repeats the same objection to the proposed change in paragraph (a)(5)(ii) which was discussed above in response to the comments received concerning §§ 725.212 and 725.218. For the reasons stated above in response to those comments, no change has been made in response to this comment. No other comments were received concerning this section and no changes have been made in it.

Section 725.225 Determination of dependency; parent, brother, or sister

No comments were received concerning this section and no changes have been made in it.

Section 725.367 Payment of a claimant's attorney's fee by responsible operator

(a) Three comments were received which are supportive of the proposed changes in this section.

(b) Two comments were received which support an additional change in proposed paragraph (b). Specifically, it is recommended that the fourth sentence be revised to read "liability of an operator, carrier or claimant." This change would have the effect of relieving a claimant from any liability for any part of an attorney's fee in a case which is subject to the transfer of liability provisions of the 1981 amendments. However, those amendments only served to transfer the liabilities of employers and insurance carriers with respect to certain claims to the Trust Fund. There is nothing in those amendments or their legislative history to suggest that they were intended to alter the rights or obligation of claimants with respect to those claims. Therefore, any liability for the payment of attorney's fees which previously was the responsibility of the claimant remains unaffected by the operation of the transfer of liability provisions and no change in the proposed version of paragraph (b) can be made in response to these comments.

(c) No other comments were received concerning this section and no changes have been made in it.

Section 725.420 Initial determinations

No comments were received concerning this section and no changes have been made in it.

Section 725.421 Referral of a claim to the Office of Administrative Law Judges

No comments were received concerning this section and no changes have been made in it.

Section 725.456 Introduction of documentary evidence

No comments were received concerning this section and no changes have been made in it.

Section 725.490 Statutory provisions and scope

No comments were received concerning this section and no changes have been made in it.

Section 725.496 Special claims transferred to the Trust Fund

(a) The notice of proposed rulemaking, 47 FR 22674 (May 25, 1982), especially requested comments concerning the definition of cases subject to the transfer of liability provisions of the 1981 amendments. Twelve of the comments received responded to that request. The Department appreciates the assistance which it has received from these comments.

(b) Most of the comments received concerning this section are extensive and detailed. Only one of them reflected the belief that the proposed definitions of the classes of claims subject to the transfer of liability provisions are overly broad. All of the other comments received reflect the view that the proposed definitions contained in this section are unduly narrow and artificially restrict the intended scope of the transfer of liability provisions of the 1981 amendments. As is explained below in the detailed discussion of the individual comments received, the Department cannot agree with most of the specific proposals received for expansion or revision of the proposed definitions. It must be stressed that the transfer of liability provisions were never intended to relieve mine operators and their insurers from all of the unanticipated liabilities which arose as a result of the 1977 amendments. They were to be a partial release from such liabilities applicable only to certain specific and carefully defined classes of claims. For instance, there is no transfer of liability for those claims which were pending with the Department of Labor under Part C of the 1972 version of the Act at the time of the passage of the 1977 amendments and which were or will be ultimately found to be compensable under its liberalized eligibility provisions. Moreover, it should be noted that those same 1977 amendments also contained a partial release of liability provisions in that they transferred from mine operators and their insurers to the newly established Trust Fund liability for the payment of claims in which the miner's coal mine employment ceased prior to 1970. The legislative history is clear that it was estimated that the definitions which were adopted in the 1981 amendments for this second transfer of liability would produce the additional transfer of liability from private parties to the Trust Fund of approximately 10,200 claims. The Subcommittee on Oversight of the House Committee on Ways and Means received and reviewed extensive testimony concerning the proposed transfer of liability for "approximately 10,200 of those claims" before issuing its December 7, 1981, recommendation that "serious consideration be given" to the implementation of the proposal. Committee Print, pp. 19–20 and 30. See also the December 14, 1981, testimony of Bruce Watzman, Legislative Representative of the National Coal Association, before the Senate Labor Subcommittee which contrasted the 10,200 claims intended to be transferred by the proposed legislation with the "anywhere from 17,000 to 22,000 claims that could qualify" for transfer under another bill which had been introduced in the preceding Congress. Mr. Watzman stated, "we have worked very closely with the insurance industry, as well as the administration, to try to define the universe of transfer claims as *tightly as possible*". Committee Print, pp. 78 and 80 (Emphasis added.) At the same hearing, Andrew Kalmykow, Consultant and former Assistant General Counsel of the American Insurance Association, and Tom O'Day, Government Relations Officer for the Alliance of American Insurers, also referred to their "best estimates" that the transfer provisions under consideration would apply to "roughly" 10,000 claims with a present value of $1.4 or $1.5 billion. Id., pp. 150–152. The repeated references to the 10,200 number in the debates in both the House and the Senate likewise reflect Congressional reliance on the approximate correctness of that estimated figure. According to the best information currently available to the Department, application of the definitions contained in the proposed version of this section requires the Trust Fund to assume permanent liability for payment of 12,000 claims. Rather than supporting the view that the Department's proposed definitions are unduly restrictive, this figure tends to support the conclusion that the transfer language adopted in the 1981 amendments has produced a somewhat more extensive transfer of liability than the participants in the legislative process originally anticipated or appear to have intended.

(c) One comment was received which suggests either that no detailed definition of the classes of claims subject to the transfer of liability provisions is needed or, in the alternative, that proposed paragraphs (a) and (b) which paraphrase the relevant language of sections 422 and 402 of the Act, as now amended, are sufficient for this purpose. It is contended that the remainder of the proposed section is unnecessary. This position is similar to the idea that no detailed regulatory definition of the phrase "death due to pneumoconiosis" was necessary. Some of the reasons for the rejection of that concept discussed above in response to the comments received concerning proposed § 718.205 are equally applicable here. The sheer diversity of proposed interpretations contained in the comments received in response to the proposed version of this regulation and the potential for prolonged and extensive litigation which they reflect is persuasive evidence of the need for an authorizative statement of the scope and applicability of the transfer of liability provisions. Immediately upon the passage of the 1981 amendments, the Department developed guidance for its personnel in the implementation of these provisions (see especially BLBA Bulletin 82–7, March 31, 1982). The proposed version of this section reflected that guidance. It also served both to put all interested parties on notice as to those interpretations and definitions and to solicit their assistance in the further refinement of them. The Department believes that this process has been a fruitful one and that it would be counter-productive to now abandon the purposes which proposed paragraphs (c) through (f) were designed to serve. Therefore, no change in this section has been made in response to this comment. However, a new subparagraph (2)(D) has been added to paragraph (b) defining the fourth means by which claimant action would have prevented an informal denial from becoming final. This addition reflects the provisions of section 22 of the Longshoremen's and Harbor Workers' Compensation Act, 33 USC 922, as incorporated by section 422 of the Act. See also paragraph (o) below.

(d) Several comments were received which request that proposed paragraphs (a) and (b) be supplemented by adding a definition for the word "approved." It is suggested that if the previously denied claim was ever the subject of a deputy commissioner's initial finding or initial determination of entitlement, then the claim should be deemed to have been "approved" and be accepted for payment by the Trust Fund, regardless of its subsequent procedural history. These comments are apparently based on the belief that liability for the payment of a previously denied claim can only transfer from a coal mine operator or its insurer to the Trust Fund if at some point in the past the claim has been "approved." The Department cannot accept this interpretation. The language of section 205(a) of the 1981 amendments is clear. The transfer of liability provision is applicable to a previously denied claim which "is or has been approved in accordance with the provisions of section 435." It is not limited to the past tense, i.e., claims which have already been "approved." It is equally applicable to those previously and currently denied claims which may at some future time be found to be entitled to benefits under the eligibility criteria mandated by section 435. The issues of claimant eligibility and operator transferability are separate and

distinct. But the intent of the Congress is clear: in no event shall an operator or insurer bear liability for the costs of the payment of such a claim. Not only did the amendments release operators and carriers from future liability for such costs; they also include a specific provision, to be codified at section 9501(d)(7) of the Internal Revenue Code, providing for the reimbursement from the Trust Fund for all such costs already incurred. If "approval" were the operative part of the amendment, then a potentially liable operator or insurer could bring itself within the scope of the amendments by the mere act of agreeing to pay the previously denied claim (regardless of its merits), thus rendering it "approved", secure in the knowledge that the liability for payment would immediately transfer to the Trust Fund. The Department is convinced that Congress did not intend such an absurd result. Rather, the transfer of liability provision is to be understood as intending the immediate release of operators and carriers from both actual and potential liabilities for such previously denied claims. See also paragraph (c) of the discussion concerning § 725.497. If the claimant has already succeeded in finally establishing entitlement to benefits, payment of those benefits is assumed by the Trust Fund. However, if the claim has not yet been finally adjudicated, the Department must be free to exercise its judgement as to whether or not it will voluntarily accept liability for payment of the claim on behalf of the Trust Fund. The Department cannot agree that it is automatically bound to accept such liability based on a previous initial finding or initial determination favorable to the claimant which may have been made at a time when the evidentiary record concerning the claimant's entitlement to benefits was much less fully developed. Therefore, no changes have been made in response to these comments.

(e) Several comments were received concerning the proposed version of paragraph (c) which point out that the words "unless such claims were merged in accordance with the agency's regulations" could produce differing results depending upon whether or not the agency had complied with its own regulations. No such result was intended. The relevant language has been revised in the final version of this paragraph to now read "unless such claims were required to be merged by the agency's regulations" in response to these comments.

(f) Several comments were received which are critical of the emphasis contained in proposed paragraph (c) upon the specific procedural history of individual claims in those situations where the miner and/or the dependent survivors have filed more than one claim under the Act. The gist of these comments is that proposed paragraph (c) mistakenly focuses upon individual pieces of paper labelled "claims" and other procedural niceties rather than getting to the heart of the matter which is claimant entitlements. It is suggested that a claim should be understood as being in the nature of a legal cause of action, i.e., that it is a group of facts giving rise to a legal right. This same basic concept also underlies many of the comments received concerning proposed paragraphs (d), (e) and (f).

(g) The Department believes that the claims as cause of action analogy is misplaced. The more correct analogy would be to a complaint or other preliminary pleading which is filed to initiate an adjudication of the nature of the right or the validity of the cause of action which is being asserted. Throughout its various versions, the Act has been consistent in requiring that a claim must be filed before any determination of eligibility for benefits could be undertaken. With the limited exception of dependent survivors of miners previously found eligible for benefits provided by section 422(l) of the Act, no miner or dependent survivor could be found entitled to benefits as a primary beneficiary without first having filed a claim. The two administering agencies have developed, promulgated and applied detailed regulations defining what constitutes a claim, who may file a claim, when it will be considered to have been filed, *etc.* See 20 CFR 410.420–410.433 (Social Security Administration (SSA)) and 20 CFR 725.301–725.311 (Department of Labor). Moreover, claims are not interchangeable, nor is the date or sequence of their filing irrelevant. Depending upon when and with which agency the claim was filed significant differences have existed with regard to virtually every aspect of a claim: eligibility requirements, availability of presumptions, methods of initial adjudication, hearing and appellate review procedures, evidentiary rules applicable (especially with regard to the use of x-ray and affidavit evidence), offsets applicable, the availability of medical benefits and the source of payment. The same claim may have been reviewed under several versions of the Act and by both administering agencies. A specific claim initially filed in 1970 with SSA under Part B of the Act and repeatedly denied by it under the 1969 and 1972 versions of the Act could ultimately be approved by the Department of Labor a decade later under section 435 of the 1977 amendments. Such unforeseeable developments in the history of individual claims are what gave rise to the enactment of the 1981 transfer of liability provisions. A claim which would have been paid from the general revenues of the United States, if it had been approved by SSA under the 1969 or 1972 versions of the Act, could suddenly become the payment liability of a coal mine operator under the 1977 amendments. The question of whether operators' insurance arrangement covered this unexpected result was being vigorously litigated when Congress was considering the 1981 amendments. The legislative history is replete with references to the uncertainties surrounding the outcome of the litigation. It was cited as a factor which supported passage of the provisions which would transfer these unanticipated liabilities from both operators and their insurers to the Trust Fund. The Congress recognized that both the eligibility requirements to be met and the financial consequences which flowed from meeting them have varied significantly under the Act. It, therefore, selected only certain classes of cases with specific procedural histories and clearly estimated numerical and financial impacts for inclusion in the transfer of liability provisions. The Department is not free to ignore or blur those distinctions and the underlying rationales which led to their adoption. Therefore, it believes that the focus upon the procedural history of individual classes of claims reflected in proposed paragraphs (c)–(f) is appropriate. No changes have been made in response to these comments.

(h) Several comments received in response to proposed paragraph (d) are critical of its requirement that an "election card" must have been filed if the previously denied Part B claim is to come within the scope of the transfer provisions. It is contended that Congress intended that all previously denied claims be reviewed under the 1977 amendments and that insistence upon the filing of an election card is inconsistent with that intent. The Department cannot agree that this is an appropriate reading of section 435 of the 1977 amendments, its implementing regulations or the applicable legislative history.

(i) Section 435 explicitly states that pending or denied claims under Part B may, "upon the request of the claimant," 30 U.S.C. 945(a)(1), be reviewed by SSA.

30 U.S.C. 945(a)(1)(A), or referred directly to DOL, 30 U.S.C. 945(a)(1)(B). It requires the Secretary of HHS to "approve forthwith each claim for which review *is requested* under paragraph (1)(A). . . ." 30 U.S.C. 945(a)(2)(A). Any question as to whether a "request for review" under this provision means some affirmative and concrete act on claimant's part is laid to rest by SSA's regulations. 20 CFR 410.704(d) explicitly requires a *request* for review within six months of the date of notification of right of review. Failure to act within the time limit constituted a waiver of the right to review of the Part B claim. 20 CFR 410.704(d).

(j) The legislative history of section 435 amply demonstrates that while review of Part C and section 415 claims was intended to be *automatic*, a Part B claimant had to *elect* either review under Part B by SSA or referral to DOL for refiling under Part C. See H.R. Rep. No. 95–864, 95th Cong., 2d Sess. (1978), reprinted in *Black Lung Benefits Reform Act and Black Lung Benefits Revenue Act of 1977, Committee on Education and Labor," House of Representatives* (1979) 891–92. Senator Randolph, in introducing the conference committee report accompanying the bill enacted as the 1977 amendments, noted that "pending and denied Part C claims *will be reviewed* by the Secretary of Labor, while "(a)ll denied Part B claimants *will be given the option* of having their claims reviewed. . . ." by SSA or DOL. *Id.* at 902 (emphasis added). Similarly instructive is the statement of Senator Clark immediately following passage of the 1977 amendments, which includes DOL's explanation of major provisions of the bill. After noting that previously denied or pending Department of Labor claims would be "*automatically* reviewed," *id.* at 939 (emphasis in original), the statement noted that claimants who filed with the Social Security Administration "will be notified by the SSA that *upon request of the claimant*," the claim would be processed in accordance with 30 U.S.C. 945(a)(1). *Id.* Although several comments cite other portions of the legislative history in support of their argument that a universal and automatic review was intended, such references cannot be given greater weight than the unambiguous language of section 435 and the conference committee report. Therefore, no changes have been made in response to these comments.

(k) Because of the importance of the Social Security Administration's implementing regulations to a proper understanding of the operation of section 435 of the 1977 amendments, the last sentence of proposed paragraph (d) has been revised to include an express reference to them.

(l) Several comments suggest that its inequitable or arbitrary to treat two similarly situated claimants differently based on the "happenstance" that one returned an election card to the Social Security Administration and that the other did not. Although it is true that two claimants, both of whom had denied Part B claims and pending Part C claims at the time of the enactment of the 1977 amendments, would appear to be differently affected by the transfer of liability provisions of the 1981 amendments if one had returned an election card four years earlier and the other had not, this analysis misses the point of the legislative changes. Taken as a whole, the 1981 amendments were intended to achieve several interrelated objectives: (1) The tightening of eligibility criteria for future filed claims while preserving the substantive rights of those persons whose claims had already been filed, (2) to secure the future solvency of the Trust Fund, and (3) to transfer a portion of the unanticipated liabilities which had been imposed upon operators and insurers by the 1977 amendments to the Trust Fund. Each provision of the amendments must be understood not only in terms of its express language but also in relationship to those objectives. In the example of the two claimants given above, it is implied that it is unfair to confer the benefit of transfer status upon one while denying it to the other. However, the intent of the amendments was not to confer additional benefits upon such claimants. Rather, it was intended to preserve their pre-existing substantive rights unchanged. See the summary of the legislative history on this point contained in paragraph (e) of the discussion of comments received concerning § 718.205. In fact, the transfer of liability provisions do not affect the rights of claimants with regard to such substantive matters as eligibility criteria and benefit rates. They merely substitute one source of payment for another.

(m) The primary purpose of the transfer of liability provision was to relieve mine operators and their insurers of a portion of the unanticipated liabilities imposed upon them by the 1977 amendments. To that end, the Congress chose to focus primarily upon claims originally filed with SSA, since employers and insurers could not, prior to the enactment of the 1977 amendments, have anticipated liabilities arising from that source. The estimates referred to during the legislative process make clear that approximately 80% of all transfer cases would come from that category. The remaining 20% were to be drawn from Part C claims finally denied by the Department of Labor under the 1972 version of the Act. Here again, prior to the enactment of the 1977 amendments, employers and insurers had a right to assume that they had been released from any possible liability as to those claims.

(n) In order to transfer liability for the payment of the claims of both of the claimants referred to paragraph (e) above, the Department would have to ignore the express language of the transfer provisions and frustrate congressional expectations as to the scope of the transfer provisions and their implications for the future solvency of the Trust Fund. This uniformity of claimant treatment could be achieved in either of two ways. The Department could revise its previous interpretation and conclude that whenever a previously denied Part B claim was merged with a pending Part C claim, the merged claim assumed the nontransfer status of the Part C claim rather than the transfer status of the Part B claim. This procedure would achieve uniform treatment of the claimants but it would also yield substantially fewer transfers of liability than Congress anticipated and would thus deny employers and insurers the amount of release from liability which Congress intended them to receive. Alternatively, such uniformity could also be achieved by ignoring the language of sections 435 and 422, as now amended, and concluding that whenever the claimant had both a non-transferable pending Part C claim and a denied Part B claim, the claim would transfer even though the Part B claim was never reviewed and approved under the provisions of section 435 and the pending Part C claim was not otherwise eligible for transfer. Under this approach, uniformity of claimant treatment would be achieved at the cost of significantly increasing the number of cases subject to the transfer provisions and thus jeopardizing the objective of future Trust Fund solvency. The Department believes that neither approach would be consistent with Congressional intent or the express language of section 205 of the 1981 amendments. Therefore, no changes have been made in paragraph (d) in response to these comments.

(o) Several comments questioned the provisions of proposed paragraph (e) which refer to the situation where a claim filed with the Department of Labor under the 1972 version of the Act was the subject of repeated denials. Specific

objection is made to reliance on the date of the last such denial as dispositive of the issue as to whether the claim comes within the transfer of liability provisions. The intent of Congress was to transfer liability from operators and insurers to the Trust Fund only for those claims which were finally denied by the Department of Labor under the 1972 version of the Act and which were reviewed and made compensable by the 1977 amendments, thus creating new and unanticipatable liabilities for those operators and insurers. It is equally clear that the Congress did not intend to transfer liability for those claims which were still pending with the Department of Labor at the time of the enactment of the 1977 amendments. It is also important to distinguish between an administrative or informal denial on the one hand and a warning that the claim *may* be denied unless additional evidence is submitted in support of it. This latter function was traditionally performed by CM-990 series letters under DOL's administration of the 1972 version of the Act. Under the incorporated provisions of section 22 of the Longshoremen's and Harbor Workers' Compensation Act, 33 USC 922, the denial of a claim does not become truly final until the expiration of one year from the date of that denial. Many claims filed with the Department of Labor under the 1972 version of the Act were the subject of multiple denials which resulted from repeated claimant requests for reconsideration or modification of prior denials of those claims. Unless the last such denial occurred more than one year prior to the effective date of the 1977 amendments, i.e., March 1, 1978, the possibility of a further reconsideration and ultimate approval of the claim continued to exist under the 1972 version of the Act. That possibility removed such claims from the class of unanticipatable liabilities which are the subject of the transfer of liability provisions. Therefore, no change has been made in response to these comments.

(p) Several comments objected to the distinction which was drawn in the second sentence of proposed paragraph (f) between miners' and survivors' claims for purposes of the applicability of the transfer of liability provisions. Those comments are apparently based upon the most common situation applicable to claims filed prior to January 1, 1982 in which survivors' entitlements to benefits were derivative from the miner's entitlement. Thus, it is contended that in all cases in which the miner's claim is subject to the transfer of liability provisions, all related survivors' benefits should also become the liability of the Trust Fund. However, this contention ignores the fact that separate survivors' claims were often filed after the denial of the miner's claim or even during the pendency of the miner's claim, when the miner's death occurred prior to the final adjudication of his or her claim. In addition to the ground for approval of total disability due to pneumoconiosis available to the miner's claim, survivors' claims could also be approved on the basis of death due to pneumoconiosis. Thus, it was possible that a survivor's claim could be approved even though a previous claim by the miner had been denied. The inclusion of the section 411(c)(5) presumption in the 1977 amendments which awarded survivors' benefits based on a presumed partial disability due to pneumoconiosis prior to the miner's death significantly increased the likelihood of such a result where both miner's and survivor's claims had been filed. Proposed paragraph (f) was designed to address the situation where two separate claims had been filed. For instance, a miner's claim which was denied by SSA under Part B of the Act and a survivor's claim which was approved by the Department of Labor under Part C of the Act. If the survivor's claim had been approved or was pending with the Department of Labor at the time of the enactment of the 1977 amendments, it would not fall within the transfer of liability provisions for such Part C claims, since it did not come within the class of unanticipatable liabilities. However, the denied miner's Part B claim which was reviewed and ultimately approved pursuant to section 435 of the 1977 amendments does clearly fall within the class of unanticipatable liabilities intended to be subject to the transfer of liability. Paragraph (f) addresses these two situations by transferring liability for both the miner's and the survivor's claim, *unless* the survivor's entitlement was established on a separate claim, not otherwise subject to the transfer of liability provisions, *prior* to approval of the miner's claim. This resolution preserves the general rule applicable to claims filed prior to January 1, 1982, that where the miner's claim is found to be compensable, survivors' rights are derivative from it. However, it also preserves the distinction mandated by the Congress that only unanticipatable liabilities were to be transferred from operators and insurers to the Trust Fund. Therefore, no change has been made in response to these comments.

(q) No other comments were received concerning this section and no further changes were made in it.

Section 725.497 Procedures in special claims transferred to the trust fund

(a) Although the notice of proposed rulemaking did not include specific proposals for defining the procedures for determining which individual cases are subject to the transfer of liability provisions of section 205 of the amendments, several comments were received recommending the adoption of such procedures and proposing language to be used for that purpose. The Department agrees that the formal promulgation of such procedures may be helpful in the disposition of those cases in which the applicability of section 205 is disputed.

(b) This section, as now promulgated, is based on a composite of the recommendations and proposals received. It also serves to codify the procedures which have been applied by the Department to the dispositions of those claims since the passage of the amendments. The recommendations and proposals received were generally consistent with each other and with the Department's current practices. However, the two instances in which there was a significant difference of opinion in the comments received or where the Department is unable to adopt the suggestions proposed are discussed in the following two paragraphs.

(c) One comment proposed that the dismissal of the coal mine operator or insurance carrier which has been released from liability for the payment of the claim by section 205 should not take place until there has been a determination on the claimant's eligibility for benefits "where the record is otherwise complete." The other comments received all recommend that such operators and carriers should be dismissed as expeditiously as possible and support the view that "in no event shall an operator or carrier participate as a necessary party in any claim for which only the Trust Fund may be liable." The Department concurs with the latter position. It is consistant both with 30 U.S.C. 934(b)(1)(B) and the intent of the 1981 amendments in enacting the transfer of liability provisions. Section 205 releases employers and carriers from some of the unanticipated liabilities which arose from the 1977 amendment. The amendments also provide for the reimbursement to operators and carriers for benefits which they have paid to such claimants. However, there is no provision for the

reimbursement to such employers and carriers for legal and other defense costs associated with those cases. Therefore, it is clearly inconsistent with the Congressional intent to require employers and carriers to incure additional non-reimbursable costs in association with claims for which they now have no liability for payment. Paragraph (c) as now promulgated incorporates the latter position.

(d) Several of the comments received also proposed promulgation of a new section or subsection defining the finality of decisions on the transferability of liability for claims under section 205. The proposals suggest that uniform time periods of 30 or 60 days be defined for the purpose of seeking reconsideration or appeal of such decisions. While the adoption of a uniform time period for further action on this single issue may be desirable, it is not feasible. Decisions on the transferability of claims liability and the dismissal of operators and carriers from further involvement in proceedings are made by deputy commissioners, administrative law judges and the Benefits Review Board as well as by the United States Circuit Courts of Appeals. Each of these levels of adjudication has already established timeframes for seeking reconsideration, appeal or othewise modifying their decisions. Some of these time periods are established by statute, others by regulations or court rules. To impose a uniform time period for this single issue upon all of these levels of the adjudicative process is in part beyond the Secretary's regulatory authority. Even for those levels of the adjudicatory process where the establishment of procedural rules is within the Secretary's authority, the establishment of a special timeframe for a single issue would tend to further complicate an already complex adjudicatory system. Therefore, these suggestions have not been incorporated into the regulation as now promulgated.

Section 725.520 Computation of benefits

No comments were received concerning this section and no changes have been made in it.

Section 725.532 Suspension, reduction, or termination of benefits

No comments were received concerning this section and no changes have been made in it.

Section 725.533 Modification of benefit amounts; general

(a) One comment was received which objected to the offset of reduction on benefits for any reason other than receipt of a workers' compensation award for the same occupational disease. No change can be made in response to this comment. The 1981 amendments are clear that the excess earnings offset which was previously applicable to black lung benefits awarded to surviving dependent parents, brothers, and sisters are also now applicable to the benefits awarded to miners whose claims are filed on or after January 1, 1982.

(b) No other comments were received concerning this section and no changes have been made in it.

Section 725.536 Reductions; excess earnings

(a) One comment was received concerning this section. It raises the same objection which was discussed concerning § 725.533 above. For the reason stated there, no change can be made in response to this comment.

(b) No other comments were received concerning this section and no changes have been made in it.

Section 725.608 Interest

(a) Several comments were received which contend that proposed paragraph (a), when read in isolation from proposed paragraph (b), appears to impose an obligation upon mine operators and other employers for the payment of interest even though the claimant is not ultimately found to be entitled to benefits. To avoid such a possible misinterpretation, a new sentence has been added at the conclusion of paragraph (a) which makes clear that the obligation for the payment of such interest is dependent upon the claimant ultimately being found to be entitled to benefits.

(b) One comment was received which was supportive of the proposed section, but which also suggested that, in addition to interest, criminal penalties should be imposed for non-payment or delayed payment of benefits. The Congress has clearly specified those portions of the Act in which it found criminal penalties to be appropriate. Since no criminal penalty was enacted by the Congress for this purpose, it is beyond the regulatory authority of the Department of Labor to create such a penalty. Therefore, no change can be made in response to this comment.

(c) Paragraph (d), as now promulgated, has been revised to include the statutory exception (payment of interest on advances from the United States Treasury) to the general rule that the Black Lung Disability Trust Fund shall not be liable for the payment of interest.

(d) No other comments were received concerning this section and no other changes have been made in it.

Miscellaneous Comments.—A number of comments were received which went beyond the scope of the proposed rulemaking. As indicated in the preamble to the notice of proposed rulemaking (47 FR 22674), "other changes to the existing regulations which may be appropriate will be considered by the Department separately at a later date."

Effective Date

The Secretary has determined that in order to expedite the adjudication of claims which are subject to the 1981 amendments to the Act and these implementing regulations and thus reduce hardships suffered by deserving claimants, these regulations shall be effective immediately upon their promulgation in the **Federal Register**, except §§ 725.533(a)(3) and 725.536 which contain information collection requirements which are under review at OMB. This finding is made pursuant to 5 USC 553(d).

Drafting Information

This document was prepared under the direction and control of Robert B. Collyer, Deputy Under Secretary, Employment Standards Administration, U.S. Department of Labor, Room S-2321, 200 Constitution Avenue, N.W., Washington, D.C. 20210, Telephone (202) 523-6191.

Classification—Executive Order 12291

These final rules only implement the 1981 amendments to the Black Lung Benefits Act and make certain technical corrections to the regulations as previously promulgated. They do not, in themselves, impose any additional requirements. Therefore, this is not classified as a "major rule" under Executive Order 12291 on Federal Regulations, because it is not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in cost or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Accordingly, no regulatory impact analysis is required.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), the reporting or recordkeeping provisions that are included in this regulation have been submitted for approval to the Office of Management and Budget (OMB). They are not effective until OMB approval has been obtained and the public notified to that effect through a technical amendment to this regulation.

Regulatory Flexibility Act

The Department believes that the rule will have no "significant economic impact upon a substantial number of small entities" within the meaning of section 3(a) of the Regulatory Flexibility Act, Pub. L. 96–354, 91 Stat. 1164 (5 U.S.C. 605(b)). The Secretary has certified to the Chief Counsel for Advocacy of the Small Business Administration to this effect. This conclusion is reached because the amendments are only implementing the 1981 amendments to the Black Lung Benefits Act and they do not, in themselves, impose any additional requirements upon small entities. Accordingly, no regulatory impact analysis is required.

Regulatory Flexibility Act Certification

I, Raymond J. Donovan, Secretary of Labor, hereby certify, pursuant to 5 U.S.C. 605(b), that the final rules contained in 20 CFR 718 and 725, described in this document, will not have a significant economic impact on a substantial number of small entities. This conclusion is reached because the final rules only implement the 1981 amendments to the Black Lung Benefits Act and they do not, in themselves, impose any additional requirements upon small entities. Thus no economic impact is expected with respect to small entities.

Signed at Washington, D.C., this 25th day of May 1983.

Raymond J. Donovan,

Secretary of Labor.

The program affected by this rule and its program number in the Catalog of Federal Domestic Assistance is: Coal Mine Workers' Compensation (Black Lung), 17.307.

List of Subjects

20 CFR Part 718

Black lung benefits, Lung diseases, Miners, Mines, Workers' compensation, X-rays.

20 CFR Part 725

Administrative practice and procedure, Black lung benefits, Lung disease, Miners, Mines, Workers' compensation.

For the reasons set out in the preamble, Parts 718 and 725 of Chapter IV of Title 20 of the Code of Federal Regulations are amended as follows:

PART 718—STANDARDS FOR DETERMINING COAL MINER'S TOTAL DISABILITY OR DEATH DUE TO PNEUMOCONIOSIS

1. The authority for Part 718 reads as follows:

Authority: 5 U.S.C. 301, Reorganization Plan No. 6 of 1950, 15 FR 3174, 30 U.S.C. 901 et seq. 902(f), 925, 932, 934, 936, 945; 33 U.S.C. 901 et seq.

2. Section 718.1 is revised to read as follows:

§ 718.1 Statutory Provisions.

(a) Under Title IV of the Federal Coal Mine Health and Safety Act of 1969, as amended by the Black Lung Benefits Act of 1972, the Federal Mine Safety and Health Amendments Act of 1977, the Black Lung Benefits Reform Act of 1977, the Black Lung Benefits Revenue Act of 1977, the Black Lung Benefits Amendments of 1981, and the Black Lung Benefits Revenue Act of 1981, benefits are provided to miners who are totally disabled due to pneumoconiosis and to certain survivors of a miner who died due to or while totally or partially disabled by pneumoconiosis. However, unless the miner was found entitled to benefits as a result of a claim filed prior to January 1, 1982, benefits are payable on survivors' claims filed on or after January 1, 1982, only when the miner's death was due to pneumoconiosis, except where the survivor's entitlement is established pursuant to § 718.306 of this part on a claim filed prior to June 30, 1982. Before the enactment of the Black Lung Benefits Reform Act of 1977, the authority for establishing standards of eligibility for miners and their survivors was placed with the Secretary of Health, Education, and Welfare. These standards were set forth by the Secretary of Health, Education, and Welfare in Subpart D of Part 410 of this title, and adopted by the Secretary of Labor for application to all claims filed with the Secretary of Labor (see 20 CFR 718.2, 1978). Amendments made to section 402(f) of the Act by the Black Lung Benefits Reform Act of 1977 authorize the Secretary of Labor to establish criteria for determining total or partial disability or death due to pneumoconiosis to be applied in the processing and adjudication of claims filed under Part C of Title IV of the Act. Section 402(f) of the Act further authorizes the Secretary of Labor, in consultation with the National Institute for Occupational Safety and Health, to establish criteria for all appropriate medical tests administered in connection with a claim for benefits. Section 413(b) of the Act authorizes the Secretary of Labor to establish criteria for the techniques to be used to take chest roentgenograms (X-rays) in connection with a claim for benefits under the Act.

(b) The Black Lung Benefits Reform Act of 1977 provided that with respect to a claim filed on or before the effective date of this part, that is filed prior to April 1, 1980, or reviewed under section 435 of the Act, the standards to be applied in the adjudication of such claim shall not be more restrictive than the criteria applicable to a claim filed on June 30, 1973, with the Social Security Administration, whether or not the final disposition of the claim occurs after March 31, 1980. All such claims shall be reviewed under the criteria set forth in Part 727 of this title.

3. Section 718.2 is revised to read as follows:

§ 718.2 Applicability of this part.

This part is applicable to the adjudication of all claims filed after March 31, 1980, and considered by the Secretary of Labor under section 422 of the Act and Part 725 of this subchapter. If a claim subject to the provisions of section 435 of the Act and Subpart C of Part 727 of this subchapter cannot be approved under that subpart, such claim may be approved, if appropriate, under the provisions contained in this part. The provisions of this part shall, to the extent appropriate, be construed together in the adjudication of all claims.

4. In § 718.102, paragraph (e) is revised to read as follows:

§ 718.102 Chest roentgenograms (X-rays).

* * * * *

(e) No chest X-ray shall constitute evidence of the presence or absence of pneumoconiosis unless it is in substantial compliance with the requirements of this section and Appendix A, except that in the case of a deceased miner where the only available X-ray is of sufficient quality for determining the presence or absence of pneumoconiosis and such X-ray was interpreted by a Board-certified or Board-eligible radiologist or a certified "B" reader (see § 718.208) such X-ray shall be considered and shall be accorded such weight and probative

value as is appropriate in light of all of the evidence applicable to the individual case. It shall be presumed, in the absence of evidence to the contrary, that the requirements of Appendix A have been met.

5. In § 718.106, paragraph (b) is revised to read as follows:

§ 718.106 Autopsy; biopsy.

* * * * *

(b) No report of an autopsy or biopsy submitted in connection with a claim shall be considered unless the report complies with the requirements of this section, except that in the case of a miner who died prior to March 31, 1980, such reports shall be considered even when the reports are not in substantial compliance with the requirements of this section. Such nonconforming reports concerning miners who died prior to March 31, 1980, shall be accorded such weight and probative value as is appropriate in light of all of the evidence applicable to the individual case.

* * * * *

6. In § 718.202, paragraphs (a)(1)(i) and (c) are revised as follows:

§ 718.202 Determining the existence of pneumoconiosis.

(a) * * *

(1) * * *

(i) In all claims filed before January 1, 1982, where there is other evidence of pulmonary or respiratory impairment, a Board-certified or Board-eligible radiologist's interpretation of a chest X-ray shall be accepted by the Office if the
X-ray is in compliance with the requirements of § 718.102 and if such X-ray has been taken by a radiologist or qualified radiologic technologist or technician and there is no evidence that the claim has been fraudulently represented. However, these limitations shall not apply to any claim filed on or after January 1, 1982.

* * * * *

(c) A determination of the existence of pneumoconiosis shall not be made solely on the basis of a living miner's statements or testimony. Nor shall such a determination be made upon a claim involving a deceased miner filed on or after January 1, 1982, solely based upon the affidavit(s) (or equivalent sworn testimony) of the claimant and/or his or her dependents who would be eligible for augmentation of the claimant's benefits if the claim were approved.

7. In § 718.204, paragraph (c)(5) is revised to read as follows:

§ 718.204 Total disability defined. Criteria for determining total disability.

* * * * *

(c) * * *

(5) In a case involving a deceased miner in which the claim was filed prior to January 1, 1982, where there is no medical or other relevant evidence, affidavits (or equivalent sworn testimony) from persons knowledgeable of the miner's physical condition shall be sufficient to establish total (or under § 718.306 partial) disability. On a survivor's claim filed on or after January 1, 1982, but prior to June 30, 1982, where entitlement is sought to be established in accordance with § 718.306, where there is no medical or other relevant evidence, affidavits (or equivalent sworn testimony) from persons knowledgeable of the miner's physical condition shall be sufficient to establish total or partial disability; however, such a determination shall not be based solely upon the affidavits or testimony of the claimant and/or his or her dependents who would be eligible for augmentation of the claimant's benefits if the claim were approved. Except as provided in § 718.305, proof that the miner suffers or suffered from a totally disabling respiratory or pulmonary impairment as defined in paragraphs (c)(1), (c)(2), (c)(4) and this paragraph shall not, by itself, be sufficient to establish that the miner's impairment is or was due to pneumoconiosis.

* * * * *

8. Section 718.205 is amended by revising paragraph (b), revising former paragraph (c) and redesignating it as paragraph (b)(5), and adding paragraphs (c) and (d) to read as follows:

§ 718.205 Death due to pneumoconiosis.

* * * * *

(b) For the purpose of adjudicating survivors' claims filed prior to January 1, 1982, death will be considered due to pneumoconiosis if any of the following criteria is met:

(1) Where competent medical evidence established that the miner's death was due to pneumoconiosis, or

(2) Where death was due to multiple causes including pneumoconiosis and it is not medically feasible to distinguish which disease caused death or the extent to which pneumoconiosis contributed to the cause of death, or

(3) Where the presumption set forth at § 718.304 is applicable, or

(4) Where either of the presumptions set forth at § 718.303 or § 718.305 is applicable and has not been rebutted.

(5) Death shall be considered to be due to pneumoconiosis where the cause of death is significantly related to or aggravated by pneumoconiosis.

(c) For the purpose of adjudicating survivors' claims filed on or after January 1, 1982, death will be considered to be due to pneumoconiosis if any of the following criteria is met:

(1) Where competent medical evidence established that the miner's death was due to pneumoconiosis, or

(2) Where pneumoconiosis was a substantially contributing cause or factor leading to the miner's death or where the death was caused by complications of pneumoconiosis, or

(3) Where the presumption set forth at § 718.304 is applicable.

(4) However, survivors are not eligible for benefits where the miner's death was caused by a traumatic injury or the principal cause of death was a medical condition not related to pneumoconiosis, unless the evidence establishes that pneumoconiosis was a substantially contributing cause of death.

(d) To minimize the hardships to potentially entitled survivors due to the disruption of benefits upon the miner's death, survivors' claims filed on or after January 1, 1982, shall be adjudicated on an expedited basis in accordance with the following procedures. The initial burden is upon the claimant, with the assistance of the deputy commissioner, to develop evidence which meets the requirements of paragraph (c) of this section. Where the initial medical evidence appears to establish that death was due to pneumoconiosis, the survivor will receive benefits unless the weight of the evidence as subsequently developed by the Department or the responsible operator establishes that the miner's death was not due to pneumoconiosis as defined above. However, no such benefits shall be found payable before the party responsible for the payment of such benefits shall have had a reasonable opportunity for the development of rebuttal evidence. See §§ 725.412–725.415 concerning the operator's opportunity to develop evidence prior to an initial determination and §§ 718.307 and 718.403 on the burden of proof.

9. Section 718.303 is amended by adding paragraph (c) to read as follows:

§ 718.303 Death from a respirable disease.

* * * * *

(c) This section is not applicable to any claim filed on or after January 1, 1982.

10. Section 718.305 is amended by adding paragraph (e) to read as follows:

§ 718.305 Presumption of pneumoconiosis.

* * * * *

(e) This section is not applicable to any claim filed on or after January 1, 1982.

11. In § 718.306, paragraph (a) is revised to read as follows:

§ 718.306 Presumption of entitlement applicable to certain death claims.

(a) In the case of a miner who died on or before March 1, 1978, who was employed for 25 or more years in one or more coal mines prior to June 30, 1971, the eligible survivors of such miner who claims have been filed prior to June 30, 1982, shall be entitled to the payment of benefits, unless it is established that at the time of death such miner was not partially or totally disabled due to pneumoconiosis. Eligible survivors shall, upon request, furnish such evidence as is available with respect to the health of the miner at the time of death, and the nature and duration of the miner's coal mine employment.

* * * * *

PART 725—CLAIMS FOR BENEFITS UNDER PART C OF TITLE IV OF THE FEDERAL MINE SAFETY AND HEALTH ACT, AS AMENDED

12. The authority for Part 725 reads as follows:

Authority: 5 U.S.C. 301, Reorganization Plan No. 6 of 1950, 15 FR 3174, 30 U.S.C. 901 et seq., 902(f), 925, 932, 934, 936, 945; 33 U.S.C. 901 et seq.

13. Section 725.1 is amended by revising paragraphs (a) and (g), redesignating paragraph (h) as paragraph (j) and adding new paragraphs (h) and (i) to read as follows:

§ 725.1 Statutory provisions.

(a) *General.* Title IV of the Federal Mine Safety and Health Act of 1977, as amended by the Black Lung Benefits Reform Act of 1977, the Black Lung Benefits Revenue Act of 1977, the Black Lung Benefits Revenue Act of 1981 and the Black Lung Benefits Amendments of 1981, provides for the payment of benefits to a coal miner who is totally disabled due to pneumoconiosis (black lung disease) and to certain survivors of a miner who dies due to pneumoconiosis. For claims filed prior to January 1, 1982, certain survivors could receive benefits if the miner was totally (or for claims filed prior to June 30, 1982, in accordance with section 411(c)(5) of the Act, partially) disabled due to pneumoconiosis, or if the miner died due to pneumoconiosis.

* * * * *

(g) *Changes made by the the Black Lung Benefits Revenue Act of 1977.* The Black Lung Benefits Revenue Act of 1977 established the Black Lung Disability Trust Fund which is financed by a specified tax imposed upon each ton of coal (except lignite) produced and sold or used in the United States after March 31, 1978. The Secretary of the Treasury is the managing trustee of the fund and benefits are paid from the fund upon the direction of the Secretary of Labor. The fund was made liable for the payment of all claims approved under section 415, part C and section 435 of the Act for all periods of eligibility occurring on or after January 1, 1974, with respect to claims where the miner's last coal mine employment terminated before January 1, 1970, or where individual liability can not be assessed against a coal mine operator due to bankruptcy, insolvency, or the like. The fund was also authorized to pay certain claims which a responsible operator has refused to pay within a reasonable time, and to seek reimbursement from such operator. The purpose of the Fund and the Black Lung Benefits Revenue Act of 1977 was to insure that coal mine operators, or the coal industry, will fully bear the cost of black lung disease for the present time and in the future. The Black Lung Benefits Revenue Act of 1977 also contained other provisions relating to the fund and authorized a coal mine operator to establish its own trust fund for the payment of certain claims.

(h) *Changes made by the Black Lung Benefits Amendments of 1981.* In addition to the change reflected in paragraph (a) of this section, the Black Lung Benefits Amendments of 1981 made a number of significant changes in the Act's standards for determining eligibility for benefits and concerning the payment of such benefits. The following changes are all applicable to claims filed on or after January 1, 1982: (1) The Secretary of Labor may re-read any X-ray submitted in support of a claim and may rely upon a second opinion concerning such an X-ray as a means of auditing the validity of the claim; (2) the rebuttable presumption that the death of a miner with ten or more years employment in the coal mines, who died of a respirable disease, was due to pneumoconiosis is no longer applicable; (3) the rebuttable presumption that the total disability of a miner with fifteen or more years employment in the coal mines, who has demonstrated a totally disabling respiratory or pulmonary impairment, is due to pneumoconiosis is no longer applicable; (4) in the case of deceased miners, where no medical or other relevant evidence is available, only affidavits from persons not eligible to receive benefits as a result of the adjudication of the claim will be considered sufficient to establish entitlement to benefits; (5) unless the miner was found entitled to benefits as a result of a claim filed prior to January 1, 1982, benefits are payable on survivors' claims filed on and after January 1, 1982, only when the miner's death was due to pneumoconiosis; (6) benefits payable under this part are subject to an offset on account of excess earnings by the miner; and (7) other technical amendments.

(i) *Changes made by the Black Lung Benefits Revenue Act of 1981.* The Black Lung Benefits Revenue Act of 1981 temporarily doubles the amount of the tax upon coal until the Trust Fund shall have repaid all advances received from the United States Treasury and the interest on all such advances. The Fund is also made liable for the payment of certain claims previously denied under the 1972 version of the Act and subsequently approved under section 435 and for the reimbursement of operators and insurers for benefits previously paid by them on such claims. With respect to claims filed on or after January 1, 1982, the Fund's authorization for the payment of interim benefits is limited to the payment of prospective benefits only. These changes also define the rates of interest to be paid to and by the Fund.

(j) *Longshoremen's Act provisions.* The adjudication of claims filed under sections 415, 422 and 435 of the Act is governed by various procedural and other provisions contained in the Longshoremen's and Harbor Workers' Compensation Act (LHWCA), as amended from time to time, which are incorporated within the Act by sections 415 and 422. The incorporated LHWCA provisions are applicable under the Act except as is otherwise provided by the Act or as provided by regulations of the Secretary. Although occupational disease benefits are also payable under the LHWCA, the primary focus of the procedures set forth in that Act is upon a time definite of traumatic injury or death. Because of this and other significant differences between a black lung and longshore claim, it is determined, in accordance with the authority set forth in section 422 of the Act, that certain of the incorporated procedures prescribed by the LHWCA must be altered to fit the circumstances ordinarily confronted in the adjudication of a black lung claim. The changes made are based upon the Department's experience in processing black lung claims since July 1, 1973, and all such changes are specified in this part or part 727 of this subchapter. No other departure from the incorporated provisions of the LHWCA is intended.

14. Section 725.4 is amended by revising paragraphs (a) and (d) to read as follows:

§ 725.4 Applicability of other parts in this title.

(a) *Part 718.* Part 718 of this subchapter, which contains the criteria and standards to be applied in determining whether a miner is or was totally disabled due to pneumoconiosis, or whether a miner died due to pneumoconiosis, shall be applicable to the determination of claims under this part. Claims filed after March 31, 1980, are subject to the revised part 718 as promulgated by the Secretary in accordance with section 402(f)(1) of the Act on February 29, 1980. The criteria contained in subpart C of part 727 of this subchapter are applicable in determining claims filed prior to April 1, 1980, under this part, and such criteria shall be applicable at all times with respect to claims filed under this part and under section 11 of the Black Lung Benefits Reform Act of 1977.

* * * * *

(d) *Part 727.* Part 727 of this subchapter, which governs the review, adjudication and payment of pending and denied claims under section 435 of the Act, is applicable to this part as provided in such part 727. The criteria contained in subpart C of part 727 for determining a claimant's eligibility for benefits shall be applicable under this part with respect to all claims filed before April 1, 1980, and to all claims filed under this part and under section 11 of the Black Lung Benefits Reform Act of 1977.

* * * * *

15. Section 725.101 is amended by revising paragraphs (a)(1), (a)(10), and (a)(31) to read as follows:

§ 725.101 Definitions and use of terms.

(a) * * *

(1) The "Act" means the Federal Coal Mine Health and Safety Act, Pub. L. 91-173, 83 Stat. 742, 30 U.S.C. 801-960, as amended by the Black Lung Benefits Act of 1972, the Mine Safety and Health Act of 1977, the Black Lung Benefits Reform Act of 1977, the Black Lung Benefits Revenue Act of 1977, the Black Lung Benefits Revenue Act of 1981, and the Black Lung Benefits Amendments of 1981.

* * * * *

(10) "Division" or "DCMWC" means the Division of Coal Mine Workers' Compensation in the OWCP, United States Department of Labor.

* * * * *

(31) "Black Lung Disability Trust Fund" or the "Fund" means the Black Lung Disability Trust Fund established by the Black Lung Benefits Revenue Act of 1977, as amended by the Black Lung Benefits Revenue Act of 1981, for the payment of certain claims adjudicated under this part (see subpart G of this part).

* * * * *

16. In § 725.102, paragraph (a) is revised to read as follows:

§ 725.102 Disclosure of program information.

(a) All reports, records, or other documents filed with the OWCP with respect to claims are the records of the OWCP. The Director or his or her designee shall be the official custodian of those records maintained by the OWCP at its national office. The Deputy Commissioner shall be the official custodian of those records maintained at a district office.

* * * * *

17. Section 725.201 is amended by revising paragraphs (a)(2), (a)(4), and (b) to read as follows:

§ 725.201 Who is entitled to benefits; contents of this subpart.

(a) * * *

(2) The surviving spouse or surviving divorced spouse or, where neither exists, the child of a deceased miner, where the deceased miner:

(i) Was receiving benefits under section 415 or Part C of title IV of the Act as a result of a claim filed prior to January 1, 1982; or

(ii) Is determined as a result of a claim filed prior to January 1, 1982, to have been totally disabled due to pneumoconiosis at the time of death, or to have died due to pneumoconiosis. Survivors of miners whose claims are filed on or after January 1, 1982, must establish that the deceased miner's death was due to pneumoconiosis in order to establish their entitlement to benefits, except where entitlement is established under § 718.306 of part 718 on a survivor's claim filed prior to June 30, 1982, or;

* * * * *

(4) The surviving dependent parents, where there is no surviving spouse or child, or the surviving dependent brothers or sisters, where there is no surviving spouse, child, or parent, of a miner, where the deceased miner:

(i) Was receiving benefits under section 415 or Part C of title IV of the Act as a result of a claim filed prior to January 1, 1982; or

(ii) Is determined as a result of a claim filed prior to January 1, 1982, to have been totally disabled due to pneumoconiosis at the time of death, or to have died due to pneumoconiosis. Survivors of miners whose claims are filed on or after January 1, 1982, must establish that the deceased miner's death was due to pneumoconiosis in order to establish their entitlement to benefits, except where entitlement is established under § 718.306 of part 718 on a survivor's claim filed prior to June 30, 1982.

(b) Section 411(c)(5) of the Act provides for the payment of benefits to the eligible survivors of a miner employed for 25 or more years in the mines prior to June 30, 1971, if the miner's death occurred on or before March 1, 1978, and if the claim was filed prior to June 30, 1982, unless it is established that at the time of death, the miner was not totally or partially disabled due to pneumoconiosis. For the purposes of this part the term "total disability" shall mean partial disability with respect to a claim for which eligibility is established under section 411(c)(5) of the Act. See § 718.306 of part 718 which implements this provision of the Act.

* * * * *

18. Section 725.205 is amended by revising paragraph (c) to read as follows:

§ 725.205 Determination of dependency; spouse.

* * * * *

(c) The miner has been ordered by a court to contribute to such individual's support (see § 725.233(e)); or

* * * * *

19. Section 275.207 is amended by revising paragraph (c) to read as follows:

§ 725.207 Determination of dependency; divorced spouse.

* * * * *

(c) A court order requires the miner to furnish substantial contributions to the individual's support (see § 725.233 (c), (e)).

20. Section 725.208 is amended by revising paragraphs (f)(1) and (f)(2) to read as follows:

§ 725.208 Determination of relationship; child.

* * * * *

(f) * * *

(1) The beneficiary, prior to his or her entitlement to benefits, has acknowledged in writing that the individual is his or her son or daughter, or has been decreed by a court to be the parent of the individual, or has been ordered by a court to contribute to the support of the individual (see § 725.233(e)) because the individual is his or her son or daughter; or

(2) Such beneficiary is shown by satisfactory evidence to be the father or mother of the individual and was living with or contributing to the support of the

individual at the time the beneficiary became entitled to benefits.

21. Section 725.212 is revised to read as follows:

§ 725.212 Condition of entitlement; surviving spouse or surviving divorced spouse.

(a) An individual who is the surviving spouse or surviving divorced spouse of a miner is eligible for benefits if such individual:

(1) Is not married;

(2) Was dependent on the miner at the pertinent time; and

(3) The deceased miner either:

(i) Was receiving benefits under section 415 or part C of title IV of the Act at the time of death as a result of a claim filed prior to January 1, 1982; or

(ii) Is determined as a result of a claim filed prior to January 1, 1982, to have been totally disabled due to pneumoconiosis at the time of death or to have died due to pneumoconiosis. A surviving spouse or surviving divorced spouse of a miner whose claim is filed on or after January 1, 1982, must establish that the deceased miner's death was due to pneumoconiosis in order to establish entitlement to benefits, except where entitlement is established under § 718.306 of part 718 on a claim filed prior to June 30, 1982.

22. Section 725.213 is amended by revising paragraph (b)(3) to read as follows:

§ 725.213 Duration of entitlement; surviving spouse or surviving divorced spouse.

* * * * *

(b) * * *

(3) Where the individual qualifies as the surviving spouse of a miner under § 725.204(d), such individual ceases to qualify as provided in that paragraph.

23. Section 725.214 is amended by revising paragraph (d) to read as follows:

§ 725.214 Determination of relationship; surviving spouse.

* * * * *

(d) Such individual went through a marriage ceremony with the miner resulting in a purported marriage between them and which but for a legal impediment (see § 725.230) would have been a valid marriage, unless such individual entered into the purported marriage with knowledge that it was not a valid marriage, or if such individual and the miner were not living in the same household at the time of the miner's death. The provisions of this paragraph shall not apply if another person is or has been entitled to benefits as the surviving spouse of the miner and such other person is, or is considered to be, the surviving spouse of such miner under paragraph (a), (b), or (c) of this section at the time such individual files a claim for benefits.

24. Section 725.217 is amended by revising paragraphs (a)(1), (a)(2) and (a)(3) to read as follows:

§ 725.217 Determination of dependency; surviving divorced spouse.

(a) * * *

(1) The individual was receiving at least one-half of his or her support from the miner (see § 725.233(g)); or

(2) The individual was receiving substantial contributions from the miner pursuant to a written agreement (see § 725.233 (e) and (f)); or

(3) A court order required the miner to furnish substantial contributions to the individual's support (see §275.233 (c) and (e)).

25. Section 725.218 is amended by revising paragraph (a)(1) and (a)(2) to read as follows:

§ 725.218 Conditions of entitlement; child.

(a) * * *

(1) Was receiving benefits under section 415 or Part C of title IV of the Act as a result of a claim filed prior to January 1, 1982, or

(2) Is determined as a result of a claim filed prior to January 1, 1982, to have been totally disabled due to pneumoconiosis at the time of death, or to have died due to pneumoconiosis. A surviving dependent child of a miner whose claim is filed on or after January 1, 1982, must establish that the miner's death was due to pneumoconiosis in order to establish entitlement to benefits, except where entitlement is established under § 718.306 of part 718 on a claim filed prior to June 30, 1982.

* * * * *

26. Section 725.219 is amended by revising paragraph (b)(3)(ii) to read as follows:

§ 725.219 Duration of entitlement; child.

* * * * *

(b) * * *

(3) * * *

(ii) Is not a student (as defined in § 725.209(b)) during any part of the month in which the child attains age 18;

* * * * *

27. Section 725.220 is amended by revising paragraph (f)(2) to read as follows:

§ 725.220 Determination of relationship; child.

* * * * *

(f) * * *

(2) Such beneficiary is shown by satisfactory evidence to be the father or mother of the individual and was living with or contributing to the support of the individual at the time such beneficiary became entitled to benefits.

28. Section 725.222 is amended by revising paragraphs (a)(5)(i) and (a)(5)(ii) to read as follows:

§ 725.222 Conditions of entitlement; parent, brother, or sister.

(a) * * *

(5) * * *

(i) Was entitled to benefits under section 415 or Part C of title IV of the Act as a result of a claim filed prior to January 1, 1982; or

(ii) Is determined as a result of a claim filed prior to January 1, 1982, to have been totally disabled due to pneumoconiosis at the time of death or to have died due to pneumoconiosis. A surviving dependent parent, brother or sister of a miner whose claim is filed on or after January 1, 1982, must establish that the miner's death was due to pneumoconiosis in order to establish entitlement to benefits, except where entitlement is established under § 718.306 of part 718 on a claim filed prior to June 30, 1982.

* * * * *

29. Section 725.225 is amended by revising paragraph (b) to read as follows:

§ 725.225 Determination of dependency; parent, brother, or sister.

* * * * *

(b) The individual was totally dependent on the miner for support (see § 725.233(h)).

30. Section 725.367 is amended by redesignating the existing text as paragraph (a) and adding paragraph (b). As amended § 725.367 reads as follows:

§ 725.367 Payment of a claimant's attorney's fee by responsible operator.

(a) If an operator declines to pay any benefits on or before the 30th day after receiving written notice of its liability for a claim on the ground that there is no liability for benefits within the provisions of the Act, and the person seeking benefits shall thereafter have utilized the services of an attorney in the successful prosecution of the claim, there shall be awarded, in addition to the award of benefits, in an order, a reasonable attorney's fee against the operator or carrier in an amount approved by the deputy commissioner, administrative law judge, Board, or court as the case may be, which shall be paid promptly and directly by the operator or carrier to the claimant's attorney in a lump sum after the order becomes final.

(b) Section 205(a) of the Black Lung Benefits Amendments of 1981, Pub. L. 97–119, amended section 422 of the Act and relieved operators and carriers from liability for the payment of benefits on certain claims. Payment of benefits on those claims was made the responsibility of the Trust Fund. The claims subject to this transfer of liability are described in § 725.496 of this part. On claims subject to the transfer of liability described above the Trust Fund will pay all fees and costs which have been or will be awarded to claimant's attorneys which were or would have become the liability of an operator or carrier but for the enactment of the 1981 Amendments and which have not already been paid by such operator or carrier. Section 9501(d)(7) of the Internal Revenue Code, which was also enacted as a part of the 1981 Amendments to the Act, expressly prohibits the Trust Fund from reimbursing an operator or carrier for any attorney fees or costs which it has paid on cases subject to the transfer of liability provisions.

31. Section 725.420 is amended by revising paragraphs (a) and (b) to read as follows:

§ 725.420 Initial determinations.

(a) Section 9501(d)(1)(A)(1) of the Internal Revenue Code provides that the Black Lung Disability Trust Fund shall begin the payment of benefits on behalf of an operator in any case in which the operator liable for such payments "has not commenced payment of such benefits within 30 days after the date of an initial determination of eligibility by the Secretary * * *." For claims filed on or after January 1, 1982, the payment of such interim benefits from the Fund is limited to "benefits accruing after the date of such initial determination * * *."

(b) Except as provided in § 725.415 of this subpart, after the deputy commissioner has determined that a claimant is eligible for benefits, on the basis of all evidence submitted by a claimant and operator, and has determined that a hearing will be necessary to resolve the claim, the deputy commissioner shall in writing so inform the parties and direct the operator to begin the payment of benefits to the claimant in accordance with § 725.522. The date on which this writing is sent to the parties shall be considered the date of initial determination of the claim.

* * * * *

32. In § 725.421, paragraph (b)(1) is revised to read as follows:

§ 725.421 Referral of a claim to the Office of Administrative Law Judges.

* * * * *

(b) * * *

(1) Copies of the claim form or forms;

* * * * *

33. In § 725.456, paragraph (b)(1) is revised to read as follows:

§ 725.456 Introduction of documentary evidence.

* * * * *

(b) * * *

(1) Any other documentary material, including medical reports, which was not submitted to the deputy commissioner, may be received in evidence subject to the objection of any party, if such evidence is sent to all other parties at least 20 days before a hearing is held in connection with the claim.

* * * * *

34. In § 725.490, paragraph (a) is revised to read as follows:

§ 725.490 Statutory provisions and scope.

(a) One of the major purposes of the black lung benefits amendments of 1977 was to provide a more effective means of transferring the responsibility for the payment of benefits from the Federal government to the coal industry with respect to claims filed under this part. In furtherance of this goal, a Black Lung Disability Trust Fund financed by the coal industry was established by the Black Lung Benefits Revenue Act of 1977. The primary purpose of the Fund is to pay benefits with respect to all claims in which the last coal mine employment of the miner on whose account the claim was filed occurred before January 1, 1970. With respect to most claims in which the miner's last coal mine employment occurred after January 1, 1970, individual coal mine operators will be liable for the payment of benefits. The 1981 amendments to the Act relieved individual coal mine operators from the liability for payment of certain special claims involving coal mine employment on or after January 1, 1970, where the claim was previously denied and subsequently approved under section 435 of the Act. See § 725.496 for a detailed description of these special claims. Where no such operator exists or the operator determined to be liable is in default in any case, the Fund shall pay the benefits due and seek reimbursement as is appropriate. See also § 725.420 for the Fund's role in the payment of interim benefits in certain contested cases. In addition, the Black Lung Benefits Reform Act of 1977 amended certain provisions affecting the scope of coverage under the Act and describing the effects of particular corporate transactions on the liability of operators.

* * * * *

35. Section § 725.496 is added to part 725 to read as follows:

§ 725.496 Special claims transferred to the Trust Fund.

(a) The 1981 amendments to the Act amended section 422 of the Act and transferred liability for payment of certain special claims from operators and carriers to the Trust Fund. These provisions apply to claims which were denied before March 1, 1978, and which have been or will be approved in accordance with section 435 of the Act.

(b) Section 402(i) of the Act defines three classes of denied claims subject to the transfer provisions:

(1) Claims filed with and denied by the Social Security Administration before March 1, 1978;

(2) claims filed with the Department of Labor in which the claimant was notified by the Department of an administrative or informal denial before March 1, 1977, and in which the claimant did not within one year of such notification either:

(i) Request a hearing; or

(ii) Present additional evidence; or

(iii) Indicate an intention to present additional evidence; or

(iv) Request a modification or reconsideration of the denial on the ground of a change in conditions or because of a mistake in a determination of fact;

(3) Claims filed with the Department of Labor and denied under the law in effect prior to the enactment of the Black Lung Benefits Reform Act of 1977, that is, before March 1, 1978, following a formal hearing before an administrative law judge or administrative review before the Benefits Review Board or review before a United States Court of Appeals.

(c) Where more than one claim was filed with the Social Security Administration and/or the Department of Labor prior to March 1, 1978, by or on behalf of a miner or a surviving dependent of a miner, unless such claims were required to be merged by the agency's regulations, the procedural history of each such claim must be considered separately to determine whether the claim is subject to the transfer of liability provisions.

(d) For a claim filed with and denied by the Social Security Administration prior to March 1, 1978, to come within the transfer provisions, such claim must have been or must be approved under the provisions of section 435 of the Act. No claim filed with and denied by the

Social Security Administration is subject to the transfer of liability provisions unless a request was made by or on behalf of the claimant for review of such denied claim under section 435. Such review must have been requested by the filing of a valid election card or other equivalent document with the Social Security Administration in accordance with section 435(a) and its implementing regulations at 20 CFR 410.700–707.

(e) Where a claim filed with the Department of Labor prior to March 1, 1977, was subjected to repeated administrative or informal denials, the last such denial issued during the pendency of the claim determines whether the claim is subject to the transfer of liability provisions.

(f) Where a miner's claim comes within the transfer of liability provisions of the 1981 amendments the Trust Fund is also liable for the payment of any benefits to which the miner's dependent survivors are entitled after the miner's death. However, if the survivor's entitlement was established on a separate claim not subject to the transfer of liability provisions prior to approval of the miner's claim under section 435, the party responsible for the payment of such survivors' benefits shall not be relieved of that responsibility because the miner's claim was ultimately approved and found subject to the transfer of liability provisions.

36. Section 725.497 is added to part 725 to read as follows:

§ 725.497 Procedures in special claims transferred to the Trust Fund.

(a) *General.* It is the purpose of this section to define procedures to expedite the handling and disposition of claims affected by the benefit liability transfer provisions of Section 205 of the Black Lung Benefits Amendments of 1981.

(b) *Action by the Department.* The OWCP shall, in accordance with the criteria contained in § 725.496, review each claim which is or may be affected by the provisions of Section 205 of the Black Lung Benefits Amendments of 1981. Any party to a claim, adjudication officer, or adjudicative body may request that such a review be conducted and that the record be supplemented with any additional documentation necessary for an informed consideration of the transferability of the claim. Where the issue of the transferability of the claim can not be resolved by agreement of the parties and the evidence of record is not sufficient for a resolution of the issue, the hearing record may be reopened or the case remanded for the development of the additional evidence concerning the procedural history of the claim necessary to such resolution. Such determinations shall be made on an expedited basis.

(c) *Dismissal of operators.* If it is determined that a coal mine operator or insurance carrier which previously participated in the consideration or adjudication of any claim, may no longer be found liable for the payment of benefits to the claimant by reason of section 205 of the Black Lung Benefits Amendments of 1981, such operator or carrier shall be promptly dismissed as a party to the claim. The dismissal of an operator or carrier shall be concluded at the earliest possible time and in no event shall an operator or carrier participate as a necessary party in any claim for which only the Trust Fund may be liable.

(d) *Procedure following dismissal of an operator.* After it has been determined that an operator or carrier must be dismissed as a party in any claim in accordance with this section, the Director shall take such action as is authorized by the Act to bring about the proper and expeditious resolution of the claim in light of all relevant medical and other evidence. Action to be taken in this regard by the Director may include, but is not limited to, the assignment of the claim to the Black Lung Disability Trust Fund for the payment of benefits, the reimbursement of benefits previously paid by an operator or carrier if appropriate, the defense of the claim on behalf of the Trust Fund, or proceedings authorized by § 725.310.

(e) Any claimant whose claim has been subsequently denied in a modification proceeding will be entitled to expedited review of the modification decision. Where a formal hearing was previously held, the claimant may waive his right to a further hearing and ask that a decision be made on the record of the prior hearing, as supplemented by any additional documentary evidence which the parties wish to introduce and briefs of the parties, if desired. In any case in which the claimant waives his right to a second hearing, a decision and order must be issued within 30 days of the date upon which the parties agree the record has been completed.

37. In § 725.520, the introductory text of paragraph (a), paragraphs (a)(1), (a)(2), and (a)(3) are revised and paragraph (a)(4) is removed to read as follows:

§ 725.520 Computation of benefits.

(a) *Basic rate.* The amount of benefits payable to a beneficiary for a month is determined, in the first instance, by computing the "basic rate." The basic rate is equal to 37½ percent of the monthly pay rate for Federal employees in GS–2, step 1. That rate for a month is determined by:

(1) Ascertaining the lowest annual rate of pay (step 1) for Grade GS–2 of the General Schedule applicable to such month (see 5 U.S.C. 5332);

(2) Ascertaining the monthly rate thereof by dividing the amount determined in paragraph (a)(1) of this section by 12; and

(3) Ascertaining the basic rate under the Act by multiplying the amount determined in paragraph (a)(2) of this section by 0.375 (that is, by 37½ percent).

* * * * *

38. In § 725.532, paragraph (a) is revised to read as follows:

§ 725.532 Suspension, reduction, or termination of payments.

(a) No suspension, reduction, or termination in the payment of benefits is permitted unless authorized by the deputy commissioner, administrative law judge, Board, or court. No suspension, reduction, or termination shall be authorized except upon the occurrence of an event which terminates a claimant's eligibility for benefits (see subpart B of this part) or as is otherwise provided in subpart C of this part, §§ 725.306 and 725.310, or this subpart (see also §§ 725.533–725.546).

* * * * *

39. In § 725.533, paragraph (a)(3) is revised to read as follows:

§ 725.533 Modification of benefit amounts; general.

(a) * * *

* * * * *

(3) In the case of benefits to a parent, brother, or sister as a result of a claim filed at any time or benefits payable on a miner's claim which was filed on or after January 1, 1982, the excess earnings from wages and from net earnings from self-employment (see § 410.530 of this title) of such parent, brother, sister, or miner, respectively; or

* * * * *

40. Section 725.536 is revised to read as follows:

§ 725.536 Reductions; excess earnings.

In the case of a surviving parent, brother, or sister, whose claim was filed at any time, or of a miner whose claim was filed on or after January 1, 1982, benefit payments are reduced as appropriate by an amount equal to the deduction which would be made with respect to excess earnings under the provisions of sections 203 (b), (f), (g), (h), (j), and (l) of the Social Security Act (42

U.S.C. 403 (b), (f), (g), (h), (j), and (l)), as if such benefit payments were benefits payable under section 202 of the Social Security Act (42 U.S.C. 402) (see §§ 404.428–404.456 of this title).

41. Section 725.608 is amended by revising paragraphs (a) and (b), redesignating previous paragraph (c) as paragraph (d), and adding a new paragraph (c) to read as follows:

§ 725.608 Interest.

(a) If an operator or other employer fails or refuses to pay any or all benefits due under the terms of an initial determination by a deputy commissioner (§ 725.420), a decision and order filed and served by an administrative law judge (§ 725.478) or a decision filed by the Board or a United States court of appeals, including any penalty awarded in addition to benefits in accordance with § 725.607, such operator shall be liable for simple annual interest on all past due benefits computed from the date on which such benefits were due and payable, in addition to such operator's or other employer's liability as is otherwise provided in this part. On claims filed on or after January 1, 1982, in which the payment of retroactive benefits has been withheld pending final adjudication of liability in accordance with section 422(d) of the Act as amended, interest on such withheld retroactive benefit payments shall begin to accumulate 30 days after the date of the first determination that such an award should be made. The first determination that such an award should be made may be a deputy commissioner's initial determination of entitlement, an award made by an administrative law judge or a decision by the Board or a court, whichever is the first such determination of entitlement made upon the claim. Except as provided in paragraph (b) of this section, interest payments owed under this paragraph shall be made directly to the beneficiary. However, an operator or other employer shall have no obligation to pay interest except with respect to benefits which it has either agreed to pay or it has been directed to pay by an order which has become final.

(b) If an operator or other employer fails or refuses to pay any or all benefits due pursuant to an award of benefits or an initial determination of eligibility made by the deputy commissioner and the Fund undertakes such payments, such operator or other employer shall be liable to the Fund for simple annual interest on all payments made by the Fund for which such operator is determined liable, computed from the first date on which such benefits are paid by the Fund, in addition to such operator's liability to the Fund, as is otherwise provided in this part. Interest payments owed pursuant to this paragraph shall be paid directly to the Fund.

(c) The rates of interest applicable to paragraphs (a) and (b) above shall be computed as follows:

(1) for all amounts outstanding prior to January 1, 1982, the rate shall be 6% simple annual interest;

(2) for all amounts outstanding for any period during calendar year 1982 the rate shall be 15% simple annual interest; and

(3) for all amounts outstanding during any period after calendar year 1982 the rate shall be simple annual interest at the rate established by section 6621 of the Internal Revenue Code of 1954 which is in effect for such period.

(d) The Fund shall not be liable for the payment of interest under any circumstances, other than the payment of interest on advances from the United States Treasury as provided by section 9501(c) of the Internal Revene Code of 1954.

Signed at Washington, D.C. this 25th day of May, 1983.

Raymond J. Donovan,

Secretary of Labor.

[FR Doc. 14383 Filed 5-27-83; 8:45 am]

BILLING CODE 4510-27-M

Federal Register

Tuesday
May 31, 1983

Part IV

Department of Commerce

National Oceanic and Atmospheric Administration

National Marine Sanctuary Program Regulations

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 922

[Docket No. 30321-44]

National Marine Sanctuary Program Regulations

AGENCY: Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: These final regulations revise existing procedures for identifying and selecting marine sanctuary candidates, as well as for designating these sites as national marine sanctuaries. The regulations reflect a management-oriented approach to protecting special marine areas. They reflect the refinements and programmatic policies outlined in the Program Development Plan (PDP) for the National Marine Sanctuary Program (January 1982).

EFFECTIVE DATE: These regulations are effective June 30, 1983.

FOR FURTHER INFORMATION CONTACT: John Epting, Sanctuary Programs Division, Office of Ocean and Coastal Resource Management, NOAA, 3300 Whitehaven St., N.W., Washington, D.C. 20235; (202) 634-4236.

SUPPLEMENTARY INFORMATION:

I. Authority

This notice of final rulemaking is issued under the authority of Title III of the Marine Protection, Research and Sanctuaries Act, as amended in 1980, 16 U.S.C. 1431-1434.

II. General Background

On September 7, 1982, NOAA published proposed revised regulations for continued implementation of the National Marine Sanctuary Program, pursuant to Title III of the Marine Protection, Research and Sanctuaries Act, 16 U.S.C. 1431-1434 (The Act). Written comments on the proposed regulations were accepted until November 8, 1982. These comments have been considered in preparing these final regulations. In response to comments concerning the mission and goals, criteria for the site evaluation list (SEL) and Active Candidate selection, and sanctuary size, the regulations have been modified.

The final regulations further clarify the Program's mission and goals, revise the SEL and active candidate criteria, and further clarify the concept of multiple use of sanctuary areas. These regulations supersede the previous regulations for the program (44 FR 44831 (1979)).

III. Refinements to the Regulations for the National Marine Sanctuary Program

The proposed regulations solicited comments on a number of programmatic refinements. These refinements are discussed at length in the Program Development Plan (PDP) for the National Marine Sancturary Program (published in January 1982). The PDP describes the Program's mission and goals; changes in the site identification and selection criteria; modifications to the nomination and designation process; and the components and purposes of site-specific management plans.

A. Adoption of the Mission and Goals for the Program

The Mission and Goals are based on the statute which provides that sanctuaries may be designated for their "conservation, recreational, ecological, or esthetic values" (section 302(a)). Although broad in scope, they establish a framework within which specific program activities are conducted. The Mission Statement and Goals are adopted with several revisions by the final regulations (§ 922.1).

B. Revision of the Procedures for Initially Identifying Potential Sanctuary Candidates

(1) Elimination of the List of Recommended Areas

In regulations published on July 31, 1979 (44 FR 44831), NOAA established the List of Recommended Areas (LRA) as a means of eliminating clearly inappropriate proposals, advising the public at large of recommended sites, cataloging potentially significant marine sites, and soliciting information on those sites. The LRA, however, did not totally fulfill these purposes. Since LRA site evaluation criteria were broad and allowed marginally acceptable nominations to qualify for further consideration, the procedure resulted in unnecessary controversy over the Program as a whole. A great number of nominations were received, many of which were minimally acceptable, in some instances incorporating large areas of Outer Continental Shelf waters and encompassing thousands of square miles. This caused substantial confusion and concern over the status of sites on the LRA and the likelihood of further action. Even though the majority of the listed sites would never become active candidates, the LRA has often been perceived as the blueprint for the national marine sanctuary program. These revised regulations eliminate the LRA process from the Program, and replace it with the Site Evaluation List procedure.

(2) Establishment of a Site Evaluation List

The Site Evaluation List (SEL) process, described in subpart B of the regulations, will eliminate the problems created by the LRA.

The PDP established the policies and procedures for the SEL process (see Chapter III of the PDP). Regional resource evaluation teams, selected by NOAA and using NOAA-developed identification criteria (see Appendix 1), were to identify high natural resource and human use value sites. NOAA began implementing the site identification process in February 1982. NOAA used regional resource evaluation teams, comprised of knowledgeable scientists with regional research experience, to identify, evaluate, and recommend sites suitable for sanctuary consideration in accordance with site identification criteria in Appendix 1. By actively seeking sites based on sound criteria, resource data and input from marine scientists, and by assuring early public review at the regional level, highly-qualified marine sanctuary sites can be identified. The teams' initial lists of sites were circulated for public comment in the summer and fall of 1982. Based on these comments and applying the identification criteria in Appendix 1, each regional team developed a final list recommending 3-to-5 sites per region. These sites were submitted to NOAA in early February 1983. After a preliminary analysis of the sites based on the criteria in Appendix 1, NOAA will publish a notice of the availability of potential sites for the SEL in the Federal Register. These sites will be subject to a ninety-day comment period. At the conclusion of the comment period, and after the effective date of the national marine sanctuary regulations, NOAA will publish a final SEL, based on the selection criteria as set forth in these regulations (see § 922.20(b)) and the public comments.

It should be noted that the identification of potential sites for listing on the draft SEL meets the requirements of NOAA's existing regulations (see 44 FR 44831, Subpart B (1979)).

After the SEL is adopted, NOAA will review an additional site for listing on the SEL only if it is an important new discovery or if there is substantial new information indicating that a known site merits such consideration. NOAA will

determine, in consultation with appropriate scientists and resource managers, whether such sites meet the selection criteria specified in Appendix 1. If such a determination is made, the sites will be placed on the Site Evaluation List for further evaluation as national marine sanctuaries, consistent with the procedures in §§ 922.20 through 922.22.

C. Selection of Active Candidates and the Actual Designation of Marine Sanctuaries

Selection from the SEL as an active candidate is the second step in evaluating a site for potential designation. Subpart C contains the criteria by which NOAA selects active candidates. A site-specific management plan is prepared as part of the designation process. The environmental impact statement evaluates the impacts of sanctuary designation and management plan implementation. Only a limited number of sites at a time will be selected as active candidates and evaluated by NOAA for sanctuary designation.

D. Enforcement Activities

The enforcement section (subpart D) has been revised to incorporate by reference NOAA-wide civil procedures and seizure and forfeiture procedures which will apply to all proceedings under this Act. These procedures are set forth, respectively, at 46 FR 61643(1981) (to be codified at 15 CFR 904.100 through 904.273) and 46 FR 31648 (1981) (to be codified at 50 CFR Part 219).

IV. Summary of Significant Comments on the Proposed Regulations and NOAA's Responses

NOAA received comments from 23 sources. Commenters included members of Congress, Federal and state agencies, representatives of the oil and gas industry, and environmental and public interest groups. All comments received are on file at the Sanctuary Programs Division, Office of Ocean and Coastal Resource Management. The comments are available at that office for review upon request. Each of the major issues raised by commenters has been summarized and NOAA's responses provided under the relevant subheading in this section.

General

Executive Order 12291 and the Regulatory Flexibility Act. Several commenters suggested that the regulations be reevaluated in light of Executive Order 12291 and the Regulatory Flexibility Act (Pub. L. 96-354).

Response: These regulations provide general standards for the future designation and subsequent implementation of national marine sanctuaries by NOAA. As regulations for a particular sanctuary are proposed, they will be reviewed pursuant to Executive Order 12291 and the Regulatory Flexibility Act, and necessary analyses prepared. This has been done in the past by NOAA. For example, regulatory impact analyses were prepared for portions of the regulations implementing both the Channel Islands and Point Reyes-Farallon Islands National Marine Sanctuaries.

Section-by-Section Analysis

Subpart A—General

Section 922.1(a)—*Mission and Goals.* (1) Several reviewers suggested that the Mission be revised to allow sanctuary designation only where the marine area is threatened by existing or potential activities. They suggest that the research goals (§ 922.1(b)(2)) and public awareness goals (§ 922.1(b)(3)) are not in themselves necessary reasons for creating a sanctuary.

Response: While NOAA agrees that an existing or probable threat to a site is an important factor in whether to designate a marine sanctuary, the prime factor to be considered is the area's natural resource and human use values compared to other sites of national significance. The Act provides two criteria for sanctuary designation—preservation and restoration of marine areas for their "conservation, recreational, ecological, or esthetic values." While the Act allows NOAA to restore areas which have been subject to man's impacts, the Act also directs NOAA to preserve special marine areas before they are threatened or harmed by man's activities. Thus, the threat to the area's conservation, recreational, ecological, or esthetic values is only one test NOAA uses in designating sanctuaries.

NOAA also agrees that the research goals and public awareness goals are not by themselves sufficient reasons for establishing a sanctuary. The prime reason for sanctuary designation is always to protect the site's conservation, recreation, ecological, and esthetic values. Sites having such values, however, often provide substantial opportunities for research and public awareness.

(2) Other reviewers suggested that the mission and goals in the proposed regulations represented a major shift in the Program toward giving human use "improper priority " over the protection of an area for its conservation, recreational, ecological or esthetic values. One reviewer stated that the replacement of "preserving or restoring such areas for their conservation, recreational, ecological or esthetic values" (Act, section 302(a)) with "comprehensive management of special marine areas for the long-term benefit and enjoyment of the public" and placing "optimum compatible public and private use" on an equal footing with enhanced resource protection represents a drastic departure from existing regulations and from the spirit of the Act.

Response: As noted in our above response, protection of the area's important natural resource values remains the Program's primary purpose. The mission and goals represent an attempt to balance resource protection with legitimate human uses of the marine environment.

(3) One commenter recommended that the mission and goals section contain a provision stating that the existing regulations of other Federal agencies be incorporated into the National Marine Sanctuary Program. For example, the Department of the Interior regulations governing oil and gas development activities on the Outer Continental Shelf should be the basis for the regulation of such activities located within a marine sanctuary.

Response: Existing regulations of federal and state authorities are considered in determining whether to designate marine sanctuaries and in developing the management framework for such sanctuaries. NOAA has, in many instances, and on a site specific basis, relied upon existing federal and state regulations to preserve or restore a sanctuary's natural resource and human use values when such regulations have been judged to meet the purposes and policies established by Congress in the Act. For example, NOAA has relied upon existing federal and state regulations to control fishing activities within a sanctuary when it has been determined that the interests of other federal and state agencies in managing these activities "are parallel to the interests of NOAA in managing the sanctuary, preserving the stocks and their habitats" (45 FR 65200). Similarly, NOAA has decided not to regulate a variety of activities, ranging from anchoring (46 FR 7942) and safeguarding waterfowl (46 FR 7939) to recreational boating (45 FR 65201) and instead relied upon existing authority. With respect to the few remaining preexisting oil and gas leases within the boundaries of the Channel Islands National Marine

Sanctuary, NOAA relies upon the regulatory authority of several federal and state agencies to fulfill the purposes of sanctuary designation under the Act (15 CFR 935.6). New regulations are promulgated only when necessary to control activities within the sanctuary (section 302(f)).

(4) *Multiple Use.* Several reviewers suggested that NOAA encourage multiple compatible use of sanctuary areas based on the capacity of the marine resource to assimilate various human and natural impacts. One reviewer specifically recommended that the regulations recognize, to the greatest extent possible, that multiple use is one of the objectives of the Sanctuary Program.

Response: NOAA intended to convey that multiple use is encouraged in sanctuaries to the greatest extent possible, as long as such use is compatible with the purposes of the sanctuary. Goals 1 and 4 of the Program has been refined to reflect this intent (§ 922.1(b) (1) and (4)).

Section 922.2—*Definitions.* (1) Several commenters suggested that "regional resource evaluation team" be defined. NOAA was also asked to describe the procedure by which the teams were chosen. One reviewer noted that since the regional teams are discussed in Chapter III.B.1 of the PDP, this discussion should either be restated or referenced in the regulations.

Response: Regional resource evaluation teams represent the teams of scientists chosen by NOAA to make the initial selection of sites based on NOAA's criteria in Appendix 1.

In developing the list of individuals for each regional team, NOAA consulted with federal agencies, universities, and private organizations including oil and gas industry representatives for recommendations on appropriate scientists. The final team members and their affiliations are:

North Atlantic

Dr. Maurice Lynch—Leader, College of William and Mary, P.O. Box 125, Gloucester Point, VA 23062
Dr. H. Perry Jeffries, Graduate School of Oceanography, University of Rhode Island, Narragansett, RI 02881
Dr. Walter Adey, Dir., Marine Systems Laboratory, W3-6 Natural History Museum Bldg., Smithsonian Institution, Washington, D.C. 20560
Dr. Jeffrey Levinton, Dept. of Ecology & Evolution, State University of New York, Stony Brook, NY 11794

Great Lakes

Dr. A. M. Beeton—Leader, Dir., Great Lakes & Marine Waters Center, Univ. of Michigan, 4103 I.S.T. Bldg., 2200 Bonnisteel Blvd., Ann Arbor, MI 48109
Dr. Charles Herdendorf, Dir., OSU Sea Grant Program, Ohio State Univ., 484 W. 12th Ave., Columbus, OH 43210
Dr. Bud Harris, College of Environmental Sciences, Univ. of Wisc., Room E5105, Green Bay, WI 54302
Ms. Carol E. Cummings, Standard Oil of Indiana, Mail Code 3804, 200 E. Randall Dr., Chicago, IL 60607

South Atlantic

Dr. Vernon Henry, Jr.—Leader, Skidaway Institute of Oceanography, University of Georgia, P.O. Box 13687, Savannah, GA 31406
Dr. Dirk Frankenberg, Dir., Marine Science Program, University of North Carolina, 12-5 Venable Hall, Mail Stop 045A, Chapel Hill, NC 27514
Dr. F. John Vernberg, Dir., Belle Baruch Inst. for Marine Biology, University of South Carolina, Columbia, SC 29208
Dr. Harold Wanless, University of Miami RSMAS, 4600 Rickenbacker Causeway, Miami, FL 33149

Gulf

Dr. Thomas Bright—Leader, Dept. of Oceanography, Texas A&M, College Station, TX 77843
Dr. William McIntire, Center for Wetland Resources, Louisiana State University, 1234 Highland Park Dr., Baton Rouge, LA 70808
Dr. David Gettleson, Continental Shelf Association, P.O. Box 3609, Tequesta, FL 33458
Dr. James Ray, Shell Oil, P.O. Box 4320, Houston, TX 77210

Caribbean

Dr. Manuel Hernandez-Avila—Leader, Dir., Dept. of Marine Sciences, University of Puerto Rico, College Station, Mayaguez, PR 00708
Dr. John Ogden, West Indies Laboratory, Fairleigh Dickinson University, P.O. Box 4010, Christiansted, St. Croix, U.S.V.I. 00820

East Pacific

Dr. Paul Rudy—Leader, Dir., Inst. of Marine Biology, University of Oregon, Stillwater Cove, Jenner, CA 95450
Dr. Joel W. Hedgpeth, 5660 Montecito Avenue, Santa Rosa, CA 95404
Dr. Elizabeth Venrick, Assoc. Research Oceanography, Code A-001, Scrips Inst. of Oceanography, La Jolla, CA 92093
Dr. June Lindstedt-Siva, Atlantic Richfield, 515 S. Flower St., Los Angeles, CA 90071
Dr. P. Dee Boersma, Actg. Dir., Inst. of Environmental Studies (FM-12), University of Washington, Seattle, WA 98195

Alaska

Dr. Vera Alexander—Leader, Inst. of Marine Sciences, Univ. of Alaska, Fairbanks, AK 99701
Dr. Lewis J. Haldorson, Asst. Prof., School of Fisheries, University of Alaska, Juneau, AK 99803
Dr. Donald F. Keen, ARCO Alaska, Inc., P.O. Box 360, Anchorage, AK 99510
Dr. Robert Weeden, Prof., Resource Management, University of Alaska, Fairbanks, AK 99701

West Pacific

Dr. Roy Tsuda—Leader, Dean of Graduate Research, University of Guam, UOG Station, Mangilao, Guam 96913
Dr. E. Alison Kay, Prof., Dept. of Zoology, University of Hawaii at Manoa, Honolulu, HI 96822
Dr. Richard C. Wass, Office of Marine Resources, P.O. Box 3730, Pago Pago, American Samoa 96795.

Specific reference is also made to the description of the teams in the PDP at § 922.20(b) (see "comment").

(2) One commenter recommended adding a definition of "marine areas" which incorporates the language of section 320(a) of the Act.

Response: The recommended definition has been added at § 922.2(g).

Subpart B—Site Evaluation List

(1) Several reviewers noted with approval that this section formally abolishes the List of Recommended Areas (LRA). Such reviewers believe that the SEL has the potential to be a much more reponsible mechanism for selecting potential sites. The final regulations should make clear, however, that none of the former LRA sites will receive any further consideration for sanctuary status unless renominated as part of the SEL process. It was also requested that the regulations expressly state that listing on the SEL and later selection as an Active Candidate do not impose any sanctuary regulatory controls.

Response: Sites formally on the LRA receive no sanctuary consideration unless they have been reselected by NOAA and placed on the SEL through the site evaluation process as specified in § 922.20(a). The effect of listing on the SEL or Active Candidate List is described at § 922.21.

(2) Several commenters recommended specific criteria for use in selecting sites for the SEL; the criteria were recommended to ensure that high resource and human use value sites are

selected for the SEL. These commenters noted that if comprehensive and precise SEL criteria are included in the regulations, Appendix 1 can be deleted.

Response: NOAA has incorporated Appendix 1, as revised, into the regulations (see § 922.20(b)). Appendix 1 contains the criteria used initially by the teams and then by NOAA to comprise the SEL. These criteria are quite specific and reflect the range of values intended to be protected by the Act.

It must be noted that more comprehensive and precise criteria than those presented in Appendix 1 are not applicable to the SEL. There is simply not enough information available at the time of SEL selection to analyze in detail other factors besides natural resource and human use values. SEL selection should provide a list of high resource and human use value sites that provide the basis for further consideration. Other concerns are factored in progressively at later stages in the designation process. For example, active candidate criteria are much more specific, focusing not only on natural resource and human use values (see § 922.30(b)).

(3) Another reviewer suggested that the regulations include a specific timetable for selecting sites from the SEL to ensure that sites do not remain on the SEL indefinitely.

Response: While a precise timetable for selection of sites from the SEL cannot be established, § 922.22(a) provides that sites considered but not designated are not replaced on the SEL. Thus, the number of sites on the SEL is reduced over time. All sites remaining on the SEL after 5 years will be reevaluated.

(4) In terms of adding new sites after the SEL is established, several reviewers noted that the regulations should not assume that the selection and designation of marine sanctuaries is a one-time effort. They point out that the program is mandated by Congress "for the purpose of preserving or restoring such [marine] areas for their conservation, recreational, ecological or esthetic values." The reviewers state that the regulations should identify the process that will be followed in designating a marine sanctuary, without implying that this will only happen once or that the program is limited to a set number of sites.

For instance, one reviewer suggested that NOAA periodically review site evaluation lists and recommendations made by federal, state, and local agencies or the interested public. Similarly, another reviewer suggested that once the original SEL is established, regional resource evaluation teams of knowledgeable scientists should periodically determine whether there have been any newly discovered sites that would qualify for inclusion on the list.

Finally, another reviewer suggested a change in the procedures for selecting sites for SEL consideration. In addition to considering for the SEL sites which are important new discoveries, it was suggested that known sites be reconsidered if substantial new information arises which establishes the need to reassess a particular site.

Response: NOAA's intent is to allow new sites to be added to the SEL only if they represent significant new discoveries, or if there is substantial new information establishing the national significance of a known site, which was previously unavailable to the regional resource evaluation teams (see § 922.22(c)).

As noted in the previous above response, any sites remaining on the SEL after 5 years will be reevaluated. If additional sites are required for further sanctuary consideration, § 922.22(b) provides a procedure for initiating a new identification process.

Subpart C—Selection of Active Candidates and the Designation of National Marine Sanctuaries

Active Candidates. (1) One reviewer questioned the relationship between the criteria used for SEL selection and Active Candidate selection. It was suggested that non-ecological factors be taken into account at the SEL selection stage, rather than subsequently at the Active Candidate stage. This would eliminate one step in the process.

Response: SEL selection and Active Candidate selection serve distinct purposes. SEL selection is geared toward choosing sites of high natural resources and human use value. Since sites on the SEL already have a certain requisite level of value, the Active Candidate criteria also take other factors into consideration, including the results of public and agency review and comment during preliminary consultation (§ 922.30(c) and (d)).

(2) Another reviewer suggested that the criteria for Active Candidate selection in the existing regulations (15 CFR Part 922.21, 44 FR 44831 *et seq.* (1979)) be used. Another reviewer suggested revised criteria based partially on those in the original regulations.

Response: More specific criteria for Active Candidate selection have been developed in the regulations. The criteria embodied in the original regulations are not entirely applicable because they do not take the new SEL process and the criteria in Appendix 1 into consideration.

(3) One reviewer suggested publishing notice of preliminary consultation not only in the **Federal Register**, but also in newpapers of general circulation.

Response: Notice of preliminary consultation will be published in newspapers in the local area(s) of concern.

(4) One reviewer suggested that prior to preliminary consultation, and before actual selection of a site as an Active Candidate, that the Assistant Administrator (AA) should request comments for "the appropriate Regional Technical Advisory Groups formed under the Department of the Interior's Outer Continental shelf Advisory Committee."

Response: Since a notice of preliminary consultation is published in the **Federal Register** and in the local area(s) of concern, it is not necessary to specify the Regional Technical Advisory Groups in the regulations. The Department of the Interior is formally provided with opportunities to comment throughout the process.

(5) One reviewer recommended that the regulations be revised to provide that if a potential site is considered for formal designation and designation, "and be approved through the same administrative procedures lending to the original designation. . . ."

Response: This section reflects the terms of the Act (section 302(f)(1)). Sites meeting the identification and selection criteria in Appendix 1 have national significance under the Act. The Act provides that sanctuaries are to be designated based on their conservation, recreation, ecological, and esthetic values. The criteria in Appendix 1 focus on these values; sites selected for the SEL based on these values are therefore deemed to be of national significance. As in the past, activities will be subject to sanctuary regulation only if the regulations are necessary to protect the area's values. Regulatory changes, for activities listed as subject to regulation in the Designation Document, may be made so long as they remain consistent with the Designation and the Administrative Procedures Act. Such changes do not require reapproval by the Secretary of Commerce and the President. Likewise, revisions to the Management Plan can be made as long as they are consistent with the Designation Document.

(4) One reviewer noted that the geographical area encompassed by a proposed site should only include the area necessary to provide adequate protection.

Response: This is fully NOAA's intent.

(5) Several reviewers suggested that the regulations discuss size considerations in more detail in the body of the regulations. Another reviewer suggested that Section III.E.1 of the PDP, discussion NOAA's expectations with respect to maximum size, should be imcorporated into the site identification criteria.

Response: Although no maximum or minimum size limits are established, NOAA expects that the Channel Islands and Point Reyes-Farallon Islands National Marine Sanctuaries, covering 1,252 and 948 square nautical miles respectively, are likely to represent the upper end of the sanctuary size spectrum and that future sanctuaries will be no larger. Size considerations are addressed under the Mission and Goals (§ 922.1(d) and the Active Candidate Criteria (§ 922.30(b)(4)). A reference has also been added to the appropriate discussion in the PDP ("Comment" to § 922.1(d)).

(6) One commenter recommended that in developing sanctuary-specific regulations relating to activities under the jurisdiction of one or more Federal agencies, these regulations should be developed in consultation with the appropriate Federal agency.

Response: Such coordination has always been done as a part of the preliminary consultation process and environmental impact statement development under the National Environmental Policy Act. To emphasize such cooperation further, § 922.31(b) has been modified explicity to include this cooperation

(7) One reviewer suggested that while there is a time limit (90 days) from initiation of preliminary consultation to the date when the AA must select a site as an Active Candidate, there is no limit on the time in which the AA must initiate preliminary consultation. The reviewer claims that without a specific timetable for each step in the designation process, areas would be tied up for an indefinite period of time. It is claimed that this problem is made especially serious if the legal effect of such listing is not clarified. The reviewer requests that a specific time limit within which NOAA must initiate preliminary consideration of areas included on the SEL be established. A related concern is that the regulations do not specify the amount of time within which the AA must either select an Active Candidate for designation or remove it from the SEL.

Response: As noted above, the regulations clarify that such listing imposes no regulatory controls on the use or development of these areas. Thus, the claim that the use of the areas of the SEL will be tied up for indefinite periods is without merit. It is also not possible for NOAA to set precise time limits on when sites from the SEL will be selected as active candidates. NOAA can only consider a few sites at a time, but cannot realistically determine in advance which sites will be selected first and in what order for consideration.

The regulations, at § 922.22(a), do clarify that the entire SEL will be reevaluated in 5 years. As sites on the SEL are selected for preliminary consultation and active candidacy, the SEL will be reduced. Sites selected for active candidate consideration, but later rejected, will not be returned to the SEL, but dropped with a written rationale.

It is also important to point out the advantages of the SEL. It provides a clear picture of the only sites that NOAA can consider for national marine sanctuaries during the lifetime of the SEL (except for the narrow exception specified in § 922.22(c) (concerning new discoveries or new information). Because the sites on the SEL do not have regulatory status and can be selected for active candidacy and further consideration as a marine sanctuary only after NOAA's careful scrutiny in applying the active candidate criteria, preparing an EIS, and seeking public input. NOAA finds that the overall implementation of the designation process will be much more predictable than past procedures. It provides a clear presentation of the sites that can be considered and numerous opportunities for public review.

(8) One reviewer recommended that there be a notice and opportunity for a public hearing before any interim emergency regulations can become effective.

Response: This provision can only be invoked when, consistent with the Administrative Procedure Act, notice and comment are impracticable, unnecessary, or contrary to the public interest (5 U.S.C. 553(b)). Specific procedures for implementing such emergency regulations will be detailed in the site-specific regulations.

(9) One commenter recommended that a Federal mediation process was necessary to handle a situation where several Federal agencies disagree on sanctuary designation or the regulatory requirements which should be imposed.

Response: NOAA has determined that a formal mediation process unique to marine sanctuaries is not needed. If interagency disputes do arise over designation or implementing regulations, the Executive Office of the President can mediate.

(10) With respect to § 922.31(d) and 922.31(a)(2), one reviewer suggested that the term "public" be inserted into these sections to ensure that the meetings are in fact "public meetings."

Response: This has been done.

(11) With respect to § 922.32(e), one reviewer suggested it would be helpful if this section briefly indicated the purpose of the public hearing, as indicated in section 302(e) of the Act.

Response: An explanation has been added.

(12) One reviewer requested that the regulations reflect that the designation of a sanctuary be consistent with an affected state's approved coastal management program.

Response: This has been done, see § 922.32(a)(1).

(13) One reviewer suggested that specific provisions be added for withdrawal of designation.

Response: NOAA does not have sufficient guidance, either in the statute or from the legislative history, on which to base a process for withdrawing sanctuary designation since the statute and legislative history only speak to designating national marine sancturies.

APPENDIX 1—Several commenters suggested detailed changes to this Appendix.

Response: Appendix 1 has been revised and is incorporated into the regulations § 922.20(b). Appendix 2 has been deleted.

V. Other Actions Associated with the Notice of Final Rulemaking

(A) Classification Under Executive Order 12291

NOAA has concluded that these regulations are not major "rules" within Section 1(b) of Executive Order 12291 because they will *not* result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or

(3) Significant adverse effect on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to complete with foreign-based enterprises in domestic or export markets.

The final rules amend existing procedures by providing greater selectivity and specificity in initially identifying and processing potential national marine sanctuaries in accordance with the Program Development Plan for the National Marine Sanctuary Program. These rules establish a revised process for

identifying, designating, and managing national marine sancturies. They will not result in any direct economic or environmental effects nor will they lead to any major indirect economic or environmental impacts. They are intended to reduce delay and uncertainty in the site selection and approval process.

(B) Regulatory Flexibility Act Analysis

A Regulatory Flexibility Analysis is not required for this notice of proposed rulemaking. The regulations set forth procedures for identifying, selecting, and, if designated, managing national marine sanctuaries. These rules do not directly affect "small government jurisdictions" as defined by Pub. L. 96-354, the Regulatory Flexibility Act, and the rules will have no direct effect on small businesses.

(C) Paper Work Reduction Act of 1980 (Pub. L. 96-511)

These regulations will impose no information collection requirements of the type covered by Pub. L. 96-511.

(D) National Environmental Policy Act

NOAA has concluded that publication of these rules does not constitute a major Federal action significantly affecting the quality of the human environment. Therefore, an environmental impact statement is not required.

List of Subjects in 15 CFR Part 922

Administrative practice and procedure, Environmental protection, Marine resources, Natural resources.

(Federal Domestic Assistance Catalog Number 11.419 Coastal Zone Management Program Administration)

Dated: May 24, 1983

K. E. Taggart,

(Acting) Assistant Administrator for Ocean Services and Coastal Zone Management.

Accordingly, it is proposed that 15 CFR Part 922 by revised as follows:

PART 922—NATIONAL MARINE SANCTUARY PROGRAM

Subpart A—General

Sec.

922.1 Mission and Goals.
922.2 Definitions.
922.10 Effect of National Marine Sanctuary Designation.

Subpart B—Site Evaluation List (SEL)

922.20 Purpose of the Site Evaluation List.
922.21 Effect of Placement on the SEL or Selection as an Active Candidate.
922.22 SEL Time Frame and Consideration of New Sites.

Subpart C—Selection of Active Candidates and the Designation of National Marine Sanctuaries

Sec.

922.30 Selection of Active Candidates.
922.31 Designation Process.
922.32 Coordination with States.

Subpart D—Enforcement

922.40 Applicable Procedures.

Appendix 1—National Marine Sanctuary Site Identification and Selection Criteria.

Authority: Title III, Public Law 95-532, as amended (16 U.S.C. 1431-1434).

Subpart A—General

§ 922.1 Mission and goals.

(a) The mission of the National Marine Sanctuary Program (Program) is the establishment of national marine sanctuaries for the purpose of preserving or restoring such areas for their conservation, recreational, ecological, or esthetic values. Designated sanctuaries should be illustrative of the nation's marine areas. Decisions to designate areas as national marine sanctuaries are based on an evaluation of the area's intrinsic natural resource and human use values and the impacts of various activities on these values.

Note.—Section 302(a) of the Act permits the Secretary of Commerce, with the approval of the President, to designate ocean areas as marine sanctuaries for "the purpose of preserving or restoring such areas for their conservation, recreational, ecological, or esthetic values." Decisions to designate an area are therefore based on the area's intrinsic values. For purposes of analysis, these regulations use the term "natural resource and human use values" to equate to the statutory language of "conservation, recreation, ecological, or esthetic values." The term "natural resource" value is synonymous with the "ecological" values referred to in the statute. The statute's terms "conservation," "recreational," and "esthetic" values are covered in the regulations as "human use values." The criteria for sanctuary identification and selection which are categorized into natural resource and human use values, are therefore based on the statute's terms "conservation, recreational, ecological, or esthetic values."

(b) The goals of the Program are to carry out this mission by designating national marine sanctuaries to:

(1) Enhance resource protection through the implementation of a comprehensive, long-term multiple use management plan tailored to the specific resources;

(2) Promote and coordinate research to expand scientific knowledge of significant marine resources to improve management decisionmaking in marine sanctuaries;

(3) Enhance public awareness, understanding, and wise use of the marine environment through public interpretive and recreational programs; and

(4) Provide for multiple compatible public and private use of special marine areas.

(c) The National Marine Sanctuary Program will seek maximum public participation throughout all the stages that may lead to the designation of a sanctuary.

(d) Sanctuary size, while highly dependent on the nature of the site's resources, will be no larger than necessary to ensure the sanctuary's effective management. Sanctuaries will be limited to relatively small, geographically discrete marine areas. NOAA intends that the maximum size will not exceed that of the largest existing marine sanctuary at the time of the effective date of these regulations.

Note.—The criteria for active candidate selection explicitly includes size considerations in § 922.30(b)(4). The SEL selection criteria also includes size considerations under "Management Concerns" (Appendix 1.A. IV.).

§ 922.2 Definitions.

(a) "Act" means Title III of the Marine Protection, Research and Sanctuaries Act of 1972, as amended, 16 U.S.C. 1431-1434.

(b) "Active Candidate" means a site selected by NOAA from the Site Evaluation List for further consideration leading to sanctuary designation.

(c) "Affected State" means any State in which a proposed marine sanctuary includes waters lying within the territorial limits of that State or superjacent to the subsoil and seabed within the seaward boundary of that coastal State.

(d) "Administrator" means the Administrator of the National Oceanic and Atmospheric Administration, United States Department of Commerce.

(e) "Assistant Administrator" (AA) means the Assistant Administrator for Ocean Services and Coastal Zone Management, National Oceanic and Atmospheric Administration, United States Department of Commerce, or his/her successor or designee.

(f) "Human use values", as used in these regulations, equates to the statutory language of "conservation," "recreational," and "esthetic" values (section 302(a)).

(g) "Marine areas" means those areas of the ocean waters, as far seaward as the outer edge of the Continental Shelf, as defined in the Convention of the Continental Shelf (15 U.S.T. 74; TIAS 5578), of other coastal waters where the

tide ebbs and flows, or of the Great Lakes and their connecting waters.

(h) "National marine sanctuary" means a marine area, as defined above in paragraph (g), which is designated for the purpose of preserving or restoring such area for its conservation, recreational, ecological or esthetic values, as provided by section 302(a) of the Marine Protection, Research, and Sanctuaries Act of 1972.

(i) "Natural resource values" refers to the "ecological" values specified in the Act (section 302(a)).

(j) "Person" means any private individual, partnership, corporation, or other entity; or any officer, employee, agent, department, agency or instrumentality of the Federal government, or any State, local or regional unit of government.

(k) "Secretary" means the Secretary of the United States Department of Commerce.

(l) "Site Evaluation List" (SEL) means that list of high natural resource and human use value sites established by the AA as qualifying for further evaluation as national marine sanctuaries.

§ 922.10 Effect of national marine sanctuary designation.

The designation of a national marine sanctuary, and the management plan implementing it (including regulations, if applicable), are binding on any person subject to the jurisdiction of the United States. Designation does not constitute any claim to territorial jurisdiction on the part of the United States, and the management plan implementing it applies to foreign citizens only to the extent consistent with recognized principles of international law or otherwise authorized by international agreement.

Subpart B—Site Evaluation List (SEL)

§ 922.20 Purpose of the Site Evaluation List.

(a) The List of Recommended Areas (LRA) is abolished. Sites on the prior LRA have no further status under these regulations, unless the site has been reselected and placed on the Site Evaluation List (SEL), as provided in § 922.22.

(b) In place of the LRA, the Assistant Administrator (AA) will establish a Site Evaluation List comprising the most highly qualified marine sites identified and recommended by the regional resource evaluation teams in accordance with the Program's mission and goals set forth in § 922.1 and the site identification and selection criteria described in Appendix 1, which is incorporated into these regulations.

Note.—Procedures for SEL site identification and description of the regional resource evaluation teams (teams) are discussed in Chapter III.B of the Program Development Plan (PDP). The site identification criteria used by the teams and the criteria for SEL selection by NOAA are the same and are provided in Appendix 1. The teams' identification of sites for the SEL was based primarily on the area's natural resource values and human use values (See Appendix 1.A I and II). Sites recommended to NOAA for inclusion on the SEL were accompanied by a written analysis of the sites' natural resources and human use values. Sites from the Alaskan region are not included in the current SEL. NOAA's selection of sites for the SEL will be based on the area's natural resource and human use values, the potential activity impacts, and management concerns, including to the extent feasible, a preliminary consideration of the economic effects of sanctuary designation. (See Appendix 1.A. III and IV).

(c) After a preliminary analysis of the sites based on the criteria in Appendix 1, NOAA will publish a notice of availability of sites proposed for listing on the SEL in the **Federal Register.** These sites will be subject to a ninety-day comment period. At the conclusion of the comment period, NOAA will publish the final SEL in the **Federal Register,** based on the selection criteria and the public comments. For each site on the SEL, NOAA will prepare a written analysis of the site describing its values relative to the selection criteria in Appendix 1. Such analysis becomes part of the administrative record for that site.

(d) The SEL serves as NOAA's working list for future marine sanctuary sites; only sites on the SEL may be considered for subsequent review as active candidates for designation. Thus, the SEL provides a pool from which potential sanctuaries are considered.

§ 922.21 Effect of placement on the SEL or selection as an active candidate.

Placement of sites on the SEL or selection for further consideration as active candidates does not subject such sites to any regulatory controls under Federal law. Such regulations may only be established after designation, as provided under § 922.31.

§ 922.22 SEL time frame and consideration of new sites.

(a) As sites are designated as marine sanctuaries or rejected from further consideration, they will be removed from the SEL. Rejected sites will not be replaced on the SEL. Sites remaining on the SEL after a 5 year period will be reevaluated.

(b) If after the 5-year reevaluation, it is determined that a new SEL is necessary, notice of the initiation of a new SEL identification process will be published in the **Federal Register** at least twelve (12) months in advance. NOAA will reevaluate the prior SEL process, including the team approach, and determine, after public comment, how to design and implement a new site selection process.

(c) Unless a new identification process is established as provided in paragraph (b) of this section, the AA will consider future recommendations of potential sanctuary sites only if such sites are important new discoveries or if substantial new information previoulsy unavailable establishes the national significance of a known site. NOAA will determine, in consultation with appropriate scientists, resource managers, and other interested parties, and after public review, whether such sites meet the selection criteria specified in Appendix 1. Qualified sites will be placed on the Site Evaluation List for further evaluation as national marine sanctuaries, consistent with the procedures set forth in these regulations.

Subpart C—Selection of Active Candidates and the Designation of National Marine Sanctuaries

§ 922.30 Selection of active candidates.

(a) Only a limited number of sites at one time will be selected from the SEL as active candidates and further evaluated for sanctuary designation.

(b) The AA will select sites from the SEL for Active Candidate consideration based on the evaluation contained in the written analysis developed in accordance with § 922.20(c), as well as the following additional factors:

(1) A primary reason for considering a site for marine sanctuary designation is the area's high natural resource and human use values. When selecting an active candidate, NOAA considers the site's relative contribution to the Program's mission and goals;

(2) A consideration of the immediacy of need for sanctuary designation based on the present or potential threats to resources, and the vulnerability of the resources. Consideration will also will be given to the cumulative effect of various human activities that individually may be insignificant.

(3) An evaluation of the benefits to be derived from sanctuary designation, including an assessment of the site's natural resource and human use values, the adequacy of existing management or regulatory regimes for protecting these resources, and the effectiveness of

NOAA's proposed management program.

(4) A consideration of the present feasibility of sanctuary designation in light of the sanctuary's size, requirements for managing the site, program staffing, and fiscal constraints; and

(5) An initial consideration of the economic impacts and benefits of sanctuary designation, including a consideration of the range of public and private uses which may be consistent with sanctuary designation.

(c) Before selecting a site as an active candidate, the AA shall undertake preliminary consultation on the considerations described in paragraph (b) of this section with relevant local, state, and Federal government agencies and appropriate regional fishery management councils. The AA also shall request comments from the public and any relevant international agencies. NOAA's written analysis described in § 922.20(c) will be provided for review. Notice of such preliminary consultation shall be published in the **Federal Register** and in newspapers in the area(s) of local concerns.

(d) Within 180 days of initiating preliminary consultation, the AA shall determine whether to select the site as an active candidate and publish a notice of this determination in the **Federal Register.** If the site is not selected, a short statement of the reasons for the negative determination shall be specified in the notice.

§ 922.31 Designation process.

(a) After selecting a site as an active candidate, the AA shall prepare a draft designation document, including the terms of the designation, and draft management plan to implement the designation in consultation with relevant Federal, state, and local agencies, Regional Fishery Management Council members, and other interested persons. Management plans generally shall include sections on: Goals and objectives, management responsibilities, resource studies, interpretive and educational programs, public and private uses consistent with sanctuary designation, and regulations (where applicable). A draft environmental impact statement (DEIS) will be prepared on the designation document and management plan, including draft regulations if applicable. The Plan and the EIS will be prepared in as timely a manner as possible allowing for maximum public input. The time period between active candidate selection and recommendation of the site to the Secretary for designation is not to exceed three (3) years, unless the AA determines that additional time is needed for public discussion.

(b) The terms of designation shall include the geographic area included within the Sanctuary; the characteristics of the area that give it conservation, recreational, ecological, or esthetic values; and the types of activities that will be subject to regulation in order to protect those characteristics. The terms of the designation may be modified only by the same procedures through which the original designation was made. If regulations are promulgated, they shall be consistent with and implement the terms of the designation. Regulations relating to activities under the jurisdiction of one or more other Federal agencies will be developed in consultation with these agencies. All amendments to these regulations must remain consistent with the designation.

(c) Early in the development of the sanctuary documents and the DEIS, public meetings shall be held in the area or areas most affected to solicit public and government agency input on the significant issues related to the proposed action.

(d) The AA will publish the draft designation document and a summary of the management plan including the draft regulations, where applicable, in the **Federal Register.** The **Federal Register** notice shall be published concurrently with the Environmental Protection Agency (EPA) Notice of Availability of the DEIS. Not less than 30 days after publication of the applicable documents, the AA shall hold at least one public hearing in the area or areas most affected by the proposed designation in accordance with section 302(e) of the Act.

Note.—Section 302(e) of the Act provides that before a sanctuary is designated, public hearings must be held in the coastal areas which would be most directly affected by such designation. The purpose of the hearings is to receive and give proper consideration to the views of any interested party.

(e) After publication of a final environmental impact statement, and final consultation with all appropriate Federal agencies, including the Departments of State, Defense, the Interior, Transportation, Energy, and the Environmental Protection Agency, the Secretary shall transmit the proposed designation to the President for approval. Where sites include state waters, the applicable documents will be sent to the Governor of the State for final consultation, as provided under paragraph (h) (1) of this section.

(f) The AA shall announce the designation of a Sanctuary and publish the designation document and implementing regulations in the **Federal Register.**

(g) A designation shall become effective unless either: (1) The governor of any affected State, as defined in § 922.2(c) certifies to the Secretary, before the end of the sixty-day period beginning on the date of the publication of the designation, that the designation or any of its terms described in paragraph (b), of this section are unacceptable to the state, in which case those terms certified as unacceptable will not be effective in the waters described in § 922.2(c) until the Governor withdraws his/her certification of unacceptability; or

(2) Both Houses of Congress adopt a concurrent resolution consistent with section 302(h) of the Act, within sixty calendar days of continuous session of Congress after the date on which the designation was transmitted, which disapproves the designation or any of its terms described in paragraph (b) of this section.

(h) After the designation becomes effective, and where essential to prevent immediate, serious and irreversible damage to the resources of a sanctuary, activities other than those listed in the designation may be regulated within the limits of the Act on an emergency basis for an interim period not to exceed 120 days, during which time an appropriate amendment of the terms of the Designation will be sought by the Secretary.

Note.— Specific emergency procedures will be provided in the regulations implementing individual sanctuaries.

§ 922.32 Coordination with States.

(a) The AA shall make every effort to consult and cooperate with affected states throughout the entire national marine sanctuary review and designation process. In particular the AA shall:

(1) Consult with the relevant state officials prior to selecting any site on the SEL as an Active Candidate, pursuant to § 922.30, especially concerning the relationship of any site to state waters and the consistency of the proposed designation with an approved State Coastal Zone Management Program. For purposes of consistency review by States with federally-approved coastal management programs, designation of a national marine sanctuary is deemed to be a Federal activity which directly affects the State's coastal zone and must be undertaken in a manner consistent to the maximum extent practicable as provided by section 307(c)(1) of the Coastal Zone Management Act of 1972.

as amended, and implementing regulations at 15 CFR Part 930 *et seq.*

(2) Ensure that any relevant state agency is consulted prior to holding any public meeting pursuant to § 922.31(d) or public hearing pursuant to § 922.31(e).

(3) Provide the Governor an opportunity to certify the designation as unacceptable as specified in § 922.31(h)(1).

(b) In accordance with section 302(f)(4) of the Act, where the need arises and a state agency possesses appropriate law enforcement capabilities that could assist the AA in carrying out the Act's responsibilities, state law enforcement officers may be deputized as Federal law enforcement agents and authorized to enforce those provisions of the Act and applicable regulations for the specific sanctuary.

Subpart D—Enforcement

§ 922.40 Applicable procedures.

NOAA will apply to all enforcement matters under the Act the consolidated civil procedure regulations, set forth at 46 FR 61643 (1981) (to be codified at 15 CFR 904.100 through 904.273), and the seizure, forfeiture, and disposal procedure regulations set forth at 46 FR 31648 (1981) (to be codified at 50 CFR Part 219).

Appendix 1—National Marine Sanctuary Site Identification and Selection Criteria

During the summer of 1981, the National Marine Sanctuary Program draft Site Identification and Selection Criteria were reviewed and refined by three marine scientists: Drs. Walter H. Adey, Rezneat M. Darnell, and G. Carlton Ray. Taking their recommendations into consideration, the criteria presented below were developed.

The criteria are directly related to the Program's mission and goals, see § 922.1. The criteria are grouped into four categories: (1) Natural resource values; (2) human use values; (3) potential activity impacts; and (4) management concerns. The criteria under each category reflect concerns significant to the Program.

The site identification and selection process is discussed in detail in the PDP, chapter III. The regional resource evaluation teams (teams), convened to recommend to NOAA areas for SEL consideration, focused on the (1) natural resource value and (2) human use value criteria (represented in sections I and II, below). These criteria are designed to insure that sites recommended to NOAA for SEL consideration have high natural resource and human use values.

In selecting sites for the SEL, NOAA also considers to the extent such information on the site is available, potential activity impacts and management concerns (as presented in sections III and IV, below). NOAA's selection of sites for the SEL is only the first of several determinations before sanctuary designation or subsequent rejection of a site as not qualified for sanctuary status. [At the SEL stage NOAA's prime focus is on the site's natural resource and human use values.] The presence of such high values is a requisite or "minimum" requirement for NOAA's further consideration since the Act requires that sanctuaries be designated based on the site's "conservation, recreational, ecological, or esthetic values" (section 302(a)). Other, more specific issues are factored into NOAA's decision whether to select a site as an active candidate (see Subpart C of the regulations).

I. Natural Resource Values

A. *Subregional Representation*

The area under consideration is representative of the biogeographic subregion in which it is located (Reference: Sanctuary Program Classification System in the PDP).

Examples: This criterion would apply to an area containing species assemblages which are especially characteristic of the Oregonian subregion of the British Columbian region. Another example would be an area containing species assemblages which are especially characteristic of the Floridian or American Atlantic Antillean subregion of the West Indian region.

B. *Community Representation*

The area under consideration is significant in relation to the ecological communities which are found within the specified habitat type or within the biogeographic region or subregion (i.e., on a macroscale, communities as assemblages of species populations within a prescribed area or habitat).

Examples: (1) The wide spectrum of marine habitats in the Channel Islands National Marine Sanctuary in California created by accentuated bottom relief, varied bottom substrates, and gradation in water depth from island shorelines to deep coastal basins support a variety of ecological communities.

(2) Coral reef, grass bed, soft bottom, and open-bay habitat areas in the Key Largo National Marine Sanctuary support a variety of ecological communities associated with the east Florida reef tract.

C. *Biological Productivity*

The area under consideration is significant in relation to its level of primary and/or secondary production.

Examples: (1) East Breaks at the edge of the outer continental shelf off Corpus Christi, Texas, is characterized by intense local upwelling, high primary productivity, and exceptional fish production.

(2) In the Gray's Reef National Marine Sanctuary, much production may be imported; outcroppings of limestone rocks may serve to entrap, conserve, and circulate detritus and plankton which provide energy sources for reef invertebrates, which in turn support marine fisheries and sea turtles.

(3) In the Channel Islands National Marine Sanctuary, the cold waters of the California Current flowing south meet the warm waters of the California Counter Current flowing north to create upwellings of cold nutrient-rich waters that enhance the biological productivity of the area.

Note.—This example also meets Criterion I.F.)

(4) In many cases, coral reefs are not only energetically self-sustaining (i.e., they produce locally enough food to support the community), but they are also specifically organized to entrap, hoard, and recycle materials received from the surrounding waters (i.e., products that are imported and conserved).

D. *Biotic Character/Species Representation*

The area under consideration is of special interest because it supports:

(1) Ecologically limited species;

(2) Ecologically important species; or

(3) Unique species associations or biological assemblages.

Examples: (1) This criterion would apply to marine habitat areas upon which ecologically limited species (e.g., threatened, endangered, rare, depleted, endemic, or peripheral species) are dependent during all or part of their lives.

(2) This criterion would apply to marine areas containing species which contribute in a significant way to the maintenance of a specified ecosystem found in the region or subregion, such as the Channel Islands National Marine Sanctuary which supports one of the largest and most varied assemblages of marine mammals and seabirds in the world.

(3) The waters of Point Lobos, California, support a unique assemblage of kelp, sea urchin, abalone, and sea otters.

(4) Submarine canyons support unusual biological communities of soft corals, crustaceans, and fish, and are known as "pueblo villages."

(5) This criterion would also apply to wide sandy bottom areas which are characterized by low productivity, but unique species composition, such as certain areas off central texas.

E. *Species Maintenance*

The area under consideration is important to life history activities, including special feeding, courtship, breeding, birthing/nursery, resting/wintering, and migration areas.

Examples: (1) The waters off the Point Reyes-Farallon Islands provide deep and shallow water feeding areas for a wide variety of marine organisms, including seabirds, marine mammals, and marine fisheries. The Farallon Islands support the largest seabird rookeries in the contiguous United States and are used, along with the mainland, by California sea lions, harbor seals, and elephant seals for hauling out and pupping purposes. Whales, including several endangered species, and porpoise pass through the sanctuary on annual migrations.

(2) The waters around certain Hawaiian Islands are important wintering, birthing/nursery, and perhaps courtship/breeding areas for endangered whales.

(3) Spiny lobster migration routes off Florida are important for the "off shelf" movement of this species.

(4) The mouth of the Mississippi River is an important brown shrimp over-wintering ground.

F. *Ecosystem Structure/Habitat Features*

The area under consideration is characterized by special chemical, physical, and/or geological habitat features.

Examples: (1) The Florida Middle Grounds on the Gulf of Mexico continental shelf represent an unusual geological formation—a drowned Pleistocene reef—which supports rich and diverse reef communities.

(2) Transition zones occur where two different marine systems converge—such as at coastal/marine system interfaces, shelf/slope interfaces, soft bottom/hard bottom ecotones, or cold water/warm water current convergence zone. These areas of mixing often have unique physical and ecological characteristics, high production, and species diversity/population densities which are often greater than in areas flanking them. For example, a transition zone is formed near Cape Hatteras where cold northern waters of the Labrador Current mix with warm water eddies of Gulf Steam/Florida Current and as a result, northern and southern species mix and co-exist with species endemic to the area.

Note.—This example also meets Criterion I.C.)

(3) Easternmost coastal areas of Maine—with unique bay-heads and rocky coasts, varied substrates derived from glacial materials, extensive sub-fjord character, and numerous offshore islands—are matched by few areas in the world in habitat types and species diversity.

II. Human-Use Values

A. *Fishery Resources of Recreational Importance*

The area under consideration contains fish and shellfish species, species groups (e.g., snapper-grouper complex), or fishery habitats which are important to the recreational fishing industry/community and for which conservation and management are in the public interest.

B. *Fishery Resources of Commercial Importance*

The area under consideration contains fish and shellfish species, species groups (e.g., snapper-grouper complex), or fishery habitats which are important to the commercial fishing industry and for which conservation and management are in the public interest.

C. *Ecological/Esthetic Resources of Importance for Recreational Activities Other Than Fishing*

The area under consideration contains exceptional natural resources and features which, because of their importance to nature watching and other nonconsumptive recreational activities, enhance human appreciation, understanding, and enjoyment of nature.

Examples: (1) Rocky shorelines, shallow nearshore waters, and intertidal pools in the Channel Islands and Point Reyes-Farallon Islands National Marine Sanctuaries have rich and varied plant and animal life which attract many persons interested in photography and nature study.

(2) The prominent topography around the Channel Islands and Point Reyes-Farallon Islands National Marine Sancturaies provides outstanding ocean vistas.

(3) The spectacular spur-and-groove coral reef formation in the Looe Key National Marine Sanctuary attracts SCUBA and snorkeling enthusiasts from all over the world.

(4) The waters off Maui, Hawaii, are popular for humpback whale watching.

D. *Research Opportunity*

The area under consideration provides exceptional opportunities for research in marine science and resource management.

Examples: (1) The Gray's Reef National Marine Sanctuary serves as a natural laboratory or control area for research in live bottom ecology.

(2) The Key Largo National Marine Sanctuary is amenable to onsite research activities for many reasons, including the diversity of resources available, the past history of scientific research and education in the area, the compatibility with similar research efforts in adjacent John Pennekamp State Park and Biscayne National Park, and the proximity of the site to user groups. In addition, the Carysfort Reef Lighthouse provides a unique research base from which to launch studies concerning the sanctuary environment.

(3) The Channel Islands National Marine Sanctuary offers a special opportunity to coordinate research with the Channel Islands National Park. Such coordination will contribute to a better scientific understanding of the marine environment and to more effective management by answering questions such as those related to fisheries, marine mammals, seabirds and those related to development and use of marine resources.

E. *Interpretive Opportunity*

The area under consideration provides an excellent opportunity to interpret the meanings and relationships of special marine resources in order to enhance general understanding, appreciation, and wise use of the marine environment.

Examples: (1) Through a variety of interpretive media, including aquaria displays, narrated slide shows and glassbottom boat tours, a visitor to the Key Largo National Marine Sanctuary is exposed to a variety of marine and coastal ecosystems, including open ocean, fringing coral reefs, patch reefs, mangroves, open bay, and barrier islands.

(2) The Channel Islands National Marine Sanctuary provides an exceptional opportunity to interpret marine and insular ecosystem features through the use of various interpretive "hands on" techniques that go beyond tradition educational tools, such as brochures and pamphlets.

F. *Historical, Archaeological or Paleontological*

The area under consideration contains (or is likely to contain) submerged remnants of past life that are of special historical, cultural or paleontological value.

Examples: (1) This criterion would apply to marine areas where known or possible shipwrecks, armaments, or other maritime relics occur and where protection is desirable to conserve or restore esthetic values and to advance the goal of the United States antiquities laws to protect historical resources.

(2) This criterion would apply to marine areas containing, or suspected of containing, remnants of historic human occupation by Indians, Eskimos, early Americans, or other peoples.

(3) This criterion would apply to marine areas containing fossils and geological formations whose study would reveal clues to the Earth's geologic history, the characteristics of ancient environments and the relationship of ancient plants and animals to the Earth's evolutionary history.

Additional Factors in Site Identification and Selection

III. Potential Activity Impacts

Many marine areas are subject to human use, some of which bring adverse pressures to bear on the natural resources. Where applicable, initial identification of potential marine sanctuary areas includes a summary of existing and potential human activities in these areas as well as a preliminary assessment of environmental impacts. To the extent such information is available, NOAA's selection of sites for the SEL will consider impacts of human activities on the area's natural resource and human use values, as well as the impacts of site selection on human activities already taking place within the site.

IV. Management Concerns

A. *Relationship to Other Programs*

While some sanctuaries may be designated to protect resources not currently managed by other existing programs (e.g., the *U.S.S. MONITOR* on the continental shelf off North Carolina), most recommendations involved cooperation with some other Federal, State, local agency or organization. The ability of existing regulatory mechanisms to protect the values of the area and the contribution of the Sanctuary Program to that existing management effort may be an important factor in selecting sanctuary candidates. Depending on the location, the resource, and the existing system, the Program could either complement the status quo by filling specific gaps or form a management umbrella over a fragmented system to help coordinate and strengthen diverse, but related efforts. At different sites, NOAA may work to complement other pograms' efforts such as estuarine sanctuaries, national parks, wildlife refuges, or state preserves, among others. There may be instances where NOAA's primary contribution to protection of special marine areas will be in the form of enhanced public awareness through interpretive and research programs.

B. *Management of a Conservation Unit*

Optimum size of a marine sanctuary is an issue to be considered in potential sanctuary sites. The size or extent of a marine sanctuary should be a cohesive conservation unit amenable to effective management given fiscal and staff constraints of the managing entities.

C. *Accessibility*

Since national marine sanctuaries are to be readily available for public use, when use is compatible with the sanctuary's goals and objectives, consideration should be given to

factors which limit or enhance public access to a particular site.

D. *Surveillance and Enforcement*

Another issue to be considered when evaluating a potential sanctuary site is the degree to which the area lends itself to adequate enforcement and surviellance and the capabilities of responsible agents (e.g., U.S. Coast Guard, state law enforcement divisions, or the like). This depends on the location, its size, and the types or resources involved. Consideration is also given to: (1) Degree of surveillance/enforcement presence needed in the area—light, medium, or heavy; (2) schedule—routine, prescribed, or case-by-case basis; and (3) logistics—vessels, aircraft, manpower, equipment, and budgetary requirements.

E. *Economic Considerations*

The designation of a national marine sanctuary may have economic effects at both local and national levels. Prior to the development of a management plan for a particular site which describes the uses and activities which may take place within a sanctuary, it is difficult to calculate fully the economic impact of sanctuary designation. It is also difficult to determine, at the SEL stage, the economic benefits of the sanctuary to society as a whole based on such considerations as public use, and research and interpretive values which will also be fully described in a management plan. Sanctuary designation may, in some cases, enhance economic value by insuring long-term protection for commercially significant resources, such as commercial or recreational fish stocks, vital habitats, and resources which generate tourism. Conversely, a designated marine sanctuary may have negative economic impacts if management regulations unduly restrict commercial activities.

To the extent, feasible, a decision to include a proposed site on the SEL will take into consideration the ecomonic effects of sanctuary designation. As consideration of a particular site progresses through the designation process, more information will be developed and analyzed concerning the economic efforts to sanctuary designation.

[FR Doc. 83-14326 Filed 5-27-83; 8:45 am]

BILLING CODE 3510-08-M

federal register

Tuesday
May 31, 1983

Part V

Department of Health and Human Services

Health Care Financing Administration

Medicare Program; Payment for Physician Services Furnished in Hospitals, Skilled Nursing Facilities, and Comprehensive Outpatient Rehabilitation Facilities; Final Rule; Delay in Effective Date

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 405

Medicare Program; Payment for Physician Services Furnished in Hospitals, Skilled Nursing Facilities, and Comprehensive Outpatient Rehabilitation Facilities

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

ACTION: Final rule; delay in effective date.

SUMMARY: This rule implements a delay in the effective date of a final rule with comment period that appeared in the Federal Register on March 2, 1983. That rule revised the regulations that govern Medicare coverage and reimbursement for services of physicians who practice in providers and, as published, was to be generally effective on May 31, 1983.

Due to the provisions of Pub. L. 98–21 (Social Security Amendments of 1983; enacted April 20, 1983) and comments we have received, we are delaying the effective date of the regulations concerning provider-based physicians until October 1, 1983.

EFFECTIVE DATE: The rules published March 2, 1983 are effective for physician services furnished on or after October 1, 1983.

FOR FURTHER INFORMATION CONTACT: Leonard Peshkin, (301) 594–1115.

SUPPLEMENTARY INFORMATION:

I. Background

On March 2, 1983, we published in the Federal Register (48 FR 8902) a final rule with comment period that set forth regulations governing Medicare reimbursement of services furnished by provider-based physicians. Generally, those regulations were to be effective for services furnished on or after May 31, 1983.

However, 42 CFR 405.550(e), which requires the overhead incurred by leased departments to be reimbursed on a reasonable cost basis through the provider, contains provisions indicating that it would be applied for services furnished under lease agreements established on or after July 1, 1966, effective June 30, 1983, and for services furnished under lease agreements established before July 1, 1966, effective March 2, 1985. Those time frames provided 120 day and 2 year delays from the date of publication respectively, during which parties may renegotiate lease arrangements if they believe it is necessary or appropriate. The 2 year delay was granted to providers that had longstanding lease arrangements predating Medicare to allow adequate time for the parties to the lease to adjust their arrangements in a manner that ensures that delivery of services is not disrupted and that the providers can be adequately reimbursed for services they furnished to Medicare patients.

II. Delay of Effective Date

Since publication of the final rules on reimbursement for physician services in providers, Congress enacted Pub. L. 98–21 (Social Security Amendments of 1983). Title VI of this law, enacted April 20, 1983, establishes a system of prospective payment for Medicare inpatient hospital services effective with hospital cost reporting periods beginning on or after October 1, 1983. Basically, this system will reimburse hospitals on the basis of prospectively determined rates. Currently, Medicare payment amounts to hospitals are retrospectively determined based upon the hospitals reasonable costs, subject to certain limits.

The regulations implementing the prospective payment system will affect some of the same operating procedures that the provider-based physician regulations affect. Since the prospective payment system regulations will be in place by October 1, 1983, we believe that it would be advantageous to all parties to delay until October 1, 1983, the implementation of the regulations published March 2, 1983.

Delaying the effective date will also reduce the burden placed on Medicare contractors. Instead of implementing separate operating instructions, and system changes for both the provider-based physician rules and the prospective payment system rules, some of which would overlap, the contractors will be responsible for implementing only one set of instructions and system changes for both rules.

In addition, we have received many comments concerning the comparatively short amount of time (120 days, in most cases) allowed for renegotiation of lease and other arrangements. Commenters have indicated that it is unlikely that these renegotiations will be completed by the current effective date and, in any case, would be an added burden to physicians and providers.

For these reasons, we believe that a delay in the effective date of the regulations governing payment for physicians services furnished in hospitals, skilled nursing facilities (SNFs), and comprehensive outpatient rehabilitation facilities (CORFs), until October 1, 1983, would be both practical and in the best interest of the public and the Medicare program.

In the March 2, 1983 Federal Register document, we invited comments on all the new issues (such as combined billing) that were raised in that document that were not addressed in the notice of proposed rulemaking for these regulations published September 30, 1982 (47 FR 43578). We will be publishing a final rule in the near future that will respond to all the comments we have received on the combined billing issue and other new issues raised in the preamble of the final rule with comment period.

III. Impact Analysis

A. Executive Order 12291

Executive Order 12291 requires us to prepare and make available to the public a regulatory impact analysis for any regulations likely to result in an annual effect on the economy of $100 million or more, cause a major increase in costs or prices, or meet other threshold criteria specified in section 1(b) of the Order. We have determined that this rule does not meet the criteria of a "major rule" in section 1(b). Therefore, a regulatory impact analysis is not required.

B. Regulatory Flexibility Act

The Secretary certifies, under 5 U.S.C. 605(b), as enacted by the Regulatory Flexibility Act (Pub. L. 96–354), that this rule will not have a significant impact on a substantial number of small entities. That Act requires us to prepare and make available to the public a regulatory flexibility analysis under 5 U.S.C. 603(b), unless the Secretary so certifies. The purpose of the analysis would be to explain the expected impact of the rule and to analyze alternatives that might reduce its negative impact on small entities. (A small entity is a small business, a nonprofit enterprise, or a government jurisdiction with a population of less than 50,000.)

All of the affected individuals and providers, except for contractors, are considered small entities for purposes of the Regulatory Flexibility Act. Therefore, these provisions clearly impact a substantial number of small entities. However, the delay in implementation of these regulations will, for the reasons already noted, result in an advantage to these individuals and providers, rather than a negative impact. Also, we believe that any loss to the Federal government will not result in a significant increase in allowable payments to these parties. Therefore, a

regulatory flexibility analysis is not required.

IV. Waiver of Proposed Rulemaking

We are publishing this delay in the rule's effective date without notice of proposed rulemaking procedures. The revised regulations concerning payment for physician services furnished in providers published in the Federal Register on March 2, 1983, were to be effective, for the most part, for services furnished on or after May 31, 1983. We do not believe that a delay in this rule's effective date is rulemaking that requires use of notice and comment procedures. In any event, however, the failure to publish by May 31, 1983, a final rule that delays the effective date of those regulations to October 1, 1983, would be contrary to the public interest. Therefore, we find good cause to waive proposed rulemaking procedures.

V. List of Subjects in 42 CFR Part 405

Administrative practice and procedure, Certification of compliance, Clinics, Contracts (Agreements), End-Stage Renal Disease (ESRD), Health care, Health facilities, Health maintenance organizations (HMO), Health professions, Health suppliers, Home health agencies, Hospitals, Inpatients, Kidney diseases, Laboratories, Medicare, Nursing homes, Onsite surveys, Outpatient providers, Reporting requirements, Rural areas, X-rays.

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare—Hospital Insurance Program, No. 13.774, Medicare—Supplementary Medical Insurance Program)

Dated: May 26, 1983.

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

Approved: May 27, 1983.

Margaret M. Heckler,

Secretary.

[FR Doc. 83-14658 Filed 5-27-83; 9:57 am]

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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.**

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